

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF APRIL, 2024

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1375 OF 2022

C/W

CRIMINAL PETITION No.1041 OF 2022

CRIMINAL PETITION No.1330 OF 2022

IN CRIMINAL PETITION No.1375 OF 2022

BETWEEN:

SRI ADITYA KANKARIA
S/O SRI SUBHAS CHAND KANKARIA
AGED ABOUT 44 YEARS
DIRECTOR, M/S. KSM NIKETAN PVT. LTD.,
RESIDING AT OLYMPIA ENCHANTE, VILLA NO.5
SY.NO.152, HAGADUR VILLAGE
WHITEFIELD
BENGALURU - 560 066.

ALSO AT:

OFFICE NO.688, 1ST FLOOR,
9TH 'A' MAIN ROAD, BENGALURU.

(BY SRI AMAR CORREA, ADVOCATE)

... PETITIONER

AND:

- 1 . THE STATE OF KARNATAKA
BY THE POLICE OF WHITEFIELD POLICE STATION
BENGALURU
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

- 2 . SRI SATHISH KUMAR.H.A.,
S/O LATE ANJANAPPA
AGED ABOUT 44 YEARS
R/O HIMARSHA NILAYA
PENT HOUSE, VIJETHA APARTMENT
B BLOCK, HAGADURU MAIN ROAD
BENGALURU – 560 066.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R-1;
SMT.B.N.GAURI, ADVOCATE A/W
SRI VINUDEEP R., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASHING THE FIR AS AGAINST THIS PETITIONER, INCLUDING THE REGISTRATION AND CONTINUATION OF THE CASE IN CR.NO.13/2022 FOR THE ALLEGED OFFENCE P/U/S.406,420,447,467,468,417 OF IPC OF WHITEFIELD P.S, ON THE FILE OF THE LEARNED ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BENGALURU RURAL DISTRICT.

IN CRIMINAL PETITION No.1041 OF 2022

BETWEEN:

SRI ADITYA KANKARIA
S/O SRI SUBHASH CHAND KANKARIA
AGED ABOUT 44 YEARS
DIRECTOR
M/S.KSM NIKETAN PVT. LTD.,
RESIDING AT OLYMIPA ENCHANTE
VILLA NO.5, SY.NO.152
HAGADUR VILLAGE
WHITEFILED
BENGALURU – 560 066.

... PETITIONER

(BY SRI AMAR CORREA, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
BY LOKAYUKTHA POLICE
BENGALURU – 560 001.
REPRESENTED BY
STATE PUBLIC PROSECUTOR/HCGP
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . SRI SATHISH KUMAR
S/O LATE ANJANAPPA
AGED ABOUT 44 YEARS
R/O: HIMARSHA NILAYA
PENT HOUSE
VIJETHA APARTMENT
B BLOCK, HAGADUR MAIN ROAD
BENGALURU – 560 066.

... RESPONDENTS

(BY SRI B.B.PATIL, SPL.PP FOR R-1;

SMT.B.N.GAURI, ADVOCATE A/W
SRI VINUDEEP R., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR AS ARE AGAINST THIS PETITIONER /ACCUSED NO.3, INCLUDING THE REGISTRATION AND CONTINUATION OF THE CASE IN CR.NO.49/2021 OF ANTI CORRUPTION BUREAU P.S., BENGALURU CITY FOR THE OFFENCE P/U/S 13(1)(a),13(2) AND SEC.12 OF THE P.C ACT NOW ON THE FILE OF THE LEARNED ADDL.CITY CIVIL AND SESSIONS JUDGE AND SPL.JUDGE, LOKAYUKTHA CASES.

IN CRIMINAL PETITION No.1330 OF 2022

BETWEEN:

SRI ADITYA KANKARIA
S/O SRI. SUBHAS CHAND KANKARIA
AGED ABOUT 44 YEARS
DIRECTOR, M/S. KSM NIKETAN PVT. LTD.,
RESIDING AT OLYMPIA ENCHANTE
VILLA NO.5
SY.NO. 152, HAGADUR VILLAGE
WHITEFIELD
BENGALURU – 560 066.

... PETITIONER

(BY SRI AMAR CORREA, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
BY THE POLICE OF
WHITEFIELD POLICE STATION
BENGALURU
REPRESENTED BY

STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . SRI. SATHISH KUMAR
S/O LATE ANJANAPA
AGED ABOUT 44 YEARS
R/O HIMARSHA NILAYA
PENT HOUSE
VIJETHA APARTMENT
B BLOCK
HAGADURU MAIN ROAD
BENGALURU – 560 066.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R-1;
SMT.B.N.GAURI, ADVOCATE A/W
SRI VINUDEEP R., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASHING THE FIR AS AGAINST THIS PETITIONER, INCLUDING THE REGISTRATION AND CONTINUATION OF THE CASE IN CR.NO.14/2022 FOR THE ALLEGED OFFENCE P/U/S.406, 420, 447, 467, 468, 417 OF IPC OF WHITEFIELD P.S., ON THE FILE OF LEARNED ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BENGALURU RURAL DISTRICT.

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

ORDER

Petitioner in all these 3 cases is common. What is called in question is different crimes registered against the petitioner.

Criminal Petition 1375 of 2022 relates to Crime No.13 of 2022 registered for offences punishable under Sections 406, 420, 447, 467, 468 and 417 of the IPC. Criminal Petition 1330 of 2022 relates to a challenge to crime No.14 of 2022 for the very same offences. Criminal Petition 1041 of 2022 arises out of Crime No.49 of 2021 registered for offences punishable under Sections 13(1)(a) and 13(2) and Section 12 of the Prevention of Corruption Act, 1988 ('Act' for short). Since the facts that arose for registering the aforesaid crimes are similar and the petitioner being common, these matters are taken up together and disposed by this common order. For the sake of convenience, facts obtaining in Criminal Petition 1375 of 2022 are considered.

2. Heard Sri Amar Correa, learned counsel appearing for petitioner, Sri.Mahesh Shetty, learned High Court Government Pleader appearing for respondent No.1 in CrI.P.No.1375 of 2022 and 1330 of 2022 and Sri.B.B.Patil, learned Special Public Prosecutor appearing for respondent No.1 in CrI.P.No.1041 of 2022 and Smt.B.N.Gauri, learned counsel along with Sri. Vinudeep R., learned counsel appearing for respondent No.2, in all the petitions.

