

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.22057 OF 2021 (GM – RES)

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BETWEEN:

- 1 . SRI NAGULAVANCHA SRIDHAR RAO
S/O N.LAKSHMAN RAO
AGED ABOUT 48 YEARS
RESIDING AT FLAT NO.1201, F-BLOCK
THE BHOTANIKA JAYABHERIENC
GOCHIBOWLI, SERILINGAMPALLY,
HYDERABAD,
TELANGANA STATE – 500 032.
- 2 . SRI N.LAXMAN RAO
S/O N.RAMALINGA RAO
AGED ABOUT 78 YEARS
RESIDING AT NO.907-21
YADAGIRI NAGARA
OPP. TO SANTHOSH NAGAR COLONY
HYDERABAD
TELANGANA STATE – 500 057.
- 3 . SMT. KOTARU RAJYALAKSHMI
W/O K.VINOD KUMAR,
R/O V.V.NAGAR, STREET NO. 8/24,
HABSIGUDA, HYDERABAD,
TELANGANA STATE – 500 007.

... PETITIONERS

(BY SRI SANDESH J.CHOUTA, SENIOR ADVOCATE A/W.,
SRI HARISH M. N., ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
REPRESENTED BY
S.H.O. VIJAYANAGARA P.S
NARASIMHARAJA SUB-DIVISION,
MYSURU CITY AND DISTRICT – 570 019.

- 2 . CHINNAM SRINIVAS
S/O SUBBARAYUDU
RESIDING AT NO.2940
HIGH TENSION DOUBLE ROAD
2ND STAGE, VIJAYANAGARA,
MYSURU – 570 019.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R-1 AND
SRI CHINNAM SRINIVAS, R-2 PARTY-IN-PERSON)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA READ
WITH SECTION 482 OF THE CR.P.C., PRAYING TO CALL
FOR THE ENTIRE SET OF RECORDS AND QUASH THE FIR
IN THE CRIME NO.154 OF 2021 DATED 05.10.2021 ON
THE FILE OF THE VIJAYANAGARA POLICE STATION,
NARASIMHARAJA SUB-DIVISION, MYSURU CITY AND
DISTRICT (ANNX-H).

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 25.05.2023, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE
FOLLOWING:-

ORDER

The petitioners are before this Court calling in question registration of crime in Crime No.154 of 2021 registered on 05-10-2021 for offences punishable under Sections 420, 448, 506 and 34 of the IPC.

2. Shorn of unnecessary details, facts in brief, are as follows:-

The 2nd respondent is the complainant and a partner with the 1st petitioner. Petitioners 2 and 3 are roped in for the reason that certain work execution that the 1st petitioner and the complainant sought to undertake was on the site belonging to petitioners 2 and 3. The 1st petitioner and the complainant entered into a deed of partnership at Hyderabad on 26-02-2020. The deed of partnership was for execution of certain works. Remuneration and inflow of capital, *inter alia* was a part of the partnership deed. After execution of the partnership deed, the 1st petitioner, the 3rd petitioner and the complainant entered into another agreement for execution of work titled as agreement of

work execution. The salary fixed under the contract, for execution of work was ₹2/- lakhs. It appears that the complainant trespassed into the house of the 2nd petitioner who was a senior citizen, which leads the 2nd petitioner to register a crime against the complainant on 26-05-2021. The police on recording the statements of the 2nd petitioner and the complainant submitted a non-cognizable report. When things stood thus, a legal notice is caused by the complainant claiming certain amounts from the hands of petitioners 1 and 3. This is replied to by the recipients of the notice and carrying on further, the complainant seeks to register a crime in Mysore City in Crime No.154 of 2021 narrating incidents between 26-02-2020 and 13-09-2021 for offences punishable under Sections 420, 448, 506 and 34 of the IPC. The police issued notices to the petitioners under Section 41(A) of the Cr.P.C., It is then the petitioners knocked at the doors of this Court in the subject petition.

