



CRL.P No. 4856 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO.4856 OF 2021

BETWEEN:

SRI AMIT GARG

...PETITIONER

(BY SRI BHARATH KUMAR V., ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH STATION HOUSE OFFICER
WHITEFIELD CEN POLICE STATION
BENGALURU
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.
2. NEERAJ KUKREJA

Digitally signed by
PADMAVATHI B K
Location: HIGH
COURT OF
KARNATAKA



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...RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;
SRI D.VIJAY RAJ, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR BEARING NO.64/2021 REGISTERED WITH THE RESPONDENT NO.1 WHITEFIELD CEN CRIME P.S., ALONG WITH INFORMATION DATED 02.08.2021 WHEREIN THE PETITIONER HEREIN IS ARRAIGNED AS ACCUSED NO.2 FOR THE ALLEGED OFFENCES P/U/S 420, 419 OF IPC AND SEC.66(C), 66(D) OF I.T ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.07.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.64 of 2021 for offences punishable under Sections 419 and 420 of the IPC and Sections 66C and 66D of the Information Technology Act, 2000 ('the Act' for short).

2. Heard Sri V.Bharath Kumar, learned counsel appearing for the petitioner, Smt. K.P.Yashodha, learned High Court



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Government Pleader appearing for respondent No.1 and Sri D.Vijay Raj, learned counsel appearing for respondent No.2.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings, are as follows:-

The petitioner is in the business of manufacture of medical equipments which includes manufacture of masks to be used during the period when the country was engulfed with COVID-19 pandemic. The 2nd respondent/Director of M/s Pegasi Spirits Private Limited earlier known as M/s 3 Aces Hospitality Private Limited desiring to purchase certain quantity of masks placed an order with the petitioner for supply of one lakh pieces of N-95 masks. The correspondence between the parties led to acceptance of contract and supply of one lakh masks to the 2nd respondent. After receipt of masks payment was also made by the 2nd respondent to the petitioner in terms of the invoice that was raised by the petitioner.

4. It appears that prior to transportation of masks to the 2nd respondent-Company, samples had been sent to the 2nd respondent for verification of the quality of masks, which in



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turn sent them to quality checks to various organizations. Before the quality check came about, the 2nd respondent had insisted delivery of masks and therefore, the delivery had taken place and payment also was made against such delivery.

5. The 2nd respondent, on receiving the samples from the petitioner, had sent them to laboratories to check their quality which resulted in a report depicting that efficiency of mask which ought to have been 95% was actually 38.41%. On the ground that the petitioner had supplied masks which were not in tune with what they ought to have been i.e., N-95, the 2nd respondent caused a legal notice upon the petitioner seeking refund of the entire amount that was paid, as the masks were never put into use in the light of they being ineffective owing to poor quality.

6. The petitioner replied to the said notice clearly indicating that all the compliances and approvals were known to the 2nd respondent and the petitioner had not concealed anything prior to delivery of masks. What was sent as sample was the one that was delivered. The fact that the complainant



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could not put them into use cannot mean that the petitioner has supplied poor quality, as it was in tune with the sample. After receipt of the reply, the complainant registers a crime which becomes an FIR in Crime No.64 of 2021 for offences punishable under Sections 419 and 420 of the IPC and Sections 66C and 66D of the Act. On registration of the crime, the petitioner knocks the doors of this Court in the subject petition and the petition having been entertained, further investigation against the petitioner was stalled by an interim protection in favour of the petitioner. Therefore, further investigation into the matter has not gone on.

7. The learned counsel appearing for the petitioner would contend with vehemence that the entire issue is in the realm of contract. It was a contract between the parties and what was supplied was what was sought for. There was no cheating on the part of the petitioner and there was no dishonest intention at the inception. Without waiting for the report to come on the quality of masks sample which was supplied by the petitioner, the respondent insisted that delivery be made immediately and, therefore, the complainant cannot now contend that what was



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supplied was not what was promised. He would submit that the entire intention of registering the crime against the petitioner is recovery of money.