3. The genesis of the problem is a Joint Development Agreement entered into between the petitioner/Company and the complainant's family. The complainant is the 2nd respondent. The petitioner is one of the Directors of M/s.KSM Niketan Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956. As observed hereinabove, the Company enters into a registered Joint Development Agreement of a property in Sy.No.152 measuring 4 acres and 20 guntas situated in K.R.Puram Hobli, Bengaluru. The agreement is executed by all the children of one Muninarasamma, who was the owner of the said property. The step children are said to have been the confirming parties to the said agreement, which included the complainant.

4. The Company after entering into the agreement, developed the property into a residential villa project by name Olympia Enchante. The villa complex comprised of several residential villas. In all, 31 residential villas are constructed and developed by the Company. It is said that it is developed out of huge expenditure. After the project getting completed, the developer Company applied for occupancy certificate along with relevant documents.

Occupancy certificate was sought to be granted by the Bruhath Bengaluru Mahanagara Palike ('BBMP' for short) pending payment of a few lakhs as betterment charges. The developer Company sold their portion of the villas in terms of the sharing agreement that had been entered into in the year 2012 itself between the family of the complainant and the petitioner-Company. The purchasers who have occupied the villas are said to be in peaceful possession of those villas.

5. The complainant appears to have applied for occupancy certificate on a particular *inter se* understanding between the petitioner and the Company and not the Joint Development Agreement. One villa, villa No.21 comes to be sold in the year 2016. After about 6 years of the said sale, a crime comes to be registered on 14-01-2022 alleging the offences as afore-quoted. The contents of the complaint are that the Joint Development Agreement or the sharing agreement has been breached and the villa project is not completed within time. The complaint becomes a crime in Crime No.13 of 2022. Investigation is carried on. On the same set of facts, comes a second complaint by the very same

complainant for the very same offences. This becomes a crime in Crime No.14 of 2022. Crime No.49 of 2021 is slightly different. It has public servants involved in the said crime. It is therefore the offence punishable under Sections 13(1)(a) r/w 13(2) and Section 12 of the PC Act is alleged against the petitioner. Petitioner is accused No.3 in the said case. The allegation in Crime No.49 of 2021 is that petitioner has attempted to bribe the officers of the BBMP in securing a occupancy certificate. The moment investigation commences, the petitioner accused in Criminal Petitions 1375 of 2022 and 1330 of 2022 has knocked at the doors of this Court. He is the sole accused in those petitions and accused No.3 along with officers of BBMP in Criminal Petition No.1041 of 2022.

6. The learned counsel Sri. Amar Correa appearing for the petitioner would vehemently contend that breach of a Joint Development Agreement is projected to be an act of crime on the part of the petitioner and the complainant who is a signatory to the said Joint Development Agreement and a sharing agreement has set the criminal law into motion to arm-twist the petitioner to fall in

line of the demands of the complainant. He would further contend that the agreement also contemplates arbitration proceedings as a dispute resolution mechanism and arbitration notice is also sent by the 2nd respondent and family, which has been replied too by the petitioner. He would submit that the petitioner had handed over the possession of villas in terms of the sharing agreement on 09-10-2017 itself that is acknowledged by the mother of the complainant on 31-10-2017 and therefore, a breach of agreement is sought to be projected a crime. He would seek to place reliance upon plethora of judgments of the Apex Court, which would all bear consideration *qua* their relevance in the course of the order.

7. On the other hand, the learned counsel representing the 2nd respondent/complainant would seek to contend that villas that belonged to the complainant are clandestinely sold by the petitioner and the Company and have therefore caused huge loss to the complainant and his family. This clandestine act does become an act of cheating. It is the allegation that petitioner has connived with the officials of the BBMP which results in forging signatures of the complainant and family and securing occupancy certificates

from the hands of the BBMP. He would therefore contend that these are matters which are to be thrashed out in evidence and seeks dismissal of the petition. Insofar as criminal petition 1041 of 2022 is concerned, it is his submission that Section 12 of the Act gets completely attracted. He seeks dismissal of the petition.

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

9. As observed hereinabove, all these arise out of a common cause and the genesis of the cause lies in the Joint Development Agreement entered into between the parties. The parties would be the petitioner and the family of the complainant. The Joint Development Agreement is between one Smt. Muninarasamma and the petitioner representing the Company. The confirming witnesses to the agreement were many members of the family including the complainant. This is not in dispute, as they are gathered from the documents itself. The agreement is entered into on 14-06-2012. Two months thereafter comes about a sharing agreement between

the parties on 08-08-2012. The villa project gets completed. Approvals are taken from the statutory authorities. Applications for occupancy certificate is also made on 02-05-2017. On 09-10-2017, the petitioner addresses a communication to the complainant's mother for handing over possession of villas to their share as they were ready for occupation, in terms of the sharing agreement between the parties. Dispute arose between the two with regard to the interpretation of the sharing agreement.

10. In the interregnum, the project is registered before RERA, occupancy certificate is issued by the BBMP. The dispute subsisted. An arbitration notice is issued by the family of the complainant on 31-07-2020. The petitioner replies to it on 02-09-2020. On 19-10-2020, the petitioner informs the BBMP that the complainant is undertaking illegal construction in the portion that was allotted to them. When all these disputes subsisted, the complaint comes to be registered by the signatory to the Joint Development Agreement Smt. Muninarasamma to the Anti-corruption Bureau. The complaint was regarding issuance of occupancy certificate in respect of the villa project. The allegation

was, the officers have issued the occupancy certificate in the name of Smt. Muninarasamma without inspecting the building to confirm themselves whether the villas are suitable for occupation. This becomes a crime in Crime No.49 of 2021 for offences punishable under Sections 13(1)(a) and 13(2) of the Act against the officials of the BBMP and Section 12 of the Act against the petitioner. During the investigation of the said crime comes two complaints, both dated 14-01-2022 which becomes crimes in crime No.13 of 2022 and 14 of 2022. The complainant is the same, the accused is the petitioner. Since the criminal law is set into motion on the registration of the complaint, I deem it appropriate to notice the complaint. The complaint reads as follows:

"From,

*(1) Smt. Muninarasamma,
aged about 68 years,
w/o Late Sri H.C. Anjanappa,
Residing at No. 232, Maruthikrupa Village, Hagadur, Whitefield,
Bangalore*