3. This Court entertaining the petition has stayed all further investigation ON 07-12-2021, the moment notices were issued under Section 41(A) of the Cr.P.C., The interim order is in subsistence even as on date. Therefore, not a speck of investigation has taken place in the case at hand.

4. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioners, Sri Mahesh Shetty, learned High Court Government Pleader for respondent No.1 and the 2nd respondent who appeared in person.

5. The learned senior counsel would contend with vehemence that the 2nd respondent/complainant first enters into a partnership deed, and next enters into an agreement of work execution and when he found that his terms were not being acceded to by the petitioners, causes a legal notice claiming a particular amount. When the legal notice did not heed any desired results, he registers the crime at Mysore contending that he is a resident of Mysore, for breach of agreement/contract. He would

contend that the criminal law is misused seeking recovery of certain amount alleging breach of contract. He would further contend that breach of contract cannot lead to registration of a crime. He seeks to place reliance upon plethora of judgments, necessary of which, will bear consideration, in the course of the order.

6. Per contra, the 2nd respondent in person seeks to vehemently refute the submissions to contend that believing the words of the petitioners, he has undertaken the risk of execution of certain works and he had been hoodwinked. But for the assurance given by the 1st petitioner that he would part with 40% of the apartment that would be built and sold, he would not have ventured in relationship with the petitioners. He would contend that the 1st petitioner and the 3rd petitioner had orally agreed to give 40% of the share. Therefore, he is entitled to receive huge sums of money. He would contend that, this clearly amounts to cheating under Section 420 of the IPC and when the complainant asked for money, they have

threatened him and, therefore, they have committed offence under Section 506 of the IPC. The threatening happened by barging into the house of the complainant and, therefore, the offence under Section 448 of the IPC but would submit that he has initiated proceedings by causing legal notice for recovery of money and will definitely file a civil suit for recovery of money. According to the 2nd respondent in-person these are facts enough to drive home *prima facie* ingredients of the offences alleged. He would seek dismissal of the petition.

7. The learned High Court Government Pleader would not say anything about registration of crime as no investigation has taken place in the case at hand. He would only submit that cognizable offences are alleged and, therefore, the State should be permitted to investigate into the matter.

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

the 2nd respondent in-person and have perused the material on record.

9. The 2nd respondent is the complainant. The petitioners are said to be known to the complainant. The 1st petitioner and the complainant entered into a partnership deed on 26-02-2020. The partnership covenants are to be carried out in the name and style of "N.C. Infra and Constructions". The capital inflow is found in Clause 5, remuneration is found in Clause 7 and they read as follows:

"5) CAPITAL: The capital required for the partnership business shall be contributed by the partners according to business requirements. Interest at the rate of 12%p.a. or as may be prescribed under 40(b)(iv) of the Income Tax Act, 1961 or any other applicable provision as may be in force in the Income Tax assessment of the partnership firm for the relevant year shall be payable to the partners on the amount standing to the credit of the account of the partners. Such interest shall be calculated and credited to the account of each partner at the close of the accounting year. However, in case of a loss or lower income, the rate of interest can be nil or lower than 12% as may be agreed to between the partners from time to time."

6) Xxxx

7. REMUNERATION: (i) In consideration of the partners working for the partnership, they shall be entitled to remuneration as under:

**1) SRI.NAGULAVANCHA
SRIDHAR RAO : Rs.20,000 p.m.**

2) SRI. CHINNAM SRINIVAS : Rs.20, 000 p.m.

(ii) The remuneration payable shall be credited to the account of the partners at the close of the accounting period when final accounts of the partnership are made up and the amount of remuneration shall fall due to them as determined in the above manner.

(iii) The partners shall be entitled to draw the above remuneration only after the end of the relevant accounting period. However, nothing herein contained shall preclude the partners from withdrawing any amount from the partnership firm against the amount standing to the capital and or current account or their share of profit for the relevant accounting year in such manner as may be decided by the partners by mutual consent.

