

\$~1

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10.11.2020

Pronounced on: 23.11.2020

+ CRL.M.C. 1616/2020 & Crl.M.A. 10307/2020

RAMESH BOGHABHAI BHUT Petitioner

Through Mr.Mohit Negi, Adv.

versus

STATE & ANR. Respondent

Through Mr.Panna Lal Sharma, APP for the State.

Mr.B.V. Niren, Adv. with Mr.Kshitij Mudgal, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT

1. Present petition has been filed under section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.02/2020 dated 01.01.2020 registered at Police Station North Rohini, Distt. Rohini, New Delhi for the offences punishable under sections 420/406 IPC.

2. The facts of present case, as narrated in the present petition, are that since 2009, the Petitioner, through his sole proprietorship has been undertaking the business of fresh/dehydrated onions and garlic and other

perishable items export to various countries like Europe, Gulf and rest of Asia. In January 2018, the Complainant's office, Tiger Logistics, approached the Petitioner and one Mr. Makbul Sheikh- salesman of Tiger Logistics, from his office situated at Veraval, Gujarat met with the Petitioner at the offices of the Petitioner which is also in Gujarat. During the meeting, Mr. Makbul Sheikh represented to the Petitioner that the Respondent No.2 is a commission agent and can provide cost efficient and reliable services. Accordingly, on 17.01.2018, Mr. Makbul Sheikh addressed an email to the Petitioner (issued from Verawal, Gujarat) thereby informing the Petitioner regarding shipping lines available from Port Pipavav, Gujarat to Port of Naples, Italy. On 10.02.2018, the Petitioner, based on the transit time of 21 (twenty one) days promised by Tiger Logistics, entered into a sales contract with his customer Sadro SRL, an importer based in Italy. Upon such commitment, the Petitioner provided 13 booking to the Respondent No.1 for 26 containers. The Petitioner only as a goodwill gesture as a sincere exporter and upon the insistence of the representatives of Tiger Logistics paid an amount of Rs.10,76,100/- (Rupees Ten lakh Seventy Six Thousand and One Hundred Only) through cheque issued in Gujarat to the Shipping Line and such payment was collected by the representatives of Tiger Logistics only as

an agent. Over the month of January, 2018, the Petitioner sent 26 (twenty six) shipments of fresh onion through the Safmarine Shipment Line as booked by Tiger Logistics. However, to the utter shock and surprise of the Petitioner, the shipment did not reach the Port of Naples within 21 (twenty one) days. On 12.03.2018, the Petitioner issued an email to the representatives of Tiger Logistics based out of Gujarat expressing his concerns with regards to the delay of 14 (fourteen) days in the delivery of the shipment of fresh onions. The Petitioner issued another email dated 21.03.2018 to the representatives of Tiger Logistics based out of Gujarat highlighting the delay in the delivery of the shipment. However, the Petitioner received no proper response to any of its emails. Due to the Petitioner's growing concern over the delay in delivery of shipments and risk of loss with every passing day, the Petitioner on 16.04.2018 issued another email to the representatives of Tiger Logistics based out of Gujarat expressing his concern over the delay of 24 (twenty four) days beyond the delivery time of 21 (twenty one) days. On 21.04.2020, the representatives of Tiger Logistics based out of Gujarat responded to the emails issued by the Petitioner, acknowledging, and accepting the delay in the delivery of shipment. The representatives of Tiger Logistics based out of Gujarat further

apologized for the delay in the delivery. However, to the dismay of the Petitioner, there was complete failure on the part of the logistics service as promised by Tiger Logistics and the containers were delivered after a delay of many weeks. Due to the delay, the buyer in Italy cancelled the remaining shipment of the Petitioner which caused an enormous loss to the Petitioner. Despite the fact that the Tiger Logistics along with the Shipping Line, caused a tremendous delay in delivery the containers led to the Petitioner incurring substantial huge loss, the Respondent No.2 started demanding approx. 37 Lakhs from the Petitioner. Since there was an utter failure of shipping services provided by Tiger Logistics which cannot claim any part of payment from the Petitioner.