*Represented by her GPA holder
Sri H.A. Sathish Kumar,*

*(2) Sri H.A. Sathish Kumar
aged about 44 years,
s/o Late Sri H.C. Anjanappa,
Residing at Himarsha Nilaya, Pent House,
Block 'B', Vijetha Elysium Apartments,*

Hagadur Main Road, Whitefield, Bangalore 560 066

*(3) Sri H.A. Narendra Kumar,
aged about 46 years,
s/o Late Sri H.C. Anjanappa,
Residing at Pent House,
Block 'E', Vijetha Elysium Apartments,
Hagadur Main Road, Whitefield, Bangalore 560 066*

To,

*Station House Officer,
Whitefield Police Station*

Subject: *Complaint against Mr. Aditya Kankaria of M/s KSM Niketan Pvt. Ltd for illegall selling Villa.21 in the Schedule Property.*

Sir,

- 1. We, the landowners of residentially converted property measuring 4 acres and 20 guntas in Sy. No. 152 situated at Hagadur Village, K.R. Puram Hobli, Bangalore East Taluk, Bangalore ("**Schedule Property**") write to you complaining against the criminal actions of Mr. Aditya Kankaria of M/s KSM Niketan Pvt. Ltd. (the "**Accused**") with whom we had entered into a Joint Development Agreement on 14 June 2012 ("**JDA**") for the development of the Schedule Property.*
- 2. The accused has engaged in a criminal conspiracy against us and has committed several criminal acts against us, including and not limited to negligent act likely to spread infection of disease dangerous to life, criminal breach of trust, cheating, criminal trespass and criminal intimidation.*
- 3. With regard to the above, we set out below the brief background of the matter, and our grievances/complaints against us:*

a. Background:

- We and our family had entered into a JDA with the company accused represents for development of the Schedule Property into residential sites as well as construction of villas, parks and open spaces, club house, internal access, providing common amenities such as water supply system, drainage system, sewerage disposal system and all other utilities and facilities ("**Villa Project**"). In this regard, a general power of attorney deed ("**GPA**") was executed by our clients on the same day as the JDA authorizing KSM to do and be able to do the needful as regards the fulfilment of agreed obligations regarding development of the Schedule Property.
- Under the JDA, inter alia, entitled the first of our clients to (a) 50% of the sital area; (b) 50% of the super built-up area in the form of villas; and (c) 50% of the benefits and advantages that would accrue on the development of the Schedule Property. In order to settle the shares belonging to the first of our clients and the Developer, and pursuant to Clause 3 of the JDA, a sharing agreement was entered into between KSM and our Client on 08 August 2012 ("**Sharing Agreement**"), with Olympia as a confirming party, wherein the sharing pattern between KSM and the first of our clients were clearly laid out. In this regard, it is pertinent to note that **Clause 6 of the Sharing Agreement**, which was designated as an "essential term" of the Sharing Agreement stipulated that Developer shall be "**entitled to execute Agreements of Sale, Sale Deed/s and receive money thereon only in respect of Villas in Type 'A' bearing nos. 2, 5 to 9, 15 to 19 allotted to Developer's Area share**"; however, Developer was only "**entitled to enter into Agreements of Sale in respect of remaining two villas bearing nos. 11 and 20 allotted to the Developers' Share and that the same shall be registered in favour of the prospective purchaser/s only after completion of construction of the Owners' Area and delivery of the same to the First Party.**"

- *It is clear from the above that the Accused was in a position to protect our interest as we had trusted them completely and fully to undertake the development on the Schedule Property. It may be noted that it is our coparcenary property and after a lot of deliberation and assurances made by the Accused, we entered into the JDA.*
- *However, the Accused has neither taken action nor done any positive steps in regard to the development of the Schedule Property and in fact, misused the trust reposed in him, and indulged in several criminal activities which have resulted in several losses to the tune of crores of rupees to us, including our property and also has criminally intimidated us, whilst at the same time putting the lives and health of residents of the Schedule Property at great risk.*
- *Firstly, the Villa Project was supposed to be completed within 14 March 2015. However, the Villa Project is incomplete till date, a whole five and half years since the supposed deadline. In fact, many of our share of the villas have not even been completed to the extent of 50% with only basic structural work having been completed, that too shoddily. This is completely a brazen act of cheating us of our hard-earned property on the pretext of developing it.*
- *Secondly, without completing the Villa Project, he has fraudulently approached the BBMP and obtained occupancy certificate in complete contravention of the law. In this regard, **complaint as against the BBMP officials for fraudulently issuing the occupancy certificate to the Accused are pending before the Hon'ble Karnataka Lokayukta in case number COMPT/UPLOK/BCD/817/2020 dated 20 May 2020 and before the Anti-Corruption Bureau bearing acknowledgement no. 10 dated 19/05/2020.** This is completely underhanded and breach of trust as we were never informed by the Accused of the decision to apply for occupancy certificate despite specific provisions in the JDA directing him to do so.*

- *The Accused has fraudulently executed a registered absolute sale deed in favour of Mr. Vemireddy Prabhakar Reddy and Mrs. Vemireddy Prashanthi Reddy on 01 September 2016 itself in respect of Villa No. 21 which was supposed to fall to the share of one of us, ie., H.A. Narendra. This is clearly a brazen act of cheating, misappropriation and criminal breach of trust.*

b. Period of criminal activities by the Accused:

- The embezzlement of property and cheating and other criminal acts as elucidated above took place on 01 September 2016 and continues to do so.*
- The fraudulent act of sale of properties which legally belongs to us but has been fraudulently sold by the Accused happened in the year 2016.*
- The other fraudulent acts of **dishonest misappropriation of property, criminal trespass, negligent act, criminal breach of trust, cheating, criminal intimidation and forgery** continues to the present day.*

c. Total loss to us: *The total loss to the Complainant as a result of the criminal acts of the accused is estimated at INR 7,00,00,000/- (Rupees Seven Crores only) approximately in loss of valuable property, cheating of hard-earned property, criminal embezzlement of property, and fraudulent sale of Villa Nos. 21.*

d. Address of the accused:

- Mr. Aditya Kankaria:*

Office- *M/s KSM Niketan Pvt. Ltd., 688, 1st Floor, 9th A Main Road, 1st Stage, Indiranagar, Bangalore 560 038.*