(iv) The partners shall be entitled to increase or to reduce the above remuneration and may agree to pay remuneration to other working partner or partners as the case may be. The parties hereto may also agree to revise the mode of calculation of the above said remuneration to such other mode as may be agreed to by and between the partners from time to time."

(Emphasis added)

Any dispute or differences amongst the partners is to be resolved by way of arbitration in terms of Clause 15 and

the seat of arbitration would be at Hyderabad in terms of Clause 16. The said clauses read as follows:

"15) ARBITRATION: Any dispute or difference arising among the partners with respect to the construction or interpretation of this deed or any other matter relating to the partnership affairs, shall be referred to arbitration under the provisions of the Arbitration and Conciliation Act, by appointing a sole arbitrator.

16) JURISDICTION: Every matter arising out of this deed and all transactions covered by it are subject to the jurisdiction of Hyderabad court only."

(Emphasis added)

10. After the partnership deed, the 1st and the 3rd petitioners enter into an agreement for work execution with the complainant on 18-05-2020. The complainant is described as an Engineer to execute the work and the work is narrated in the preamble to the agreement reading as follows:

"Hereinafter referred to as Engineer which expression shall unless excluded by (or) repugnant to the context be deemed to include its successors, executors, administrators and assigns) of the Other Part.

Whereas Owners are desirous of constructing a commercial complex consisting of Cellar, Stilt + 5 floors in the land admeasuring 841 sq.yds situated in Sy.Nos. 70 Part and 71 Part of Madhapur Village,

Serilingampally Mandal and Municipality, Ranga Reddy District intended to engage an Engineer for execution of the said work. Thereafter the parties herein has negotiated the salary of (Rs.2,00,000/- per month where under it was agreed that the owners would entrust the execution of said work to the Engineer herein, who in turn agreed to execute the same on the terms and conditions agreed hereinafter for execution and completion of such works and the remedying of any defects therein. And 5% from the salary amount will be withheld as Security Deposit for due Performance of the agreement and the said amount not carry any interest. The withheld amount will be refunded on completion of the building. As per the Schedule of labour item rates Enclosed."

(Emphasis added)

Clause 20 of the said agreement also deals with dispute resolution and reads as follows:

"20. In case of any dispute as regards quality and progress of work, decision of owners in consultation with the consultants of the project and Engineer will be final and binding on the Engineer."

(Emphasis added)

The work was for the purpose of construction of a commercial complex of five floors and the salary of the Engineer – the second respondent for execution of the work in terms of the agreement was negotiated to be ₹2/- lakhs per month. Therefore, it was an agreement subsequent to the partnership deed.

11. When things stood thus, the 2nd petitioner seeks to register a crime before the jurisdictional police at Hyderabad on the allegation that the complainant has been disturbing the peaceful possession or has been threatening to stop the work that was entrusted to him and demanding money to proceed with the work. The complaint reads as follows:

*"Date 26-05-2021,
Hyderabad,*

To,

*The Station House Officer,
Meerpet, Hyderabad.*

Sir,

*I am N.Laxman Rao, R/o: Yadagiri Nagar Colony,
Santhosh Nagar here by bring to your kind notice for
appropriate action as per law.*

*I am doing construction in my own property situated
at Survey/Premises No. 767, plot, no 171 and 172
Ward no. 19 in Lokayukta colony, Nadergul. I have
started construction in the above said land with all
permissions and the same is going for the last six
months*

*From 21-05-2021 One person viz., Mr. Srinivas has
been coming to my above said site and has been
threatening me to stop work and demanding money to
proceed with work.*

I have no relationship with the said person, but the said srinivas along with some anti social elements is daily coming to the site and threatening me and the workers. As I am not responding to his threats, the said srinivas has even came to my residence and threatened saying that if I continue the work he will see my end. Because of the fear of said Srinivas I am unable to do my routine works, stopped construction and living in constant threat. I am aged person and suffering with age related ailments and because of the harassment of said Srinivas, I am undergoing severe stress

In such circumstances, I request you to take appropriate action and help and protect me from the harassment of Mr. Srinivas and his henchmen."

