

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49450 of 2015

Arising Out of PS. Case No.-27367 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

1. Philips India Limited, through its authorized signatory Abhimanyu Kharb, Son of Mr. Attar Singh Kharb R/o- 20, Prime Minister Secretariat Apartments, Vikas Puri, Block B, P.S. - Vikas Puri Police Station, District - New Delhi.
2. A.D.A. Ratnam @ Angraj Dorairajan Aditya Ratnam, S/o- A.R. Dorairajan, Resident of B-001 Ananda Eldeco Apartments, Sector 48 Noida, Uttar Pradesh 201301, P.S. Sector 49 Police Station, District - Noida.
3. Ashish Gupta Son of S.K. Gupta Resident of House No. 113, Sector 7A, Faridabad, P.S. - Sector 7 Faridabad, District - Faridabad.
4. Jugal Kishore Sharma Son of Shri Dutta Sharma Resident of D-401 Plot No. 12, Udyog Vihar CGHS, Sector 22, Dwaraka, P.S. - Sector 22, District - New Delhi.
5. Unni Krishnan R @ Unni Krishnan Radhakrishnan, Son of Radhakrishnan Resident of Flat No. 1066, Rajanigandha Apartments, Sector - 10, Dwaraka, P.S. - Sector 10 Dwaraka, District - New Delhi.
6. Sai Ram Shekhar Son of Vachuthan Nair Resident of J 51, Ground Floor, 7th Street , Annanagar East, Chennai, P.S. - K4 Police Station, District - Chennai North West.
7. Ravi Shankar Son of G.S.P. Sinha Resident of D-602, Philips Tower, Plot No. 3, Sector - 23, Dwaraka, P.S. - Sector 23 Dwaraka, District - New Delhi.

... .. **Petitioners**

Versus

1. The State of Bihar
2. Maa Jagdambey, LPG, B.P., Pvt. Ltd. through its Managing Director, Jawahar Lal having its registered office at 129C-Block-1st Floor, Maurya Lok Complex, Police Station Kotwali, District – Patna.

... .. **Opposite Parties**

With
CRIMINAL MISCELLANEOUS No. 49449 of 2015

Arising Out of PS. Case No.-27367 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

P.T.N. CHARLU @ P.N.T.CHARLU S/o late Dr. P.T. Ramcharlu R/o Flat No. 301, A Wing, Plot no. 3, Akruili road, p.s Kandiali East .District Madhubani.

... .. **Petitioner**

Versus

1. The State of Bihar
2. Maa Jagdambey, LPG, B.P., Pvt. Ltd. 129C, Block , 1st, Floor, Maurya Lok, Complex, Police Station Kotwali, District Patna.



... .. **Opposite Parties**

Appearance :

(In CRIMINAL MISCELLANEOUS No. 49450 of 2015)

For the Petitioners : Mr.Jitendra Singh, Sr. Advocate
Mr.Harsh Singh, Advocate
Mr.Ambar Bhushan, Advocate

For the Opposite Party : Mr.Sanjeev Ranjan, Advocate

For the State : Mr.B.N. Pandey, APP

(In CRIMINAL MISCELLANEOUS No. 49449 of 2015)

For the Petitioner : Mr.Jitendra Singh, Sr. Advocate
Mr.Harsh Singh, Advocate
Mr.Ambar Bhushan, Advocate

For the Opposite Party : Mr.Sanjeev Ranjan, Advocate

For the State : Mr. Md. Fahimuddin, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 13-09-2023

Heard Mr. Jitendra Singh, learned senior counsel assisted by Mr. Harsh Singh, learned Advocate for the petitioners and Mr. Sanjeev Ranjan, learned counsel for the opposite party as also learned A.P.P. for the State.

2. Petitioners, in these applications, are seeking quashing of the order dated 25.02.2015 passed in Complaint CC No. 27367/2014 by which the learned Judicial Magistrate, 1st Class, Patna has taken cognizance of the offences under Section 406 and 420 of the Indian Penal Code (in short the 'IPC') and decided to issue summons to the petitioners.