Residence- *Villa No. A-5, Olympia Enchante, Sy. No. 152, Hagadur Main Road, Hagadur, Whitefield, Bangalore 560 066*

e. Provisions of Indian Penal Code, 1860 under which the criminal acts have been committed and brief details:

- **Section 403 - Dishonest Misappropriation of Property** - The Accused has dishonestly misappropriated and converted to their own use, the Schedule Property, and unlawfully sold off Villa No. 21, and unjustly enriched themselves. The Accused has even residing in the Schedule Property illegally.
- **Section 405 and 406 - Criminal breach of trust** - The accused was entrusted with valuable Schedule Property belonging to us for the purpose of development through the JDA and GPA. The Accused have dishonestly misappropriated the property in, violation of the legal contract of JDA & GPA & the provisions thereof, and (a) unlawfully sold Villa No. 21; (b) unlawfully obtained occupancy certificate; (c) not completed the obligations under the JDA & GPA
- **Section 415 and 417 - Cheating-** The Accused has dishonestly and fraudulently acted and represented themselves to us that they would develop the Schedule Property faithfully and truthfully, and in this regard, have entered into unlawful sale deeds. However, he has wilfully and maliciously defrauded us of our property.
- **Section 420 - Cheating and dishonestly inducing delivery of property-** The Accused has also fraudulently and dishonestly induced us to trusting them with our Schedule Property, including GPAs to sell their share of the developed Villas, and in this regard, they have destroyed the entire property and valuable security by illegally selling off Villa Nos. 21.
- **Section 441 - Criminal Trespass** - Despite us terminating the JDA through the legal notice sent by our lawyer on 31 July 2020, the Accused continued to illegally squat on our property and continue to

intimidate us with money and muscle power and keep us out of our own property.

- **Section 467 and 468 - Forgery** - *The Accused has executed an illegal sale deed representing himself to valid title over Villa No.21 to subsequent purchaser.*
 - **Section 503 - Criminal intimidation** - *The Accused has threatened us to dispossess us of our valuable property. and destroy and demolish the villas constructed therein, and have used several ways including threats from influential persons, anonymous callers, hired gunman and even goondas on the Schedule Property to prevent us from entering the Schedule Property, and in fact, daily threaten and intimidate us that they would chase us out of our own property.*
4. *In light of the above, we request your respectable offices to take cognizance of the offences committed by Mr. Aditya Kankaria of M/s KSM Niketan Pvt. Ltd., and register a First Information Report and initiate an immediate investigation to take necessary, stringent and adequate action against accused under the various provisions of the Indian Penal Code as mentioned above, and in addition under any other provisions of law existing in the country for the time being in force, as your respectable offices may deem fit in the interest of justice. We deem that our complaint has set out in great detail the nature and mode of offences committed by the Accused against us and we reiterate our commitment to cooperate with you and the department throughout the course of this investigation for any clarifications that may be needed.*
5. *We look forward to a positive consideration of our complaint and we further request an acknowledgement of the complaint for our records."*

A perusal at the afore-quoted complaint would clearly indicate that it is cleverly drafted, but the crux of the complaint is, breach of the agreement which could be gathered from the background narrated in the complaint. It is clearly a case which is registered on breach of agreement. Sections 405 and 406 of the IPC are projected in the complaint on the score that the petitioner has dishonestly misappropriated and converted villa No.21 to their own use and have breached the agreement.

11. The entire cheating revolves around villa No.21. Villa No.21 is said to have been sold in the year 2016. The complaint is registered on 14-01-2022. There is no explanation worth the name as to why the complainant sat quiet for 6 long years, when villa No.21 is allegedly illegally sold in the year 2016. Therefore, two illegalities spring from the aforesaid complaint, one it is marred by delay and it alleges breach of agreement. If it is breach of agreement, the criminal law being set into motion cannot be permitted to be continued, even if it is at the stage of investigation.

12. The allegations are, the offences punishable under Sections 406, 420, 447, 467, 468 and 417 of the IPC. Section 406 of the IPC has its ingredients in Section 405 of the IPC which would require dishonest misappropriation of the property entrusted from the hands of the victim to the accused. The case arises out of a Joint Development Agreement. If it is a Joint Development Agreement and the allegations are breach of the said agreement, wherefrom the allegation of criminal breach of trust can emerge, it can never. The other allegation is, cheating as obtaining under Section 420 of the IPC, which has its ingredients in Section 415 of the IPC. Section 415 of the IPC mandates that the victim should be lured by the accused for entering into any transaction with a dishonest intention right from the inception of the transaction. The complainant cannot be said to be lured into the subject transaction, as it is a Joint Development Agreement between the parties. The signatory to the Joint Development Agreement is the mother of the complainant. Therefore, there can be no dishonest intention right from the inception of the transaction. Therefore, the offences under Sections 406 and 420 of the IPC can hardly be laid against the petitioner.

13. The other allegation is forgery, as obtaining under Section 468 of the IPC. Forgery is alleged to have happened in the year 2016 concerning villa No.21. The complaint is registered in 2022. The parties have also initiated arbitration proceeding by issuing notices invoking the provisions of Arbitration and Conciliation Act. It is also averred that commercial O.S. is also pending between the parties. In the teeth of the aforesaid facts, if any indulgence is shown it would run foul of the judgment of the Apex Court rendered in the case of **MITESH KUMAR J. SHA V. STATE OF KARNATAKA AND OTHERS¹** wherein the Apex Court has held as follows:

"27. In order to ascertain the veracity of contentions made by the parties herein, it is imperative to firstly examine whether the relevant ingredients of offences which the appellants herein had been charged with, are prima facie made out. The relevant sections read as follows:—

"405. Criminal breach of trust—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

[Explanation [1].—A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous

¹ **2021 SCC OnLine SC 976**

Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

406. Punishment for criminal breach of trust—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Punishment for cheating by personation—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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

28. In the instant case, the complaint levelled against the Appellants herein is one which involves

commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under section 405 of the Penal Code, 1860, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand as an offence defined under section 415 of the Penal Code, 1860, involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property to a specific person. Both the sections clearly prescribed 'dishonest intention', as a pre-condition for even prima facie establishing the commission of said offences. Thus, in order to assess the relevant contentions made by the parties herein, the question whether actions of the Appellants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny.