(Emphasis added)

The police after preliminary inquiry register a non-cognizable report. Taking the threat further, a legal notice is caused by the complainant upon the 1st and 3rd petitioners in which the claim of the complainant is as follows:

"6. My client states that No.1 of you have also cheated my client, who being a partner of M/s N.C. Infra & Constructions, Hyderabad and on verifying the partnership firm account, it came to knowledge that No.1 of you have purchased the construction material required for this project in the name of partnership firm without consent of my client, whereby No.1 of you have committed cheating, breach of trust and also unfair trade

practice adopted by No.1 of you illegally for the best reasons known to you."

(Emphasis added)

This is replied to by petitioners 1 and 3 denying any amount due by them. Later, a rejoinder to the reply notice is caused by the complainant again reiterating his claim. The husband of the 3rd petitioner alleging that the complainant is threatening him, again seeks to register a complaint before the Police alleging trespass by the complainant into his house. The complaint dated 15-07-2021 reads as follows:

*"Date: 15.07.2021
Place: Hyderabad*

To,

*The Station House Officer,
Osmania University Police Station,
Hyderabad.*

Sir,

Sub: Trespass into my house bearing number 1-5-64/3, V.V.Nagar, Street No.8, Habsiguda, Hyderabad - Request - Reg.

One person by name Srinivas Chinnam trespassed into my house premises on 13-07-2021 at about 12.30 pm along with his henchmen 7 in numbers, he said some are from Budwel and few are from Hyderabad and one person is identified by my driver as Ganesh Nayak from Basthi in Street No.8. Mr.Srinivas worked

as Engineer in Construction of our ongoing commercial building which is owned by my wife Smt. K.Rajyalakshmi and Mr.Sreedhar Rao and the building is under construction at Madhapur. When we found out that Mr.Srinivas has indulged in fraud in the construction of the building we have decided to terminate Mr.Srinivas services, he without refunding the misappropriated amounts, now Srinivas started demanding amounts and there are exchange of legal notices in this regard. But Srinivas has brought above persons to threaten me and my family with dire consequences like Blackmail and Kidnapping, Mr.Srinivas cell nos. are: 9449463623 & 9448463623.

I am a Senior Citizen and suffering with age related ailments like Diabetes and Blood Pressure. In the above circumstances i request you to kindly take action against Mr.Srinivas and his henchmen and book a case under relevant sections of Cr.P.C. and protect me from harassment and mental tension.

Thanking you,"

The police again register a non-cognizable report. After all these events, the complainant chooses to register a complaint dated 05-10-2021 before the Vijayanagar Police Station, Mysore. The complaint becomes a crime in Crime No.154 of 2021 for offences punishable under Sections 420, 448, 506 and 34 of the IPC. It is in this complaint, the complainant seeks to claim various amounts. The crux of the complaint lies in certain

unnumbered paragraphs, which are required to be noticed and they read as follows:

"Things stood thus and as per the promises given by Mr. Nagulavacha Sridhar Rao regarding the development of the Project, and upon the trust, I had also invested INR 30,00,000/- (Indian Rupees Thirty Lakh only) into the partnership bank account and had also paid approx. INR 63,00,000/- (Indian Rupees Sixty Three Lakh only) to Mr. Nagulavacha Sridhar Rao to be paid towards the expenses of the construction and development of the project on the Property. All relevant approvals were also obtained in respect of the development of the project on the Property in the name of Mr. Lakshman Rao with a sole intention to cheat me and throw me out of this Project and partnership. Whenever I asked for accounts of the firm and invested cash portion of the funds, the conversation was avoided on one pretext or the other.

The said Mr. Nagulavacha Sridhar Rao had stopped developmental activities upon the Property and started avoiding my phone calls and other communications. The parties have been avoiding my calls and communications even today. With my due connections in the town, I understood that Mr. Lakshman Rao and Mr. Nagulavacha Sridhar Rao have neglected the project, and are venturing into development of other land parcel with Mrs. Rajalakshmi ("Unknown Development"). I was kept on the blindside during these developments.