3. Learned counsel for the petitioner submitted that the allegations in the FIR ex-facie do not disclose that the Petitioner at any point of time had fraudulent or dishonest intention or mens rea. The dispute raised by the Non-Petitioner/Respondent No. 2 in its complaint does not disclose commission of any criminal offence. The allegations and a purported claim at best, and without prejudice to the instant case, are in a nature of civil proceeding. The criminal proceeding is an attempt of the complainant to convert the civil dispute into a criminal dispute because of the feeling that if

a civil dispute is converted into a criminal dispute, quicker relief will be obtained. Thus, it is a gross abuse of law and process.

4. To strengthen his above arguments, learned counsel has relied upon the case of **V.Y. Jose and Anr. v. State of Gujarat and Anr.: 2009 (3) SCC 78** wherein the Hon'ble Supreme Court has held as under:

“14. 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. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

28. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The Superior Courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial courts.”

5. Learned counsel further submitted that the Complainant/Respondent No.2 has conceded that the Tiger Logistics (India) Ltd. provided the cost and fees for transportation of the goods within 21 days. It is now an undisputed fact that Tiger Logistics offered to provide the services,

including the cost and fees for transportation of the goods within 21 days. It is also an undisputed fact that good were not delivered in such 21 days. There has been a complete lapses of logistic service commitment for which they are demanding full payment. Such an act makes it evident that they are trying to mislead the legal machineries. Therefore, the amount of Rs.48,51,498/- (Rupees Forty Eight Lakh Fifty One Thousand Four Hundred and Ninety Eight Only) will no longer apply to the terms of the contract, since there is a clear breach of the contract. The Complainant is trying to enforce a decree of money recovery, wherein such decree does not exist, through the criminal mechanism.

6. Learned counsel for the petitioner submitted that courts in Delhi do not have the jurisdiction to adjudicate upon the matter. The alleged transaction between the parties, and the pursuant action under the transaction took place from the State of Gujarat and nothing objectionable happened in the NCT of Delhi. The FIR can under any circumstances be not registered anywhere in the NCT of Delhi for lack of jurisdiction. The FIR has maliciously been lodged in Delhi. It has been so done with a view to harass the Petitioner. Apart from the fact that there has been no cheating/criminal breach of trust per se, none as such has been alleged to have been committed

in Delhi, which is established on the following facts:

- (i) *The bookings for sending the goods overseas were made outside the NCT of Delhi and in the State of Gujarat;*
- (ii) *The said containers were shipped out of the country from Gujarat. Delhi Police as such have no jurisdiction whatsoever in the matter;*
- (iii) *Because the representatives of the Respondent No.2 based out Veraval, Gujarat, met with the Petitioner at his office address at Mahuva, Gujarat. It is also reflected in the email issued by Mr. Makbul Sheikh, the representative of the Respondent No.2 operated out of Veraval, Gujarat;*
- (iv) *Because the Bill of Lading that is the only legal document between the parties also states that it has been prepared at Ahmedabad. Therefore, any purported inducement that may have happened took place within the territory of State of Gujarat and the courts/police in the NCT of Delhi have no jurisdiction to try the dispute;*
- (v) *The invoice, (albeit incorrectly since these invoices have been raised unlawfully and after the transaction has been concluded), has been raised by the office of Tiger Logistics, based out of C-406, Dev Aurum, NR. Shell Petrol Pump, Anand Nagar Road, Prahlad Nagar, Ahmedabad – 380015. The terms and conditions of the invoice also specifies that “all*

disputes are subject to Ahmedabad Jurisdiction”;

- (vi) *The Complainant has tried to mislead this Hon'ble Court by not annexing the initial invoices, where the jurisdiction was shown to be Ahmedabad. The correct invoice is available as Schedule I to the written submissions. The later invoices was a mischievous attempt by the Complainant to make Delhi the jurisdiction and to mislead this Court;*
- (vii) *In any event, such jurisdiction clause can only determine the jurisdiction of the civil court and not determine where the “purported” criminal act has taken place.*

7. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of **Asit Bhattacharjee vs. Hanuman Prasad Ojha & Ors.: (2007) 5 SCC 786** whereby held as under:

“Fraudulent representation being one of the essential ingredients in respect of commission of an offence under Section 420 of the Indian Penal Code, a place where such fraudulent misrepresentation has been made would, thus, give rise to a cause of action for prosecuting the accused. Similarly, having regard to the ingredients of an offence under Section 406 where the entrustments were made as also the situs where the offence was completed in the sense that the amount entrusted had not been accounted for by the agent to the principal will also have a nexus so as to enable to the Court concerned to exercise its jurisdiction of taking cognizance.”