29. Coming to the facts of the case at hands, the contested contention between the parties is that the builder company had sold four excess flats beyond its share, in terms of the JDA and supplementary agreement entered into between the parties. Respondent No. 2 contends that builder company which was entitled to sell only 9 flats in its favour, has instead executed sale deed for 13 flats in total. Thus, the company simply could not have sold the flats beyond 9 flats for which it was authorized and resultantly cannot evade criminal liability on a mere premise that a civil dispute is already pending between the parties.

30. The Appellants on the other hand contend that in terms of a subsequent MoU dated 19.02.15, it was mutually agreed between the parties, that partial payment for a loan amount borrowed by Respondent No. 2 from Religare Finvest Ltd., would be paid out from the sale proceeds of the said development project undertaken by both the parties. Pursuant to this MoU, the Appellants had agreed to get an NOC for 15 flats by making payment of Rs. 40,00,000/- for each flat.

31. *The key contention, and also the central point of dispute, made by the Appellants is that, it was specifically agreed between the parties that the Appellants would be entitled to sell additional flats beyond their share, as adjustments for payment made to Religare Finvest Ltd. on behalf of Respondent No. 2. It is further contended that Respondent No. 2 had also agreed to execute a ratification deed to the JDA and GPA eventually, which would have formally authorised the Appellants to sell additional apartments.*

32. *Nonetheless, the ratification deed was never made and Respondent No. 2 subsequently even revoked the GPA unilaterally, contending that the terms of JDA were not followed.*

33. *It was only after revocation of GPA that the company filed an application for arbitration seeking interim orders to restrain the Respondent No. 2 from alienating the disputed property. Simultaneously, while this dispute was pending adjudication before the arbitrator Respondent No. 2 filed a criminal complaint against the Appellants.*

34. *At this juncture, it further becomes pertinent to mention that eventually though both the parties partly succeeded before the arbitrator, in terms of their respective claims, the arbitrator observed that GPA indeed could not have been revoked unilaterally at the instance of Respondent No. 2. Aggrieved, Respondent No. 2 thereafter even preferred a challenge to the award passed by the arbitrator. Moreover, pending arbitration proceedings issue regarding selling of excess flats at the instance of Appellants, was also withdrawn by Respondent No. 2 seeking liberty to pursue his claim with regard to selling of four excess flats in pending civil proceedings.*

35. *Upon a careful assessment of such facts, by no stretch can it be concluded that the Appellants herein have deceptively or intentionally tried to sell excess flats if any, as contended by Respondent No. 2. Here, it must also be borne in mind that subsequent to the revocation*

of GPA, it was the Appellants herein who had first resorted to arbitration proceedings on 02.03.16 for redressal of dispute between the parties, to which Respondent No 2 had accordingly filed his statement of objections dated 09.03.16. It was only on 29.03.16 that Respondent No. 2 had filed the FIR in question bearing Crime No. 185/2016 against the Appellants. Moreover, it was Respondent No. 2 who had withdrawn his prayer with respect to selling of four excess flats by the Appellants, only to pursue the same in civil proceedings.

36. At this stage, by placing reliance on the judgment of this Court in *Priti Saraf v. State of NCT of Delhi (Supra)* and *Sri Krishna Agencies v. State of Andhra Pradesh (Supra)*, it has been further submitted by Respondent No. 2 that Appellants cannot evade a criminal case by merely contending that the person whose property has been sold has filed a civil suit for recovery of the property, or that the dispute had been referred to arbitration.

37. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even prima facie made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.

38. The dispute between the parties, could at best be termed as one involving a mere breach of contract. Now, whether and what, is the difference between a mere breach of contract and an offence of cheating has been discussed in the ensuing paragraphs.

Whether sale of excess flats even if made amounts to a mere breach of contract?

The said judgment in the case of **MITESH KUMAR J. SHA V. STATE OF KARNATAKA AND OTHERS** *supra* is again reiterated in the case of **VIJAY KUMAR GHAI AND OTHERS v. STATE OF WEST BENGAL AND OTHERS**². Both these judgments of the Apex Court deal with the issue of breach of the Joint Development Agreement between the parties *qua* the criminal offences alleged therein. The Apex Court clearly holds that the sharing pattern between the parties in a Joint Development Development at best, can give rise to a civil dispute and not trigger setting the criminal law in motion.

14. The Apex Court in the case of **DEEPAK GABA v. STATE OF UTTAR PRADESH**³ has held as follows:

"....

11. *The private complaint filed by Respondent 2 complainant had invoked Sections 405, 420, 471 and 120-BIPC. However, by the order dated 19-7-2018, summons were directed to be issued only under Section 406IPC, and not under Sections 420, 471 or 120-BIPC. We have quoted the operative and reasoning portion of the summoning order, that records in brief the assertions in the complaint, to hold that Respondent 2 complainant had shown that "a forged demand of Rs 6,37,252.16p had been raised by JIPL, which demand is not due in terms of the statements made by*

² **2022 SCC OnLine SC 344**

³ (2023) 3 SCC 423

Shubhankar P. Tomar and Sakshi Tilak Chand". The order states that Respondent 2 complainant had filed photocopy of "one" email as per Documents 1 to 34, but the narration and the contents of the email is not adverted to and elucidated.

....

15. For Section 405IPC to be attracted, the following have to be established:

(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

16. Thus, criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. [Sudhir Shantilal Mehta v. CBI, (2009) 8 SCC 1 : (2009) 3 SCC (Cri) 646]

17. However, in the instant case, materials on record fail to satisfy the ingredients of Section 405IPC. The complaint does not directly refer to the ingredients of Section 405IPC and does not state how and in what manner, on facts, the requirements are satisfied. Pre-summoning evidence is also lacking and suffers on this account. On these aspects, the summoning order is equally quiet, albeit, it states that "a forged demand of Rs 6,37,252.16p had been raised by JIPL, which demand is not due in terms of

statements by Shubhankar P. Tomar and Sakshi Tilak Chand". A mere wrong demand or claim would not meet the conditions specified by Section 405IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be in violation of any direction of law, or legal contract touching the discharge of trust. Hence, even if Respondent 2 complainant is of the opinion that the monetary demand or claim is incorrect and not payable, given the failure to prove the requirements of Section 405IPC, an offence under the same section is not constituted. In the absence of factual allegations which satisfy the ingredients of the offence under Section 405IPC, a mere dispute on monetary demand of Rs 6,37,252.16p, does not attract criminal prosecution under Section 406IPC.