Being suspicious, I checked into the bank accounts of the partnership firm. To my utter shock and surprise, the funds in the partnership accounts were utilised to purchase of raw materials and steel for the purposes of Unknown

Development. I also understood that none of these products were utilised on the Project. I was also disheartened to know that all my investments made towards the development of the Project was utilised by Mr. Lakshman Rao and Mr. Nagulavacha Sridhar Rao for the purposes of Unknown Development without my knowledge. I was completely kept in the dark during these times on the developments. Mr. Nagulavacha Sridhar Rao also misappropriated the funds of the partnership firm for his personal gains and for the purposes of Unknown Development.

Xxxxxxxxxx

Xxxxxxxxxx

My several attempts to reach him continued but to no avail. However, to my surprise, Mr. Nagulavacha Sridhar Rao, Mr. Lakshman Rao and Mrs. K. Rajyalakshmi, wife of Mr. K Vinod Kumar (resident of House No. 1-5-64/3, VV Nagar, St No. 8/24, Habsigunda, Hyderabad, Telangana - 500007) along with 3 of their henchmen stood in front of my doors on 13 September 2021, and threatened me and family of hurting and killing us and shredding me and family into pieces. They are causing major mental agony. They even barged into my property in Mysuru and created nuisance inside the house. They put us in deep fear of endangering our lives.

Hence, I request your goodself to protect me and my family members and also take this complaint as necessary to proceed to take necessary action against Mr. Nagulavacha Sridhar Rao, Mr. Lakshman Rao and Mrs. K. Rajyalakshmi, wife of Mr. K Vinod Kumar for threatening me to take my life and my family members' life, trespassing into my residence, cheating me, misappropriation of my funds in the partnership firm and for avoiding execution of

the development agreement with a sole reason of cheating me.”

(Emphasis added)

The moment crime comes to be registered, the petitioners file the subject writ petition. This Court finding *prima facie* case in favour of the petitioners grants an interim order on 07-12-2021. Even after the grant of interim order, the complainant continues to cause legal notices upon the petitioners claiming the said amount. In the teeth of the aforesaid facts what requires consideration is, whether the crime in Crime No.154 of 2021 should be permitted to be continued, as in the considered view of this Court the complainant has sought to set the criminal law into motion claiming certain amounts from the hands of the petitioners, alleging breach of agreement or contract and has sought to rope in the petitioners for offence of intimidation to achieve the object of recovery of money.

12. Breach of contract between the protagonists in the agreements cannot be the subject matter to set the criminal law into motion. The issue whether, on breach of

contract, criminal law can be set into motion need not detain this Court for long or delve deep into the matter. The Apex Court in plethora of cases has considered this issue of the complainant seeking to set the criminal law in motion, either for breach of contract or civil cases giving a colour of crime and seeking to set the criminal law into motion as a counterblast or to wreck vengeance against the accused.

13. The Apex Court in the case of **MEDMEME, LLC AND OTHERS v. IHORSE BPO SOLUTIONS PRIVATE LIMITED**¹, has held as follows:

"11. The moot question before us revolves around Question 1 which was formulated by the High Court and it is to be seen as to whether dispute between the parties is essentially of a civil nature or any case is made out against the appellants for launching criminal prosecution under the aforesaid sections.

12. After going through the allegations contained in the complaint and the material on record, we are of firm conclusion that the matter entirely pertains to civil jurisdiction and not even a prima facie case is made out for the offences under Sections 420, 406 and 409 read with Section 120-B IPC even if the allegations

¹ (2018) 13 SCC 374

contained in the complaint are to be taken on their face value. The complaint gives a clear impression that it was primarily a case where the respondent had alleged breach of contract on the part of the appellants in not making the entire payments for the services rendered to the appellants. On the other hand, it is not in dispute that substantial amounts have been paid by the appellants to the respondent company for the services rendered.