3. In Cr. Misc. No. 49450/2015, petitioner no. 1 is a public limited company whereas petitioner nos. 2 to 7 are the officers/employees of the petitioner no. 1. In Cr. Misc. No. 49449/2015 the sole petitioner is again one of the



officers/employees of petitioner no. 1 company in Cr. Misc. No. 49450/2015. They are aggrieved by the order issuing summons to them in the complaint brought by the opposite party no. 2.

Case of the Complainant

4. It appears from the records that the complainant -O.P. No. 2 filed a private complaint case in the court of learned Chief Judicial Magistrate, Patna giving rise to the Complaint Case No. 27367/2014. The complainant alleged that the accused persons have committed offences which are cognizable, therefore, the learned Magistrate be pleased to take cognizance of the offences and summons the accused to face the trial.

5. The allegations against the petitioners as set out in the complaint petition are as under:-

(I) The complainant claimed that he is the Managing Director of M/s Maa Jagdambey, LPG, B.P., (Private) Limited (hereinafter referred to as the 'company' or the 'complainant-company'). One of the business of the company is to act as dealer and distributor of radio of Philips Electronics India Limited. It is stated that in the year 2011, the Government of Bihar floated a tender for distribution of radio sets amongst Mahadalit families under Mukhyamantri Radio Yojana. The Philips Electronics India Limited (accused no. 1) was one of the



tenderers. On being declared successful, the accused no. 1 was allotted the tender to supply and distribute radio amongst Mahadalit families of Bihar.

(II) In the complaint petition, it is alleged that accused no. 3 and 8 who are also petitioners in these two applications had business relationship with the complainant and they were knowing the capability and expertise of the complainant in the field as a vendor who could have coordinated the supply in remote villages of different districts and would have distributed the radio sets to the actual beneficiaries. It is stated that on the approach of accused no. 2, 3, 5, 9 and 10 requesting the Managing Director of the company to undertake the work, the Managing Director agreed to enter into an agreement with the accused no. 1 to start the work as a distributor. A registered agreement dated 30.11.2011 was executed between accused no. 1 represented by accused no. 7 and the complainant company represented by its Managing Director. In terms of the agreement the complainant agreed to submit a bank guarantee of Rupees One Crore and demand draft of Rs. 58 Lakhs with accused no. 1. It was agreed that on encashment of demand draft, the radio sets would be supplied to the complainant company. The complainant company, thereafter



collected the coupons from the concerned Block Development Officer and distributed the radio sets among the identified beneficiaries.

(III) According to the complainant company, it was agreed that the complainant company would raise the bill by enclosing the coupon to substantiate that supply to the concerned Block Development Officer who would make payment directly to the complainant authority. Thereafter, it was agreed that the complainant company will continue to make payment for radio sets after deducting the commission and supply will accordingly be resumed against each transaction.

(IV) The case of the complainant company is that it was made to believe that all the statutory payments, levies, taxes incurred during commissioning of the project by the complainant company would be paid by the accused company and the same term was also forming part of the agreement entered into between the parties. Annexure '1' to the petition is the copy of agreement which is an admitted document.

(V) It is alleged that subsequently accused no. 2, 3, 4 and 5 informed the complainant that they are initially running a pilot projects in four districts to see the capability of the complainant to execute the work assigned to it and thereafter



payment would be made by the accused no. 1 company to the complainant. It is stated that the complainant executed the work with perfection in all the four districts. There is a specific statement in the complaint petition in paragraph '14' that after the submission of coupons and bill by the complainant, the accused no. 1 company paid the commission which the complainant was entitled to receive. It is alleged that the accused nos. 2, 3, 5, 7, 8, 9 and 10 once again visited the office of the complainant and directed the complainant to resume the work of distributorship of radio sets amongst the Mahadalit families in the State of Bihar in their 38 districts. The complaint petition thereafter narrates how the work was executed by the complainant company outsourcing more than 100 volunteers and staffs.

6. The allegation is that when the complainant company raised bill and enclosed the coupons to substantiate the supply made to the beneficiaries directly to the concerned District Welfare Officer and was going to submit the bills of the concerned officer for payment, suddenly accused nos. 2, 3, 4, 5, 6, 7, 8, 9 and 10 came to the office of the complainant with dishonest intention, induced the complainant on false pretext that the bill should be given to them so that they will facilitate



the payment from the Government and accordingly the cheques will be issued by the Government in the name of the complainant which will be handed over by the accused persons.