18. *In order to apply Section 420IPC, namely, cheating and dishonestly inducing delivery of property, the ingredients of Section 415IPC have to be satisfied. To constitute an offence of cheating under Section 415IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415IPC is "fraudulence", "dishonesty", or "intentional inducement", and the absence of these elements would debase the offence of cheating. [Iridium India Telecom Ltd. v. Motorola Inc., (2011) 1 SCC 74 : (2010) 3 SCC (Cri) 1201]*

19. *Explaining the contours, this Court in Mohd. Ibrahim v. State of Bihar [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929. This Court, in this case, has cautioned that the ratio should not be misunderstood, to record the clarification, which in the present case, in our opinion, is not of any avail and help to Respondent 2 complainant. We respectfully concur with the clarification as well as the ratio explaining Sections 415, 464, etc. IPC.] , observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced*

the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or anything signed or sealed and which is capable of being converted into a valuable security.

20. *In the present case, the ingredients to constitute an offence under Section 420 read with Section 415IPC are absent. The pre-summoning evidence does not disclose and establish the essential ingredients of Section 415IPC. There is no assertion, much less legal evidence, to submit that JIPL had engaged in dishonesty, fraud, or intentional inducement to deliver a property. It is not the case of Respondent 2 complainant that JIPL had tried to deceive them, either by making a false or misleading representation, or by any other action or omission; nor is it their case that JIPL had offered any fraudulent or dishonest inducement to deliver a property. As such, given that the ingredients of Section 415IPC are not satisfied, the offence under Section 420IPC is not made out.*

21. *Section 471IPC [**471. Using as genuine a forged document or electronic record.**—Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”]* is also not attracted. This Section is applicable when a person fraudulently or dishonestly uses as genuine any document or electronic record, which he knows or has reasons to believe to be a forged document or electronic record. This Court in *Mohd. Ibrahim* [*Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751: (2009) 3 SCC (Cri) 929. This Court, in this case, has cautioned that the ratio should not be misunderstood, to record the clarification, which in the present case, in our opinion, is not of any avail and help to Respondent 2 complainant. We respectfully concur with the clarification as well as the ratio explaining Sections 415, 464, etc. IPC.] , has elucidated that the condition precedent of an offence under Section 471IPC is forgery by making a false document or false electronic record or part thereof. Further, to constitute the offence under Section 471IPC, it has to be proven that the document was “forged” in terms of Section 470 [**470. Forged**

document.—A false document [or electronic record] made wholly or in part by forgery is designated "a forged document or electronic record."] , and "false" in terms of Section 464IPC ["**464. Making a false document.**—A person is said to make a false document or false electronic record—*First.*—Who dishonestly or fraudulently—(a) makes, signs, seals or executes a document or part of a document;(b) makes or transmits any electronic record or part of any electronic record;(c) affixes any electronic signature on any electronic record;(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,with the intention of causing it to be believed that such document or part of a document, electronic record or*[electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or* Substituted for "digital signature" by Act 10 of 2009, Section 51(e) (w.e.f. 27-10-2009)*Secondly.*—Who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*Thirdly.*—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."] .

22. Section 470 lays down that a document is "forged" if there is:

(i) fraudulent or dishonest use of a document as genuine; and

(ii) knowledge or reasonable belief on the part of the person using the document that it is a forged one.

Section 470 defines a "forged document" as a false document made by forgery.

23. As per Section 464IPC, a person is said to have made a "false document":

- (i) if he has made or executed a document claiming to be someone else or authorised by someone else;
- (ii) if he has altered or tampered a document; or
- (iii) if he has obtained a document by practising deception, or from a person not in control of his senses.

24. Unless the document is false and forged in terms of Sections 464 and 470IPC respectively, the requirement of Section 471IPC would not be met.

25. In the counter-affidavit filed by Respondent 2 complainant, it is submitted that a few bills were faked/forged, as the goods were not ordered. Reference is made to balance of Rs 79,752 shown on 30-3-2013, which was objected to and thereupon as per the complaint itself the demand/bill was withdrawn. This would not make the bill a forged document or false document, in terms of Sections 470 and 464IPC. The complaint was made in the year 2017, four years after the bill/claim had been withdrawn, reflecting no criminal intent. The bill was not fake or forged, and at best it could be stated that it was wrongly raised. Moreover, the pre-summoning evidence is silent with regard to this bill and mens rea on the part of the accused is not shown and established. Same would be the position with regard to the bill/invoice of Rs 53,215 which was as per the complaint, sent directly to Manav Rachna International at Faridabad. The bill/invoice is not doubted as "forged" or "false" within the meaning of Sections 470 and 464IPC. No doubt, Adhunik Colour Solutions is mentioned as the buyer, and Manav Rachna International as the consignee, albeit the invoice was issued by JIPL. Pre-summoning evidence does not help and make out a case predicated on this bill/invoice. In the counter-affidavit filed before us, it is alleged that since this bill was sent to Faridabad, JIPL had added the GST in the invoice. It is argued that had Respondent 2 complainant supplied the goods, instead of GST, VAT as applicable in Delhi would have been levied, as Respondent 2 complainant

was based in Delhi. This argument is rather fanciful and does not impress us to justify summoning for the offence under Section 471IPC. Besides, the assertion is not to be found in the complaint, and cannot be predicated on the pre-summoning evidence.

26. *For completeness, we must record that the appellants have placed on record the dealership agreement dated 11-4-2012, which, inter alia states that JIPL has a discretion to establish direct contractual relationship with specific customers, if JIPL feels they can be served better. Further, in such a situation, the dealer, if JIPL agrees, can act as an intermediary. Assuming the bill/invoice had wrongly recorded Respondent 2 complainant as the buyer, it is not doubted that Manav Rachna International was the consignee. At best, Respondent 2 complainant would not be liable, had Manav Rachna International failed to pay. Non-payment is also not alleged in the complaint or the pre-summoning evidence. Reliance on objections vide emails dated 4-7-2014 and 21-7-2014 are of no avail, as they are for the period prior to 31-7-2014, when the bill/invoice was raised.*

27. *It is evident from the pre-summoning evidence led and the assertions made in the criminal complaint that the dispute raised by Respondent 2 complainant primarily pertains to settlement of accounts. The allegations are:*

(i) goods supplied by JIPL were not as per the requirements and demands of Respondent 2 complainant,

(ii) goods supplied were different from the order placed, and

(iii) goods lying with, and returned by Respondent 2 complainant have not been accounted for.