8. On the other hand, the learned counsel representing the 2nd respondent would seek to refute the submissions to contend that though it lies in the realm of contract, the dishonest intention of the petitioner to cheat the 2nd respondent was there right from the inspection i.e., when the supply was made and he would contend that the entire consignment of masks could not be put into use as they were of poor quality. In the bargain the complainant has lost Rs.47/- lakhs which he has paid and has registered the crime on the ground that the petitioner had cheated the complainant by supplying poor quality masks.

9. The learned High Court Government Pleader would however contend that investigation is stalled by an interim order and no further material has been collected and it is a matter of investigation of masks that the petitioner has



supplied which is of poor quality. He would seek quashment of entire proceedings.

10. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

11. The afore-narrated transaction between the parties is not in dispute. The complainant-Company became interested in venturing into COVID-19 pandemic related product in the month of May 2020 and indented for supply of N-95 masks. Looking at the credentials of the petitioner the complainant placed an order for N-95 masks with M/s Amit Spinning Mills, the petitioner herein. Samples of masks that the petitioner manufactures were sent to the 2nd respondent on 31-05-2020, whereafter the complainant communicates his intention to purchase one lakh pieces of masks. The communication reads as follows:

"This Agreement is made by and between M/S Amit Spinning Mills ("Manufacturer") having an office at Gohanna Road Panipat, Haryana 132103 and 3 Aces Hospitality Pvt Ltd. ("Company") having an office at Level 3 Sy No.33/1 Doddakannahalli Village Varthur Hobli, Bengaluru, Karnataka 560 035.



WHEREAS, Manufacturer is manufacturing N95 mask at their factory located at Gohana Road, Panipat and Company is having a registered Trademarked Brand called "Pegasi".

WHEREAS, Company wishes to contract the Manufacturer as an Original Equipment Manufacturer ("OEM") to manufacture and deliver to the Company high quality, well sanitised "Pegasi" Brand N95 Masks and 3 Ply Masks.

WHEREAS, the product will be manufactured in accordance to product specifications issued for N95 Masks, and must match the criteria for necessary filtration efficiency, fabric quality, respirator classifications, etc. in line with CE< ISO9001:2015 & ISO22609:2004 FFP2, GMP, FDA, NOISH, and all other certifications related to N95 Masks required for the production of efficient N95 Masks.

WHEREAS, the Manufacturer agrees that they will not compete with the company directly or indirectly for any Government supply and tenders. The Manufacturer will not be able to sign an OEM for any organisation except the company for government contracts and tenders.

WHEREAS, the Manufacturer and the company will mutually agree to a timeline for each order and the manufacturer will be responsible to fulfil timelines, if manufacturer fails to meet deadline, penalty might apply.

WHEREAS, the manufacturer agrees to manufacture N95 masks adhering to all quality standards with Pegasi Branding and to prioritise all orders issued by the Company.

THEREFORE, the parties agree as follows

1. DEFINITIONS

As used herein, the following terms have the following meaning, unless the context indicates otherwise.

"OEM" – (Original Equipment Manufacturer) products shall be private labelled finished goods that go to the Company or the Company's customers from Supplier either directly or through



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the Company. An OEM product may be designed and manufactured to specifications and certifications as mentioned above.”

(Emphasis added)

This communication is agreed to by the petitioner. Therefore it became a contract between the parties for manufacture of N-95 masks and its supply to the complainant's Company. The purchase order was placed by the complainant on 31-05-2020 itself. By then, the samples which were sent to the complainant for their quality check appear to have been sent to Laboratories for their check. The laboratories included Defence Research & Development Establishment which has given a report that particulate filtration efficiency of the mask that was sent for quality check was 38.41% as against 95% which ought to be the level of efficiency of N-95 mask. The opinion is that it does not meet the requirement with reference to PFE parameter.