7. The complainant further alleged that he was duped by the accused persons that the cheques will be issued in their favour by the Government. The complainant thereafter handed over the bills and the coupons to the abovenamed accused persons. There are allegations that the accused no. 2, 7, 8, 9 and 10 came to the complainant and disclosed that money has to be paid to Government functionaries for release of payment against the said bills whereafter the complainant objected, but at the same time, the complainant paid to accused no. 9 certain amounts which are indicated in paragraph '21' of the complaint petition through various cheques in favour of accused no. 9. These payments were allegedly made to facilitate payments of dues from government against supply of radio sets. Allegedly the payments were made on the direction of accused no. 4.

8. The complainant alleged that accused no. 8 started putting false pressure that the payments are being withheld by the government functionaries for failure of the complainant to pay specified sum as commission. The complainant alleges that he paid Rs. 2.20 in cash after withdrawing the amount from the



bank through various cheques.

9. Having said so, in paragraph '24' of the complaint petition it is stated that when the complaint started to demand payment which is to the extent of Rs. 1 Crore, the accused persons on one pretext or another refused to make payment and till date has not made payment against the bills raised subsequent to pilot project. In Paragraph '25' of the complaint petition, it is alleged that the accused company also made false promise that service tax will be paid by them but deliberately defaulted in making payment. Allegedly, the complainant company always raised bill with service tax as they were providing services to the accused company but with evil intention the accused nos. 2, 5, 6 and 7 convinced the complainant company to raise bill without service tax and they will pay service tax directly to the Service Tax Department. Accordingly, no service tax was paid by the accused- company. The complainant-company was surprised to know on enquiry that service tax liability is due against them as accused had deliberately not paid a farthing. This has been termed as a clear cut case of misrepresentation and forgery by the accused company.

10. After filing of the complaint petition, the



representative of the complainant-company was examined on oath and after inquiry the learned Magistrate took cognizance of the offences under Sections 406 and 420 I.P.C. and decided to issue summons against the petitioners.

11. Mr. Jitendra Singh, learned senior counsel assisted by Mr. Harsh Singh, learned Advocate for the petitioners submits that on a bare reading of the complaint petition without adding or subtracting anything out of it, it may be found that the agreement was executed between the complainant company and the accused no. 1 company. The complainant company says that one of its business is to act as a dealer and distributor of accused no. 1. The complainant admits in Paragraph '14' that after the submission of coupons and bills by the complainant the accused company paid the commission which the complainant was entitled to receive. Thus, it is submitted that there is no dispute at all with regard to the services rendered by the complainant company with respect to the pilot projects in the four districts and commission received from accused no. 1.

12. It is submitted that the dispute between the complainant company and the accused no. 1 has arisen in course of the business transactions under the agreement in the second



phase where it is alleged by the complainant that the complainant who had been made to pay certain amounts to make available the same to the government functionaries for release of payment. Relying upon the judgment of the learned Coordinate Bench of this Court in Cr. Misc. No. 48943 of 2013 and in the case of **Vijay Sharma and another Vs. State of Bihar** reported (2011) 1 PLJR 780, learned senior counsel submits that such allegations are not believable on the face of the fact that the complainant-O.P. No. 2 had no reason to make payments through account payee cheques to the complainant company to facilitate payment of money to the government officials and such money could not have been received through account payee cheques by the accused company, moreover the judgments of this Court in **Vijay Sharma** (supra) has held that this nature of agreement is prohibited by law and does not make out a case under section 406 or 420 IPC.

13. Learned Senior Counsel submits that crux of the allegations may be found in Paragraphs '24' and '25' of the complaint petition wherein the complainant comes out with a case that the complainant started to demand payment of Rs. One Crore which were not paid and then the complainant further indicates a dispute between the complainant company and the



accused company over payment of service tax amount. These are, in the nature of money disputes which are a simple civil disputes arising out of business transactions.