8. The Hon'ble Supreme Court has further held in **Navinchandra N.**

Majithia v. State of Maharashtra & Ors.: (2000) 7 SCC 640, as under:

"22. So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed."

9. While concluding his arguments, learned counsel for the petitioner submitted that the territorial jurisdiction of a court with regard to criminal offence would be decided on the basis of place of occurrence of incident and not on the basis where complaint was filed or the FIR registered.

10. To strengthen his above arguments, he has relied upon the case of ***Rajandra Ramchandra Kavelkar vs. State of Maharashtra & Anr.: AIR 2009 SC 1792***, whereby Hon'ble Supreme Court has held as under:

*"19. It is also relevant to state that in **Navinchandra N. Majithia vs. State of Maharashtra: (2000) 7 SCC 640**, the Hon'ble Supreme Court at paragraph 22 of the judgment has observed :*

"22. So far as the question of territorial jurisdiction with reference to a criminal offence is concerned the main factor to be considered is the place where the alleged offence was committed."

The territorial jurisdiction of a court with regard to criminal offence would be decided on the basis of place of occurrence of the incident and not on the basis of where the complaint was filed and the mere fact that FIR was registered in a particular State is not the sole criterion to decide that no cause of action has arisen even partly

within the territorial limits of jurisdiction of another court. The venue of enquiry or trial is primarily to be determined by the averments contained in the complaint or charge sheet.”

11. On the other hand, learned APP for State and counsel for the respondent no.2 submitted that Respondent no. 2 raised invoices for providing its services, upon which the Petitioner made part payment of Rs.10,76,800/- to Respondent no. 2 at New Delhi. However, when said Respondent no.2 demanded the outstanding amount, the Petitioner flatly refused to pay and stated that no amount is liable to be paid by the Petitioner.

12. On jurisdiction, it is submitted that as per admitted invoices raised by Respondent no.2, the payment was to be made by the Petitioner at New Delhi since the bank account mentioned on the invoices is maintained at New Delhi. The Petitioner has committed the offence of criminal breach of trust since the payment has not been made at New Delhi. In addition thereto, Respondent no.2 has been demanding the payment from his office situated in New Delhi. Furthermore, said Respondent has received threats and assault at New Delhi. Therefore, as per section 181 (4) Cr.P.C., even if a part of cause of action has arisen at a particular place, the local court shall have jurisdiction in the matter. In the present case, the whole cause of action has

arisen in New Delhi since the whole payment was to be made in New Delhi and the incidents have taken place in New Delhi.

13. Further submitted that it is an admitted fact that the Petitioner had paid Rs. 10,76,800/- to Respondent no. 2 at New Delhi. Thus, the Petitioner is estopped from claiming that no payment is required to be made at New Delhi. Therefore, the cause of action for criminal breach of trust and cheating has arisen in New Delhi and consequently, the FIR is maintainable at New Delhi. In addition, the present FIR is legally maintainable at New Delhi since the office of Respondent no.2/Complainant is in New Delhi. The Complainant is working as Manager-Credit Control in Tiger Logistics (India) Ltd. In the course of his employment, Respondent no.2 made constant requests for payment of the outstanding dues from the Petitioner from his office at New Delhi and in response thereof, the Petitioner used to threaten and intimidate Respondent no.2. Further, it has also been stated in the FIR that Respondent no.2 has been cheated at New Delhi since the Petitioner had promised to pay the amount demanded by Respondent no.2 at New Delhi but has admittedly refused to do so.