12. Several other laboratories to which samples had been sent also opined that the masks were of poor quality. The catch in the transaction is that the complainant Company did not wait till the report of the quality check came about. The complainant Company placed the order, transferred money and sought



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immediate supply of masks. In accordance with the samples that were sent, the masks were supplied and the masks, according to the complainant-Company and in terms of the report, were not used, as the filtration was not to the tune of 95% as is required. This resulted in causing exchange of legal notices between the parties – the complainant demanding refund of the entire amount and the petitioner denying the fact that no refund is permissible as the contract had concluded by demand and supply. It is after this, the present crime is registered for the offences punishable under Sections 419 and 420 of the IPC and Sections 66C and 66D of the Act. Since the entire issue, now springs from the complaint, the same is germane to be noticed and it reads as follows:

"Sir,

Sub: Complaint against:

1. *Mr. AMIT GARG, (+919999900008)
Proprietor of,
M/s. AMIT SPINNING MILLS*

2. *M/s. AMIT SPINNING MILLS.*

1. *The Complainant submits that, the Complainant is in the business of hospitality sector under the name and style M/s.Pegasi Spirits Pvt. Ltd., which was formerly known as 3-Aces Hospitality Pvt. Ltd., registered under the Companies Act, 1956 vide Certificate of Incorporation pursuant to change of*



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name vide Corporate Identification No.U55100DL2005PTC141319 which certify the name of the Company which has been changed form **3-ACES HOSPITALITY PRIVATE LIMITED to PEGASI SPIRITS PRIVATE LIMITED.** The said company is represented by its Directors who are as follows:

- (1) Mr.NeerajKukreja,
- (2) Mrs.RitikaKukreja

2. The Complainant further submits that since the complaint was in hospitality business was intending to supply N-95 Mask to Government and other private vendors. The complainant was not having Manufacturing setup in Bangalore and due to the said reason, had contacted Amit Spinning Mills represented by its propitiator Amit gargafter getting to know about their manufacturing unit in Panipat, Haryana online for the manufacture of N-95 Mask at his factory located at BILL NEHAATA, NR.L.CR.T. Public School, Gohana Road, Panipat, Harayana – 132 103, in furtherance OEM agreement and purchased order was placed to Amit Spinning Mills on 31/05/2020 for a quantity of 1,00,000/- N-95 mask amounting to Rs.46,72,500/-. The order was placed by the Complainant with the test reports of the products which was issued by Amit Spinning Mills to authenticate its quality. Later when the products were delivered, the complaint had found the said products were substandard products with inferior quality based on DRDO report and BIS certification

90% of the Payment was made VIA RTGS, the details of the payment are as follows:

Sl. No.	Date	Particulars of payment (70%) made to Respondent Company A/c i.e., with H.D.F.C. Current A/c bearing No.50200022636225	Amount in Rs.
1.	10/06/2020	By RTGS through Canara bank vide Transaction No. CNR RBR 12020060900650618	25,00,000/-



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2.	10/06/2020	By RTGS through Canara Bank vide Transaction No. CNR RBR 12020061000669129	7,55,250/-
		Rupees Thirty Two lakhs Fifty Five thousand two hundred and fifty only	32,55,250/-
Add:		(Plus)Initial Advance Payment 20% Paid On 31/05/2020 By NEFT Vide Transaction Number P20060196839689	9,50,000/-
		TOTAL AMOUNT PAID Rupees Forty Two lakhs five thousand two hundred and fifty only	42,05,250/-

The Complainant after the receipt of the test reports from DRDO and BIS authorities the complainant had also availed second opinion from SGS located at Chennai but to the dismay of the complainant the said report had also authenticated that the quality of N-95 mask supplied by Amit Spinning Mill represented by its proprietor was of inferior quality which does not meet the necessary requirement as per the approved government labs. The complainant bring to the notice of this jurisdiction police station that the said persons as mentioned below:

1. Mr. AMIT GARG,
Proprietor of,
M/s. AMIT SPINNING MILLS
2. M/s. AMIT SPINNING MILLS.

The said persons have defrauded the complainant and has given false reports in order to defraud the complainant for the amount paid for the said contract which is about Rs.46,72,500/- hereby the complainant request this jurisdiction police station to enquire the said matter by registering this complainant against the above mentioned persons.