14. It is submitted that under the agreement which is an admitted document dispute resolution mechanism are provided under Clause '15' and any such dispute which would have arisen out of the agreement were required to be settled through the dispute resolution mechanism but in no case a criminal proceeding may be initiated in the facts of the present case.

15. Learned Senior Counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Bhajan Lal and others** reported in **1992 Supp. (1) SCC 335; Indian Oil Corporation Vs. NEPC India Ltd. and others** reported in **(2006) 6 SCC 736; Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.** Reported in **(2007) 12 SCC 1** and **Rajiv Thapar and Ors. Vs. Madan Lal Kapoor** reported in **(2013) 3 SCC 330**.

16. Learned Senior Counsel further relies upon the judgment of the Hon'ble Supreme Court in the case of **S.W. Palanitkar and others Vs. State of Bihar and Anr.** reported in **2002 (1) SCC 241** to submit that none of the ingredients of



section 406 and 420 I.P.C. would be made out in the facts of the present case. Reliance has also been placed on a Bench decision of this Court in the case of **Arun Kumar Sharma @ Arun Sharma & Ors. Vs. State of Bihar & Anr.** reported in **(2010) 4 PLJR 1096** (para '8' and '9').

17. It is submitted that learned Judicial Magistrate has taken cognizance of the offences in a routine and mechanical manner without even looking into the kind of allegations made against the petitioners. It is also submitted that employees and staffs of the accused no. 1 have been implicated in this case on completely false and flimsy grounds and they do not have any vicarious liability. It is also submitted that in this case the complainant company, if at all believed that the accused persons have committed a cognizable offence should have lodged a First Information Report but no effort was made to lodge a First Information Report rather a complaint petition was presented without any averment that any effort was made by the complainant company to lodge a First Information Report.

18. Learned senior counsel for the petitioners has submitted that while passing an order taking cognizance and issuance of summon, the learned Magistrate has not followed the mandatory provision of law under Section 202 Cr.PC which



specifically provides under sub-section (1) of Section 202 Cr.PC that in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, he shall postpone the issue of process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Reliance in this regard has been placed on the judgment of the Hon'ble Supreme Court in the case of **National Bank of Oman Vs. Barakara Abdul Aziz and Another** reported in (2013) 2 SCC 488 wherein the Hon'ble Supreme Court upheld the judgment of the High Court. The High Court had taken a view that the CJM did not follow the procedure laid down under Section 202 Cr.P.C. and that the Magistrate was obliged to postpone the process against the accused in this case where the accused were residing beyond the area in respect of which the Magistrate was exercising jurisdiction. It was held that the duty of a Magistrate receiving a complaint is set out under section 202 Cr.P.C. and there is obligation on the Magistrate to find out if there is any matter which falls for investigation by criminal court.

19. On all these grounds, prayer has been made to set



aside the impugned order and quash the prosecution of the petitioners in both the applications.

Submissions on behalf of the Complainant-O.P.No.2

20. Mr. Sanjeev Ranjan, learned counsel for the complainant has opposed this application. Learned counsel submits that the case of the complainant is made out on a bare reading of Paragraph '25' of the complaint petition. Referring to Paragraph '25', learned counsel submits that the accused company made false promise that the service tax will be paid by them, they defaulted in making payment and even as the complainant company always raised bill with service tax, the accused no. 1 did not pay the service tax and gave the complainant company to understand that the service tax will be directly paid to the Department, but later on it was found that the service tax liability is due against the complainant company as the same was not paid by accused no. 1.

21. It is, thus, submitted that the criminal prosecution of the petitioners are fully justified as a prima facie case has been made out against the petitioners.

Consideration

22. Having heard learned senior counsel for the petitioners and learned counsel for the complainant-O.P. No. 2 as also on perusal of the records, this Court finds that the crux of



the allegations in the complaint petition as pointed out by learned counsel for the complainant may be found in the averments made in Paragraphs '24' and '25' of the complaint petition. In fact, learned counsel for the complainant -O.P. No. 2 has categorically submitted that the *prima facie* case is made out from Paragraph '25'. This Court is, therefore, required to look into the contentions of the parties keeping in view the entire allegations made in the complaint petition but with special emphasis to the allegations present in Paragraphs '24' and '25' of the complaint petition.