14. It is submitted that there is no civil or contractual dispute between the Petitioner and Respondent no.2. Petitioner himself has stated in the petition

that there is no contractual relationship between the Petitioner and Respondent no.2. Thus, the Petitioner has been consistently making contradictory statements which is evidence of the malafide and illegal contentions made by the Petitioner. The documents relied upon by the Petitioner, i.e. the booking amendment and Waybill etc. are admittedly documents which have been issued by the shipping line namely, Safmarine and not by Respondent no.2. Thus, there is not contractual/civil dispute existing between the parties and the Petitioner has committed the offence of criminal breach of trust and cheating. Furthermore, the Petitioner has been making contradictory statements stating that Respondent no. 2/Complainant has been deficient in his services whereas the Petitioner himself in his email dated 16.04.2018 has stated that he is satisfied with the service provided by Respondent no.2 and that the delay was caused by the shipping line Safmarine.

15. It is further submitted that any and all the documents relied upon by the Petitioner cannot be considered under section 482 Cr.P.C. The Hon'ble Supreme Court has held in para 18 of ***Ravindra Kumar Madanlal Goenka vs. Rugmini Ram Raghav Spinners Pvt. Ltd. & Anr.: (2009) 11 SCC 529*** as follows:-

*18. While entertaining a petition under Section 482 Cr.P.C., the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are *prima facie* materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases.”*

16. The Hon’ble Supreme Court has further held in *Kamal Shivaji Pokarnekar vs. State of Maharashtra & Ors.*: (2019) 14 SCC 350 at paras 5 and 6 that:-

“5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the

ingredients of a criminal offence or not.”

17. It is submitted that the Hon’ble Supreme Court has settled the position of law with respect to territorial jurisdiction for the cases pertaining to criminal breach of trust that while dealing with other precedents, it is held in

Rhea Chakraborty vs. State of Bihar & Ors.: (2020) SCC Online SC 654

as follows:-

“26. When allegation of Criminal Breach of Trust and Misappropriation is made, on the jurisdictional aspect, this Court in Asit Bhattacharjee Vs. Hanuman Prasad Ojha: (2007) 5 SCC 786, in the judgment written by Justice S B Sinha, observed as under:-

“21. Section 181 provides for place of trial in case of certain offences. Sub-section (4) of Section 181 was introduced in the Code of Criminal Procedure in 1973 as there existed conflict in the decisions of various High Courts as regards commission of offence of criminal misappropriation and criminal breach of trust and with that end in view, it was provided that such an offence may be inquired into or tried by the court within whose jurisdiction the accused was bound by law or by contract to render accounts or return the entrusted property, but failed to discharge that obligation.

22. The provisions referred to hereinbefore clearly suggest that even if a part of cause of action has arisen, the police station concerned situate within the jurisdiction of the Magistrate empowered to take cognizance under Section 190(1) of the Code of Criminal Procedure will have the jurisdiction to make investigation.”

28. Once again, in Rasiklala Dalpatram Thakkar Vs.

*State of Gujarat: (2010) 1 SCC 1, while approving the earlier decisions in **Satvinder Kaur(supra)** in the judgment rendered by Justice Altamas Kabir as he was then, the Supreme Court made it very clear that a police officer cannot refrain from investigating a matter on territorial ground and the issue can be decided after conclusion of the investigation. It was thus held:-*

"27. In our view, both the trial court as well as the Bombay High Court had correctly interpreted the provisions of Section 156 CrPC to hold that it was not within the jurisdiction of the investigating agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction."

28.

29. Moreover, the allegation relating to criminal breach of trust and misappropriation of money which were to be eventually accounted for in Patna (where the Complainant resides), could *prima facie* indicate the lawful jurisdiction of the Patna police. This aspect was dealt succinctly by Justice J S Khehar, as a member of the Division Bench in **Lee Kun Hee, President, Samsung Corporation, South Korea and Others Vs. State of Uttar Pradesh and Ors.** (2012) 3 SCC 132 and it was held as under:-

*"38 ***** 181. Place of trial in case of certain offences.—(1)-(3)* * * (4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused*

person.”

A perusal of the aforesaid provision leaves no room for any doubt, that in offences of the nature as are subject-matter of consideration in the present controversy, the court within whose local jurisdiction, the whole or a part of the consideration “... were required to be returned or accounted for....” would have jurisdiction in the matter.”

18. The Hon’ble Supreme Court, with respect to allegations of civil dispute has held in ***Indian Oil Corporation vs. NEPC India Ltd. & Ors.: (2006) 6 SCC 736*** at para 12 as follows:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) to (iv)

(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.”