13. Reason for non-payment of the balance amount as given by the appellants is that the services rendered by the respondent company were not in terms of the agreement entered into between the parties and were deficient in nature. For this reason, even the appellants have filed claims against the respondent company alleging that the appellant suffered losses because of the defective services provided by the respondent.

14. On the basis of it, we find that it cannot be said that at the time of entering into the agreement, either the first agreement or even the second agreement, there was any intention on the part of the appellants to cheat the respondent. No suspicion of any nature was shown or even alleged. It is also not the allegation of the respondent in the complaint that the agreement was entered into with fraudulent or dishonest intention on the part of the appellants in inducing the respondent to enter into such a contract. **At best, the dispute between the parties is of a civil nature, proceedings in respect of which are pending before the learned arbitrator.**

15. We, thus, allow this appeal, set aside the judgment [MedMeme LLC v. iHorse BPO Solutions (P) Ltd., 2014 SCC OnLine Mad 12832 : (2015) 2 MWN (Cri) 97] of the High Court and thereby allow the petition filed by the appellants in the High Court under Section 482 of Code of Criminal Procedure. The result

whereof would be quashing of the proceedings arising out of Complaint No. 142 of 2012 pending in the Court of Judicial Magistrate-II, Puducherry.”

(Emphasis supplied)

Later, the Apex Court in the case of **M. SRIKANTH v. STATE OF TELANGANA AND ANOTHER²**, has held as follows:

"20. The complaint filed by Respondent 2 runs into 26 pages and 26 paragraphs. As already discussed hereinabove, it reveals a disputed property claim based on inheritance between the complainant, her sisters and her brother, Accused 1. A perusal of the complaint would further reveal, that the complainant also disputes with regard to the area of the property including the manner of its devolution upon the parents of the complainant and her competing interest with that of her siblings. There is not even a whisper in the complaint that the present appellant i.e. Accused 4 was fully aware that Accused 1 was not the sole beneficiary by inheritance and that the property had devolved upon the complainant and her sisters. Also there is nothing to show that knowing this he has collusively entered into the lease agreement with Accused 1, by creating a false and fabricated will. Though, there is a mention with regard to conspiracy, but there is not even a suggestion with regard to manner of such conspiracy.

21. Upon perusal of the complaint itself, it would reveal that the father of the complainant and Accused 3 had himself entered into a development agreement which subsequently came to be cancelled during his lifetime. It would also reveal, that only after

² (2019) 10 SCC 373

the lease in question was executed in favour of the appellant, the complainant has raised all these issues. We are of the considered view, that the issues raised reflect a civil dispute with regard to inheritance amongst the legal heirs. We fail to understand as to how a dispute with regard to the inheritance under a will and deed of confirmation can be decided in a criminal proceeding. We find, that the same can be done only in an appropriate civil proceeding. Not only that, the civil proceedings with that regard are already instituted by various parties including the complainant. These proceedings are as follows:

- (i) OS No. 239 of 2004 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (ii) OS No. 337 of 2002 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (iii) OS No. 58 of 2001 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (iv) OS No. 277 of 2000 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (v) OS No. 506 of 2001 on the file of the Hon'ble XI ACJ, CCC, Hyderabad.
- (vi) Writ Petition (C) No. 685 of 2010.

... ..
26. We fail to understand, as to how after observing the aforesaid, the learned Judge could have refused to quash the proceedings against Accused 4. Not only that, but on the basis of the said observations, the learned Judge himself has observed that it will not be in the interest of justice to permit the police authorities to arrest the accused for the purposes of investigation. We are of the considered view, that the learned Judge, having found that the entire allegations with regard to forgery and fabrication and Accused 1 executing the lease deed on the basis of the said forged and fabricated documents were only against Accused 1, ought to have exercised his jurisdiction to quash the proceedings qua Accused 4 also. We find that the learned Judge ought to have applied the same parameters to the present Accused 4, which had

been applied to the other accused whose applications were allowed.”