23. This Court finds from a reading of Paragraph '24' that as per the complainant when they started demanding payment to the extent of Rs. One Crore, the accused persons on one pretext or another refused to make payment and till date the same has not been paid. This gives an impression to this Court that the complainant - O.P. No. 2 is aggrieved because of non-payment of the demanded amount to the extent of Rs. One Crore.

24. To this Court, it appears that there being a business transaction and the parties acting under an agreement, a simple case of demand of money by one of the parties and refusal to pay the same by another party would not give rise to a



criminal proceeding. The admitted document i.e. the agreement clearly provides for a dispute resolution mechanism and it is not denied that such dispute redressal mechanism clause would have been invoked in case of dispute over payment of money. Similarly, this Court finds that in Paragraph '25' the complainant company is aggrieved by the fact that the payment of service tax has not been made by accused no. 1. The distribution agreement contains a clear stipulation in Paragraph '7.15 (C)' and Clause '20.3' of Annexure '4' to this application in this regard which read as under:

“7.15(C). If the Distributor is required by law to make any deductions or withholding on account of any such tax or other amount from any sum paid or payable by the Distributor to the Principal under this Agreement, then the sum payable by the Distributor in respect of which the relevant withholding, deduction or payment is required shall be increased to the extent payable by the Distributor necessary to ensure that, after the making of that deduction, withholding or payment, the Principal receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what the Principal would have received and so retained had no deduction, withholding or payment been made or required.”

“20.3. all taxes, duties, levies and similar expenses, which are or become due in connection with the Agreement or resulting therefrom and the carrying out thereof are for Distributor's account as far as they are



due in the Territory or in such other country or countries for which the Products are destined or in which any services will be performed, irrespective of which party (including its representatives/employees) will be liable to pay such taxes.”

25. Again, this Court finds that the disputes of this nature were covered under the agreement and resolution was available under the dispute resolution clause.

26. At this stage, this Court takes note of Section 406 and 420 I.P.C. as under:-

“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.

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.”

27. In order to appreciate the definition of criminal breach of trust and cheating, it would also be necessary to have a glance over Section ‘405’ and ‘415’ of the I.P.C. which define “Criminal breach of trust” and “Cheating” respectively, hence



this Court would reproduce both the provisions hereinafter:-

“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 willfully suffers any other person so to do, commits “criminal breach of trust”.

⁶⁵[Explanation ⁶⁶[1]. A person, being an employer ⁶⁷[of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous 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.]

⁶⁸[*Explanation 2.* - A person, being an employer, who deducts the employee’s 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

65. Inserted by Act 40 of 1973, S.9 (w.e.f. 1-11-1973).

66. Explanation renumbered as Explanation 1 by Act 30 of 1975, S.9 (w.e.f.1-9-1975)

67. Inserted by Act 33 of 1988, S.27 (w.e.f. 1-8-1988).



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.]”

“**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.”

28. In the present case, on a bare reading of the complaint petition, it would appear that by no iota of doubt it is a case of entrustment with property by the complainant which may be said to have been dishonestly misappropriated or converted to its own use by the petitioners. Further the allegation as made in the complaint petition do not even remotely suggest that the petitioners have deceived the complainant fraudulently or dishonestly induced the complainant so deceived to deliver any property to any person. In fact, the complainant says in the complaint petition that it was working as a distributor of the petitioner no. 1 – company.



He admits to have taken up the work of distributorship in the present case under a registered agreement and then he admits that the complainant had received the commission amount for the work done in the pilot projects. Handing over of the bills which the complainant claims to have prepared to the named accused persons for submission with the government if taken to be correct though it is own case of the complainant that the commission was paid by accused no. 1, not directly by the government, cannot be said to be either a case of entrustment of property or delivery of any property by the complainant because of any fraudulent or dishonest inducement by the petitioners to the complainant. These transactions were done by way of business transactions under the agreement. The whole dispute seems to be that of accounting and the same may be found in the tentative kind of language used in paragraph '24' of the complaint petition wherein the Managing Director of the complainant says that when he demanded the amount to the extent of Rs. One Crore, the accused did not pay the same. The issue of service tax is the another reason of dispute and even in this regard the complainant admits that he was being paid his bills without service tax, in the opinion of this Court that may at best be a dispute arising in course of business but by no stretch



of imagination it may be said to be a case of cheating. The agreement took place in the year 2011, no notice of dispute was given, still a private complaint has been filed after about three years.