19. Thus, submitted that in view of the above facts and circumstances and the settled position of law, it is prayed that this Court be pleased to dismiss the present petition with costs.

20. I have heard learned counsel for the parties and perused the material available on record.

21. It is not in dispute that in the month of January, 2018 from complainant's office, Tiger Logistics, approached the petitioner and one Makbul Sheikh-salesman of Tiger Logistics, from his office situated at Verawal. Gujarat met with the Petitioner at his office in Gujarat. On 17.01.2018, said Makbul addressed an email to the Petitioner from Verawal, Gujarat thereby informing to the Petitioner regarding shipping lines available from Port Pipavav, Gujarat to Port of Naples, Italy. On 10.02.2018, based on the transit time of 21 (twenty one) days promised by

Tiger Logistics, the petitioner entered into a sales contract with his customer Sadro SRL, an importer based in Italy. Upon such commitment, the Petitioner provided 13 booking to the complainant for 26 containers. Admittedly, the Petitioner paid an amount of Rs.10,76,100/- (Rupees Ten lakh Seventy Six Thousand and One Hundred Only) through cheque issued in Gujarat to the Shipping Line and said payment was collected by the representatives of Tiger Logistics as an agent. Over the month of January, 2018, the Petitioner sent 26 shipments of fresh onion through the Safmarine Shipment Line as booked by Tiger Logistics. However, the shipment did not reach the Port of Naples, Italy within 21 days. To this effect, the petitioner had issued e-mail dated 12.03.2018 to the representatives of Tiger Logistics based out of Gujarat expressing his concern with regards to the delay of 14 days in the delivery of the shipment of fresh onions. Thereafter, the Petitioner had issued two other emails dated 21.03.2018 and 16.04.2018 expressing his concern over delay of 24 days beyond the delivery time of 21 days. Due to delay, the petitioner had incurred loss but respondent no.2 started demanding approx. 37 lakhs from the petitioner, however, not paid, hence, the present FIR registered against the petitioner.

22. In case of **V.Y. Jose (supra)**, the Hon'ble Supreme Court has 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 absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out. Further held that a matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. In the case in hand, there was an agreement to fulfil the same, however, there was delay due to which the petitioner has incurred loss, therefore, not paid the total amount.

23. It is trite that an inquiry and trial with respect of an offence shall be conducted by the Court within whose local jurisdiction occurrence in question is said to have taken place and thereby cause of action has arisen. Section 178 and Section 179 of Cr.P.C. are merely exceptions to this principle enumerated in Section 177, and their scope should not be enlarged on analogous consideration. Ordinarily the case shall be tried by the Court in whose local limits the offence was committed, which is in the state of Gujarat in relation to the present dispute. In addition to the aforesaid, for determination of offences alleged to have been committed under Section 406 of the Indian Penal Code 1860, Section 181 of the Code of Criminal

Procedure, 1973 lays down the jurisdiction of such court where “*the offence was committed or any part of the property which is the subject of the offence was received or retained.*”

24. In the case in hand, the transaction between the parties in relation to transaction of goods took place in Gujarat, the representations and meeting took place in Gujarat, the goods were shipped from Pipavav Port Gujarat, bill of ladings were released from Ahmedabad Gujarat, the invoices were raised by the entity based out of Gujarat and the jurisdiction of such invoices were subject to the court of Gujarat, therefore, applying the direct principles of Section 181, only the court situated in Gujarat can exercise jurisdiction over the alleged criminal breach of trust, if any.

25. It is pertinent to mention here that for the application of Section 179, the primary consequence should be considered in determining jurisdiction and not any secondary consequence. If the primary consequence completes the offence, the mere fact that there is a more remote consequence will not make Section 179 applicable. Therefore, the consequence of the offence, if any, is sustained by the Tiger Logistics Branch situated in Gujarat. It cannot possibly be the argument of the Complainant/Respondent No.2, that tomorrow, if Tiger Logistics were to send an email from its Hyderabad

office demanding repayment of money, then courts in Hyderabad will have jurisdiction over the matter. Such interpretation of law is absurd and deserves to be outrightly rejected.