Yours faithfully

*Sd/-
(Neeraj Kukreja)
Age:45 years*



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Mob No.7338305003, 7899100003

From:

M/s. PEGASI SPIRITS PVT. LTD.,
(Formerly known as
3-Aces Hospitality Pvt. Ltd.,)
having its Corporate Office
At Level-3, Sy.No.33/1,
Doddakannahalli village and Hobli,
Bangalore – 560 035
Represented by its
Managing Director.”

The grievance of the complainant in the complaint (*supra*) is that the petitioner had defrauded the complainant for the amount paid in terms of the contract which is about Rs.46,72,500/- and seeks action upon the petitioner which would result in recovery of money. Therefore, the case becomes one instituted on breach of contract and recovery of money. Whether that would amount to offence punishable for cheating under Section 420 of the IPC is the issue that requires consideration in the present *lis*. Section 420 of the IPC reads as follows:

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



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which may extend to seven years, and shall also be liable to fine."

For an offence under Section 420 of the IPC to be alleged, ingredients of Section 415 of the IPC are required to be present. Section 415 of the IPC reads as follows:

*"415. **Cheating.**—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."*

Section 415 mandates that whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property is said to cheat. There are several illustrations that are found for Section 415 of the IPC.

13. In the case at hand, finding the petitioner-Company to be well equipped for production and delivery of masks to be marketed in the name of the complainant-Company, it had placed a purchase order and purchased masks. This is found to



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be of poor quality at a later point in time. This cannot amount to cheating or deception at the inception of the contract, as masks were needed; they were supplied after supplying of samples. If the complainant could not wait for the samples to be checked by the appropriate laboratories, the offence of cheating cannot be laid against the petitioner. Therefore, none of the ingredients of Section 415 of the IPC is seen to be existing in the dispute between the petitioner and the complainant, which is a contract and the allegation is breach of contract.

14. The other offence alleged is under Section 419 of the IPC. Section 419 of the IPC deals with cheating by impersonation and whoever cheats by impersonation shall be punished. The offence would tumble down for the reasons rendered (*supra*) on Section 415 of the IPC itself. There was no cheating in the case at hand and the offence under Section 419 of the IPC also cannot be laid against the petitioner.

15. What remains is offence punishable under Sections 66C and 66D of the Act. Section 66C reads as follows:



"66-C. Punishment for identity theft - *Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh."*

66-D. Punishment for cheating by personation by using computer resource.—*Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees."*

Section 66C deals with any person fraudulently or dishonestly makes use of the electronic signature, password or any other unique identification of any other person would be punished. The other offence that is alleged is, whoever by means of any communication device or computer resource, cheats by personating. In the considered view of this Court, these provisions of the Act are reckless inclusions in the crime as the facts narrated hereinabove would not even remotely touch upon Sections 66C and 66D of the Act. Therefore, those offences also cannot be laid against the petitioner.



16. In the teeth of the aforesaid undisputed facts, reference is being made to the judgment of the Apex Court in the case of **SUSHIL SETHI v. STATE OF ARUNACHAL PRADESH**¹ becomes apposite, the Apex Court has held as follows:

"7. While considering the prayer of the appellants to quash the impugned criminal proceedings against the appellants for the offence under Section 420 IPC, few decisions of this Court in exercise of powers under Section 482 CrPC are required to be referred to.

7.1. In Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426], in para 102, this Court has categorised the cases by way of illustration wherein the powers under Article 226 or the inherent powers under Section 482 CrPC could be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In para 102, it is observed and held as under: (SCC pp. 378-79)

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

¹ (2020) 3 SCC 240



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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 Act concerned (under which a criminal



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proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

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

The aforesaid decision of this Court has been followed subsequently by this Court in a catena of decisions.