29. At this stage, this Court would also briefly note one of the allegations that the complainant had handed over certain amount to the named accused persons by way of cheques and cash after withdrawal from the bank on the representation of the accused that the money is required for payment to the government officials for getting cleared the bills. If this allegation is taken as it is, it would amount to entering into an agreement which would be unlawful and prohibited under the law. It would be in the teeth of section '23' of the Indian Contract Act, 1872. In the case of **Vijay Sharma** (supra) this Court has referred the judgment of Hon'ble Supreme Court in the case of **Chellor Mankkal Narayan Ittiravi Nambudiri Vs. State of Travancore** reported in **A.I.R. 1953 SC 479**, paragraph '21' of the said judgment reads as under:

"21. The other point that requires consideration is, whether on the prosecution evidence as it stands, the accused can be held guilty of criminal breach of trust? As laid down in section 385, Cochin Penal Code (corresponding to section 405, Penal Code, 1860), to constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that



the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do. It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which, criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. In the case before us, it is not disputed that if the sum of Rs. 23,100/- was paid by P.W. 1 to the appellant by way of illegal gratification to induce the latter to make an allotment of cloth in his favour, there could be no question of entrustment in such payment. The payee would then receive the money on his own behalf and not on behalf of or in trust for anybody else. The criminality of an act of this character would consist in illegal receipt of the money and the question of subsequent misappropriation or conversion of the same would not arise at all.”

30. The allegation in the said case was that the complainant had allegedly given Rs. 65,000/- to his own brother-in-law believing him that he would get an employment for his son in the police force at Jamshedpur. In the said facts, the learned coordinate Bench in **Vijay Sharma** (supra) while allowing the case of the accused-petitioner observed in paragraph ‘10’ and ‘11’ as under:-

“**10.** A bare perusal of the complaint reveals that even if the allegations are correct the parties were in *pari delicto* to commit an offence. Employment in the Government is available on advertisement and selection and not purchased by money. Such appointment is an outright illegal appointment. If two persons agreed to



commit an act, which is an offence under the Penal Code, 1860 and the agreement fails because the crime could not be committed can it be said that it constitutes an offence under the Penal Code, 1860 when under the Penal Code the agreement itself was an offence.

11. Section 23 of the Indian Contract Act declares void a contract which is contrary to the law or opposed to public policy. Therefore, even under the civil law the agreement between the parties was unlawful in its very inception. Both had agreed to do something which was prohibited in law. The contract *ex facie* being unlawful, both parties can be said to have intended to exploit the law for an illegal purpose. The reliance by the complainant on section 65 of the Indian Contract Act may create a civil cause of action as a money claim. This is a mere observation and not an affirmative finding for the maintainability of any such claim under an illegal contract which shall have to be decided on its own merits in an appropriate civil proceeding. It can however never constitute a criminal offence.”

31. This Court, therefore, finds that the allegation of the Managing Director of the complainant that he paid certain amounts to the named accused persons- petitioners for payment to the government officials, would be in the realm of the prohibited contract which would be wholly unlawful. In view of the judgment of this Court in the case of **Vijay Sharma** (supra) it would never constitute a criminal offence and only on an affirmative findings it may be decided on its own merit in an appropriate civil proceeding.

32. So far as the principles governing the quashing of criminal proceedings are concerned, this Court would notice the celebrated judgment of Hon'ble Supreme Court in the case of



Bhajan Lal (supra). Paragraph '102' of the said judgment extracts and reproduces some of the categories of cases by way of illustrations wherein power under Section 482 Cr.P.C. or under Article 226 of the Constitution of India may be exercised to prevent the abuse of process of any court or otherwise to secure the ends of justice. One of the categories of cases is that 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.