These assertions, even if assumed to be correct, would not fulfil the requirements of Section 405IPC, or for that matter Sections 420 or 471. The material on record does not reflect and indicate that JIPL indeed had the dishonest/culpable intention for the commission of the alleged offences under the IPC. Unless the ingredients of

aforesaid Sections of the IPC are fulfilled, the offence under Section 120-BIPC, for criminal conspiracy, would not be made. In fact, a combined reading of the complaint and the pre-summoning evidence does not disclose any element of criminal conspiracy as per Section 120-AIPC. The complaint discloses a civil dispute and grievance relating to the claim made by JIPL. What is challenged by Respondent 2 complainant is the demand of Rs 6,37,252.16p raised by JIPL as the amount payable till the year ending 2016. This assertion made by JIPL is questioned as incorrect. The demand, even if assumed to be wrong, would not satisfy the ingredients of Section 405, or Sections 420 or 471IPC, so as to justify the summoning order. As noted above, JIPL had filed a criminal case under Section 138 of the NI Act as two cheques for Rs 1,93,776 and Rs 4,99,610 issued by them, on presentation, were dishonoured on account of "insufficient funds".

28. *We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by Respondent 2 complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420 and 471IPC, as the allegations pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in *Thermax Ltd. v. K.M. Johnny* [*Thermax Ltd. v. K.M. Johnny*, (2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650] , as it refers to earlier case laws in copious detail.*

29. *In *Thermax* [*Thermax Ltd. v. K.M. Johnny*, (2011) 13 SCC 412: (2012) 2 SCC (Cri) 650] , it was pointed out*

that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion."

(Emphasis supplied)

The Apex Court, in the subsequent judgment of **USHA CHAKRABORTY v. STATE OF WEST BENGAL**⁴, while considering the entire spectrum of law on civil cases being dressed with a colour of crime, has held as follows:

"....

5. *Before advertng to the rival contentions with reference to application under Section 156(3), Cr. P.C. within the parameters, we think it only appropriate to refer to the following decisions of this Court in respect to the scope of exercise of power under Section 482, Cr. P.C.*

6. *In Paramjeet Batra v. State of Uttarakhand¹, this Court held:—*

"12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also

⁴ 2023 SCC OnLine SC 90

have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

7. *In Vesa Holdings Private Limited v. State of Kerala², it was held that:—*

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."

8. *In Kapil Aggarwal v. Sanjay Sharma³, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.*

....

12. *The basic requirements/ingredients to bring home the accusations under the alleged offences are hereunder:—*

Offence punishable under Section 323, IPC.

- (i) causation of hurt by another person; (ii) that he caused such hurt voluntarily; (iii) that such a case is not covered under Section 334, IPC.

Offence of extortion punishable under Section 384, IPC.

- (i) intentionally putting a person in fear of injury to himself or another; (ii) dishonestly inducing a person so put in fear to deliver to any person any property, or valuable security.

Offence of criminal breach of trust punishable under Section 406, IPC.

- (i) Entrustment of the property or any dominion over property with accusation; (ii) The person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust or willfully causing sufferance to any other person so to do.

Offence punishable under Section 423, IPC.

The essential ingredients to constitute an offence under Section 423, IPC is that the sale deed or deed subjecting an immovable property to a charge was contained a false statement relating to the consideration or relating to the persons or whose use or benefit, it was intended to operate. Thus, it is evident that Section 423, IPC deals with twin specific frauds in the matter of execution of deeds or instruments of transfer or charge, idest, (i) false recital as to consideration or false recital as to the name of beneficiary.

Offence punishable under Section 467, IPC.

Virtually, the offence under Section 467 is an aggravated form of the offence under Section 466, IPC. The essential ingredients to constitute the offence punishable under this Section are (i) commission of forgery; (ii) that such commission of forgery must be in relation to a document purporting to be (a) a valuable property; or (b) a will; or (c) an authority to adopt a son; or (d) which purports to give authority to any person to make or transfer any valuable security; or (e) the receive the principle, interest or dividends thereon; or (f) to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or (g) an acquittance or receipt for the delivery of any movable property or valuable security.

Offence punishable under Section 468, IPC.

- (i) Commission of forgery, (ii) that he did so intending that the document or electronic record forged shall be used for the purpose of cheating.

Offence punishable under Section 420, IPC.

To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accused must induce a person (i) to deliver any property; or (ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly. The offence punishable under Section 120B, IPC, to constitute criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution

must further prove; or (iv) that some act besides the agreement was done by or more of the parties in pursuance of it.

13. *Now, the question is whether the allegations in the aforesaid application are sufficient to constitute the alleged offences.*

14. *We have already extracted the said application filed by the respondent against the appellants in its entirety. At the outset, it is to be noted that in the affidavit accompanying the application, the respondent has stated thus : - "I have not placed this incident before any Court heretofore". In the application, obviously, it is stated that he is one of the trustees of Bagla Sundari Memorial Trust at Basunagar Madhyagram and under the said trust there is a high school by name of Rose Bank Educare and he is the Secretary of the said school. The recital in paragraph 2 of the application filed by the respondent would reveal his case that the accused persons kept him in dark and without giving any information by strengthening the said trust deed illegally got the same registered on 12.07.2016 and removed him from the said post. It is in this context that the aforesaid statement in the aforesaid affidavit assumes relevance. It is the case of the appellants that in regard to his removal from the post of Secretary of the school, the respondent had instituted title suit No. 363 of 2015, praying therein for a declaration that he is the Secretary of the school and the said suit is still pending. Despite the institution of the said suit and its pendency before the First Court of Civil Judge, Junior Division, Barasat the respondent made such a statement in the affidavit. That apart, what is stated in the application is that he is the Secretary of the school, run by the trust.*

15. *The materials on record pertaining to the said pleadings instituted in the Civil Suit, produced in this proceeding would reveal that the respondent was in fact ousted from the membership of the trust. In the counter affidavit filed in this proceeding, the*

respondent has virtually admitted the pendency of the suit filed against his removal from the post of Secretary and the trusteeship and its pendency. The factum of passing of adverse orders in the interlocutory applications in the said Civil Suit as also the prima facie finding and conclusion arrived at by the Civil Court that the respondent stands removed from the post of Secretary and also from the trusteeship are also not disputed therein. Then, the question is why would the respondent conceal those relevant aspects? The indisputable and undisputed facts (admitted in the counter-affidavit by the respondent) would reveal the existence of the civil dispute on removal of the respondent from the post of Secretary of the school as also from the trusteeship. Obviously, it can only be taken that since the removal from the office of the Secretary and the trusteeship was the causative incident, he concealed the pendency of the civil suit to cover up the civil nature of the dispute.