7.2. In Vesa Holdings (P) Ltd. [Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293 : (2015) 3 SCC (Cri) 498] , it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

7.3. In Hira Lal Hari Lal Bhagwati [Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257 : 2003 SCC (Cri) 1121] , in para 40, this Court has observed and held as under: (SCC p. 280)



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"40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Penal Code, 1860 does not arise. We have read the charge-sheet as a whole. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/ dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Kar Vivad Samadhan Scheme certificate along with Duncan [CBI v. Duncans



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Agro Industries Ltd., (1996) 5 SCC 591: 1996 SCC (Cri) 1045] and Sushila Rani [Sushila Rani v. CIT, (2002) 2 SCC 697] judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process.”

(emphasis in original)

It is further observed and held by this Court in the aforesaid decision that to bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is further observed and held that it is difficult to establish conspiracy by direct evidence.

7.4. In *V.Y. Jose [V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78 : (2009) 1 SCC (Cri) 996]* , it is observed and held by this Court that one of the ingredients of cheating is the existence of fraudulent or dishonest intention of making initial promise or existence thereof, from the very beginning of formation of contract. It is further observed and held that it is one thing to say that a case has been made out for trial and as such criminal proceedings should not be quashed, but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

7.5. In *Sharad Kumar Sanghi [Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781: (2016) 1 SCC (Cri) 159]*, this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a Company where Company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability,



in the absence of Company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a Company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a Company, it is essential to make requisite allegation to constitute the vicarious liability.

7.6. In Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59: (2011) 3 SCC (Cri) 23] , it is observed and held by this Court that when dispute between the parties constitutes only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

7.7. In Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1: (2008) 1 SCC (Cri) 259] , it is observed and 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 is further observed and 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. It is further observed and held that inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that this is a fit case to exercise



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powers under Section 482 CrPC and to quash the impugned criminal proceedings.

9. In view of the above and for the reasons stated above, we are of the firm opinion that this is a fit case to exercise the powers under Section 482 CrPC and to quash the criminal proceedings against the appellants for the offence under Section 420 read with Section 120-B IPC. To continue the criminal proceedings against the appellants would be undue harassment to them. As observed hereinabove, no prima facie case for the offence under Section 420 IPC is made out.”

(Emphasis supplied)

The Apex Court, in the afore-quoted judgment, was considering the case whether the allegation was for offence punishable under Section 420 of the IPC. The Apex Court considers the entire spectrum of law with regard to interplay between the contract and cheating. The issue before the Apex Court in the said judgment was also supply of inferior quality of material in contravention of the provisions of the Act, which stipulated specific percentages of chemicals to be found in the supply therein. The allegation was that the accused was required to supply the equipments in terms of the contract which had not been done. A criminal case was registered against the appellant therein and the High Court had refused to quash the proceedings in terms of its power under Section 482 of the



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Cr.P.C. The matter was taken up in appeal before the Apex Court and the Apex Court set aside the order of the High Court and quashed the proceedings against the appellant therein.

17. The facts in the case at hand are identical to what fell for consideration before the Apex Court in the case of **SUSHIL SETHI** (supra). The contract between the parties or supply of inferior quality would undoubtedly come within the realm of civil proceedings of whatever nature the complainant would seek to initiate, but not registration of a crime. It is trite law that criminal law cannot be set into motion for recovery of money unless the offence of cheating or even criminal breach of trust is established. The case at hand involves both incurable infirmities for setting criminal law in motion – one it is initiated for breach of contract and the other it is initiated for recovery of money. Therefore, further proceedings if permitted to continue against the petitioner, it would degenerate into harassment and result in miscarriage of justice, for which the case at hand becomes a fit case for exercise of jurisdiction of this Court under Section 482 of the Cr.P.C. and obliterate the impugned proceedings.



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18. For the aforesaid reasons, the following:

ORDER

- (i) The Criminal Petition is allowed.
- (ii) The FIR registered in Crime No.64 of 2021 by the Whitefield CEN Police Station stands quashed.
- (iii) It is made clear that this Court has not pronounced upon any right of the complainant to initiate civil proceedings for recovery of money. If such proceedings are instituted, the observations made in the course of this order would not influence any judicial *fora* on merit of the said claim.

I.A.No.1/2021 stands disposed, as a consequence.

BKP

**Sd/-
JUDGE**