26. In case of ***Jai Prakash vs. Dinesh Dayal: (1989) 39 DLT 376***, this Court held that where the accused is carrying on business in a city, agreement to supply to complainant's branch office at that city is entered within the local jurisdiction of that city, institution of complaint at New Delhi on the ground that the complainant's head office situated there, is without jurisdiction.

27. Para 6 of the above cited case is relevant here and same is reproduced as under:

"Upon a consideration of the fact that the agreement dated 4-2-1988 between the parties clearly indicates that it was entered into between them at Bhadohi, that the various invoices were sent by the petitioner to respondent No. 2 in its branch office at Bhadohi and the factum of a civil suit having been filed for recovery of amount by respondent No. 2 against the petitioner at Gian Pur, Varanasi within the territorial jurisdiction of which Bhadohi is situated. I am of the view that this criminal complaint filed by respondent No. 2 against the petitioner at New Delhi could not be so filed for want of jurisdiction. Clearly if the complaint is filed by a party against another at a place which has no territorial jurisdiction to entertain the same. I am of the view that it

amounts to abuse of process of the Court. The Court should not be made an instrument of compelling a party to come to a place far away from his own place, to submit to the jurisdiction of a court which actually has none. I am, therefore, of the view that the proceedings instituted by respondent No. 2 against the petitioner in the shape of a criminal complaint under Section 406 of Indian Penal Code and the summoning of the petitioner by the trial court are without jurisdiction and there is no alternative but to quash such proceedings. The proceedings, therefore, pending before the learned trial court are quashed.”

28. Similar view was taken in the case of ***Subhkaran Luharuka & Anr.*** vs. ***State & Anr.: 2010(170) DLT 516*** held as under:

“59. I have perused the aforesaid judgments and find that in all those judgments it has been held that jurisdiction can be conferred on the Court either where the offence has been commenced or where it has been completed and even where part of the offence was committed. Therefore, only plea raised by the complainant that a meeting had taken place in Delhi office of the complainant without giving any details as to when and for what purpose such a meeting had taken place, of which no minutes has been provided by the complainant, jurisdiction cannot be conferred in Delhi.

63. As regards inducement, it is submitted that there is no allegation of deceit, cheating or fraudulent intention of the accused at the time of entering into the contract. There is no pleading that there was any intention to cheat from the very beginning or that the 1994 agreement was fraudulently executed. The contract was executed in 1994 and after that parties have even given effect to the agreement. The assignee of the rights of the Company has already constructed the Flats over the land. Even

otherwise a subsequent breach of a contract i.e. creation of Mortgage cannot be construed as cheating. 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 [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 48 of 69] to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. The element of mens rea is totally missing.”

29. In the case of *State of Haryana & Ors. vs. Bhajan Lal & Ors.: 1992 SCC (Cri.) 426*, the Hon’ble Supreme Court has conclusively held that in regard to exercise of power under Section 482 of Cr.P.C. under following circumstances, the High Court must exercises its jurisdiction to quash any frivolous complaint.

“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 extra-ordinary 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 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 F.I.R. 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.*

[...]

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.*

[...]

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.”*

30. Keeping in view the facts and circumstances of this case and the law discussed above, the registration of FIR in question in Delhi is an abuse of

the process of law. I have no hesitation to record here that the Investigating Agency and Court should not be made an instrument of compelling a party to come to a place far away from his own place, to submit to the jurisdiction of a Court which actually has none. Therefore, continuance of the criminal proceedings will lead to harassment of the petitioner which is not acceptable in law.

31. In view of the facts discussed above, the present FIR is without jurisdiction whereby the complainant/Respondent No.2 has attempted to seek unlawful recovery of money which is purely commercial matter, therefore, the cases cited by the counsel for respondent no.2 are not applicable.

32. Accordingly, the FIR No.02/2020 dated 01.01.2020 registered at Police Station North Rohini, Distt. Rohini, New Delhi is hereby quashed with emanating proceedings thereto, if any.

33. Present petition is, accordingly, allowed and disposed of.

34. Pending application also stands disposed of.
35. The judgment be uploaded on the website forthwith.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 23, 2020
ab