16. *By non-disclosure the respondent has, in truth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil court which obviously is the causative incident for the respondent's allegation of perpetration of the aforesaid offences against the appellants. We will deal with it further and also its impact a little later. There cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged. As noticed hereinbefore, the respondent alleged commission of offences under Sections 323, 384, 406, 423, 467, 468, 420 and 120B, IPC against the appellants. A bare perusal of the said allegation and the ingredients to attract them, as adverted to hereinbefore would reveal that the allegations are vague and they did not carry the essential ingredients to constitute the alleged offences. There is absolutely no*

allegation in the complaint that the appellants herein had caused hurt on the respondent so also, they did not reveal a case that the appellants had intentionally put the respondent in fear of injury either to himself or another or by putting him under such fear or injury, dishonestly induced him to deliver any property or valuable security. The same is the position with respect to the alleged offences punishable under Sections 406, 423, 467, 468, 420 and 120 B, IPC. The ingredients to attract the alleged offence referred to hereinbefore and the nature of the allegations contained in the application filed by the respondent would undoubtedly make it clear that the respondent had failed to make specific allegation against the appellants herein in respect of the aforesaid offences. The factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature. The appellants and the respondents have given a cloak of criminal offence in the issue. In such circumstance when the respondent had already resorted to the available civil remedy and it is pending, going by the decision in Paramjit Batra (supra), the High Court would have quashed the criminal proceedings to prevent the abuse of the process of the Court but for the concealment.

17. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which is of civil nature, the respondent had already approached the jurisdictional civil court by instituting a civil suit and it is pending, there can be no doubt with respect to the fact that the attempt on the part of the respondent is to use the criminal proceedings as weapon of harassment against the appellants. The indisputable facts that the respondent has filed the pending title suit in the year 2015, he got no case that he obtained an interim relief against his removal from the office of Secretary of the School Managing Committee as also the trusteeship, that he filed the stated application for an order for investigation only in April, 2017 together with absence of a case that despite such removal he got a right to get informed of the affairs of the school and also the trust, would only support the said conclusion. For all these reasons, we

are of the considered view that this case invites invocation of the power under Section 482 Cr. P.C. to quash the FIR registered based on the direction of the Magistrate Court in the afore-stated application and all further proceeding in pursuance thereof. Also, we have no hesitation to hold that permitting continuance of the criminal proceedings against the appellants in the aforesaid circumstances would result in abuse of the process of Court and also in miscarriage of justice.”

(Emphasis supplied)

On a coalesce of the judgments rendered by the Apex Court *supra* what would unmistakably emerge is, that crime should not be permitted to be continued, as it arises out of the breach of a Joint Development Agreement. The facts in **MITESH KUMAR J SHA** and **VIJAY KUMAR GHAI** were similar to the one in the case at hand. The judgments in the case of **DEEPAK GABA** and **USHA CHAKRABORTY** have obliterated the crimes registered on transactions which are purely civil in nature or arising out of a breach of a contract.

15. Following the law laid down in all the aforesaid cases, the Apex Court in the case of **NARESH KUMAR v. STATE OF KARNATAKA**⁵ has held as follows:

"....

5. Under these circumstances, we are of the considered view that this is a case where the inherent powers should have been exercised by the High Court under Section 482 of the Criminal Procedure Code as the powers are there to stop the abuse of the process and to secure the ends of justice.

6. In the case of *Paramjeet Batra v. State of Uttarakhand*, (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. **A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.**"

(emphasis supplied)

⁵ 2024 SCC OnLine SC 268

7. Relying upon the decision in *Paramjeet Batra (supra)*, this Court in *Randheer Singh v. State of U.P.*, (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In *Usha Chakraborty v. State of West Bengal*, 2023 SCC OnLine SC 90, relying upon *Paramjeet Batra (supra)* it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

8. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in *Sarabjit Kaur v. State of Punjab*, (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in *Vesa Holdings (P) Ltd. v. State of Kerala*, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

9. In the case at hand, the dispute between the parties was not only essentially of a civil nature but in this case the dispute itself stood settled later as we have already discussed above. We see no criminal element here and consequently the case here is nothing but an abuse of the process. We therefore allow the appeal and set aside the order of the High Court dated 02.12.2020. The criminal proceedings arising out of FIR No. 113 of 2017 will hereby stand quashed.”

(Emphasis supplied)

16. In the light of the judgments rendered by the Apex Court and the facts being unequivocal, permitting further proceedings would result in miscarriage of justice and becomes an abuse of the process of the law *qua* crime Nos.13 and 14 of 2022.

17. Crime No.49 of 2021 is also called in question wherein the petitioner is accused No.3 and the allegation against the petitioner is Section 12 of the Act. Section 12 of the Act reads as follows:

"12. Punishment for abetment of offences.—
Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine."

Section 12 mandates that whoever abets an offence under the Act, becomes open to punishment under Section 12 of the Act. Since the investigation against the officers are pending and the petitioner is alleged of Section 12 of the Act, obliterating Crime No.49 of 2021, at this juncture, would not arise. Petitioner is at liberty to seek discharge before the competent Court in the event charge sheet is filed against the officers and the petitioner.

18. For all the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition No.1375 of 2022 and 1330 of 2022 are allowed. The proceedings against the petitioner in Crime No.13 and 14 of 2022 are quashed.

- (ii) Criminal Petition No.1041 of 2022 stands rejected reserving liberty to the petitioner/accused No.3 to avail of the remedy of discharge, in the event charge sheet is filed against him.

Consequently, pending applications if any, also stand disposed.

**Sd/-
JUDGE**

bkp
CT:MJ