(Emphasis supplied)

Taking the entire spectrum of law further, the Apex Court in the case of **MITESH KUMAR J. SHA v. STATE OF KARNATAKA AND OTHERS**³ holds as follows:

“Whether the dispute is one of entirely civil nature and therefore liable to be quashed?”

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of Indian Oil Corporation v. NEPC India Ltd.², as under:—

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

42. It was also observed:—

³ 2021 SCC OnLine SC 976

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

43. *On an earlier occasion, in case of G. Sagar Suri v. State of UP⁸, this Court has also observed:—*

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

44. *Furthermore, in the landmark judgment of State of Haryana v. Ch. Bhajan Lal⁹ regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:—*

"(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;

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

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

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned

Act, providing efficacious redress for the grievance of the aggrieved party;

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

45. *Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.*

46. *Recently, this Court in case of **Randheer Singh v. The State of U.P.**, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:—*

"33.There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil

nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.”

47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”

(Emphasis supplied)

In a later judgment, the Apex Court in the case of **R.**

NAGENDER JADAV v. STATE OF TELANGANA AND

ANOTHER⁴, has held as follows:

“9. The appellant herein went before the High Court with an application filed under Section 482CrPC and prayed for quashing of the criminal prosecution. The High Court declined to quash the criminal prosecution as in its view there is a prima facie case against the appellant for being put to trial for the alleged offence.

10. Being dissatisfied with the impugned order [R. Nagender Yadav v. State of Telangana, 2021 SCC OnLine TS 3598] passed by the High Court rejecting the quashing application filed by the appellant, the appellant is here before this Court with the present appeal.

Analysis

⁴ (2023) 2 SCC 195

11. *We have heard the learned counsel appearing for the respective parties and have also gone through the entire records.*

12. *As stated earlier, the police could be said to have made a mockery of the entire investigation. When it is the specific case of the original complainant that at no point of time he had executed the disputed sale deed dated 29-12-2010 and his signature on the disputed sale deed has been forged, then the first thing the police should have done was to obtain the specimen handwritings of the complainant so as to be compared with the disputed signature on the sale deed through a handwriting expert. We are informed that as on date there is no report of the handwritings expert in regard to the genuineness of the signature of the complainant on the disputed sale deed.*

13. *Second thing which the investigating agency ought to have done is to investigate whether the sale consideration had been paid to the purchaser of the disputed plot or not and if the sale deed consideration had been paid, then in what manner. There is nothing on record in this regard. We fail to understand on what basis the police filed charge-sheet against the appellant herein. If it is the case of the original complainant that a conspiracy was hatched, then in such circumstances why did the police drop the purchaser and the other individuals from the charge-sheet stating that they are the bona fide purchasers of the plot in question for value without notice.*

14. *As on date, there is no convincing legal evidence on record to put the appellant herein to trial for the alleged offences. Since the purchaser of the plot in question and others have not been arrayed as accused, the entire theory of criminal conspiracy collapses like a pack of cards. Of course, it is true that the stance of the appellant herein is very clear that it is the complainant who executed the sale deed dated 29-12-2010 in favour of Smt Kalpana Yadav Mangalarapu for the sale consideration as shown in the sale deed on his own free*

will and volition and in the said sale deed, he attested the signature of the vendor i.e. the original complainant.

15. It appears that the aforesaid aspects of the matter have been overlooked by the High Court. We are conscious of the fact that perfunctory investigation cannot be a ground either to quash the criminal proceedings or even to acquit the accused. We take notice of the fact that as on date the parties are before the civil court. The civil suit being Original Suit No. 1343 of 2016 between the parties is pending wherein the contention of the complainant as a plaintiff is that no sale deed dated 29-12-2010 was executed, whereas the contention of the appellant herein as a defendant in the suit is that the sale deed had been executed by the complainant. The civil court is therefore seized of the question as regards the legality and validity of the disputed sale deed. The matter is sub judice in the civil court."

(Emphasis supplied)

In a later judgment, the Apex Court in the case of

USHA CHAKRABORTY AND ANOTHER v. STATE OF WEST BENGAL AND ANOTHER⁵ has held as follows:

"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

⁵ 2023 SCC OnLine SC 90

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 so rendered by the Apex Court in the aforesaid cases, what would unmistakably emerge is, the Court hearing the petition under Section 482 of the Cr.P.C., ought to interfere in a given case where, on the face of it, the facts or the issue would be civil in nature or a breach of contract, is made subject matter of a crime and even the crime being registered, as a counterblast. The Apex Court considers every provision of law that is now alleged in the subject complaint against the petitioners.

14. What is alleged against the petitioners is, Section 420 of the IPC which deals with punishment for cheating. The ingredients for offences under Section 420 of the IPC are found in Section 415 of the IPC and they read as follows:

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

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."

Section 415 of the IPC mandates that the accused should have lured the victim to part with some property with dishonest intention right from the beginning of the transaction. The transaction between the parties – petitioner No.1 and the complainant, is noted hereinabove. The 1st petitioner cannot be seen to have lured the complainant as it was a partnership deed and deed of

execution of work. They are agreements on consensus. Therefore, there can be no question of the accused luring the complainant into the web of ingredients under Section 415 of the IPC. Section 448 of the IPC deals with punishment for house trespass, ingredients of which are found in Section 442 of the IPC. Not a titer of foundation is laid by the complainant in the complaint for alleging offence under Section 448 of the IPC. Even otherwise, Section 448 of the IPC is roped in only as a counterblast to the allegation of house trespass laid by the husband of the 3rd petitioner. If the aforesaid offences are not *prima facie* present in the facts of the case at hand, permitting further proceedings to continue against the petitioners would be putting a premium on the misuse of criminal justice system by the complainant to achieve his goals of recovery of money, on breach of contract. The Apex Court, in the afore-quoted judgments, has noticed that the growing tendency of cases being filed setting the criminal law in motion, which are in fact pure civil disputes, disputes arising out of breach of contract or proceedings instituted

for recovery of money. All the aforesaid kind of cases are always laced with the colour of crime. The afore-quoted are the cases where the High Courts have refused to exercise the jurisdiction under Section 482 of the Cr.P.C., in the facts akin to what is narrated above. Therefore, the Apex Court directs that in cases where the facts reveal that the dispute is purely civil in nature, the Court has to step in and quash the proceedings, more so, in the light of the fact that if the complainant is already before a civil Court seeking recovery of money or has taken steps towards that end.

15. In the case at hand, the complainant has taken steps towards that end by causing legal notice seeking recovery of money and the submissions of the 2nd respondent in-person is that, he would take steps to knock at the doors of the civil Court seeking recovery of money. If that is so, the impugned proceedings cannot be permitted to be continued in the light of the judgment of

the Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**⁶ wherein the Apex Court has held as follows:

"102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

⁶ 1992 Supp (1) SCC 335

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

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

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

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

(Emphasis supplied)

Therefore, this becomes a fit case to exercise the jurisdiction of this Court under Section 482 of the Cr.P.C., to take off the Damocles sword hanging on the head of the petitioners, annihilate the very crime registered against them, in order to prevent the issue degenerating into

harassment, becoming an abuse of the process of the law and eventually, resulting in miscarriage of justice.

16. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The impugned FIR in Crime No.154 of 2021 dated 05-10-2021 registered by the Vijayanagara Police Station, Mysore City and pending before the V JMFC, Malalavadi, Jayanagara, Mysore, stands quashed.
- (iii) It is made clear that the observations made in the case at hand are only for the purpose of consideration of the case of the petitioners under Section 482 of the Cr.P.C., which shall not influence or bind any proceedings initiated by the parties now or to be initiated in future.

I.A.No.1/2023 stands disposed, as a consequence.

**Sd/-
JUDGE**

nvj
CT:SS