33. In the case of **Indian Oil Corporation** (supra) the Hon'ble Supreme Court was dealing with a case wherein the Indian Oil Corporation (in short the 'IOC') filed two complaints against NEPC India Ltd. The parties had earlier entered into a contract with the NEPC India Limited and its sister company in respect of the aircraft fuel supplies. Certain amount became due against NEPC and its sister concerned. The NEPC and its sister concerned had hypothecated their two aircrafts with all parts and accessories to IOC by way of charge as security for payment of the amount due. The IOC alleged that the NEPC India and its two directors had unauthorizedly removed the engines and certain parts from the two



hypotheticated aircrafts. The High Court had quashed the complaints on the ground that the allegation in the complaints even if taken to be true, they would not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 I.P.C.

34. In the aforementioned background, the Hon'ble Supreme Court considered Sections 405 and 415 I.P.C. and thereafter went through the hypothecation agreement to find that in terms of the hypothecation extracted in the complaints the ownership and possession of the aircrafts continued with the NEPC India Limited and it was neither actually nor symbolically delivered to the IOC. The Hon'ble Supreme Court held that the basic and very first ingredient of criminal breach of trust, i.e., entrustment, is missing and therefore even if all the allegations in the complaint are taken at their face value – true, no case of criminal breach of trust as defined under Section 405 IPC can be made out against NEPC India Limited.

35. Although in the said case while examining the allegations under Section 415 IPC, the Hon'ble Supreme Court held that the allegations in the complaints were sufficient to constitute offences under Sections 415 and 425 IPC, what is important to take note is paragraph '13' from the said judgment



which reads as under:-

“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 in account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. 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. In G. Sagar Suri v. State of U.P. this Court observed:

“It is to be seen if a matter, which is essentially of a 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 the 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.”

36. In the case of **Inder Mohan Goswami (supra)**

once again the Hon’ble Supreme Court noticed the growing trend of converting a civil dispute into a criminal proceeding.

Paragraph ‘30’ of the judgment is being reproduced hereunder:

“30. The Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that chagrined and frustrated litigants should not be



permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.”

37. In the case of **Rajiv Thapar (supra)**, The Hon'ble Supreme Court has noticed it's earlier judgment in the case of **Rukmini Narvekar v. Vijaya Satardekar** reported in **(2008) 14 SCC 1**; wherein in the main order it has been observed that the width of the powers of the High Court under Section 482 Cr.P.C. and under Article 226 of the Constitution of India, was unlimited and that the High Court would make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. The Hon'ble Supreme Court however cautioned that the High Court, in exercise of it's jurisdiction under Section 482 Cr.P.C. must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations leveled by the prosecution/complainant against accused. It is also not a stage for determining how weighty the defences raised on behalf of the accused are. Quashing of criminal prosecution on the accused showing some suspicion or doubt in the allegations would be impermissible. Having said so, the Hon'ble Supreme Court laid down the four steps test to determine the veracity of a prayer for quashment raised by an accused. Paragraph '30' 30.1, 30.2, 30.3, 30.4 and 30.05 of the judgment in the case of



Rajiv Thapar (*supra*) are required to be noticed, hence those are being extracted hereunder:-

“**30.** Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. *Step one:* whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. *Step two:* whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. *Step three:* whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. *Step four:* whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.

38. In the case of **S.W. Palanitkar (*supra*)**, which has gone to the Hon’ble Supreme Court from the order passed by this High Court in Cr. Misc. No. 6232/1998 rejecting the case of the accused-petitioner, the facts were that under an agreement between the appellant no. 1 (the company) and respondent no. 2 who was appointed as consignment stockist of



the company subject to certain terms and conditions, the respondent no. 2 served a notice on the Marketing and Regional Manager of the company requesting them to make payment of Rs. 15 Lakhs within a period of 15 days or in the alternative refer the dispute and differences to arbitration as per clause 29 of the agreement. The Hon'ble Court held that the learned Magistrate had committed a serious error in issuing the process against appellant nos. 1 to 6 and 8 for the offences under Section 406, 420 and 120B IPC. The Honble Apex Court was of the view that summons should have been issued only against respondent no. 7 who had allegedly induced the complainant to enter into an agreement assuring him of huge profit with a view to cheat him.

39. In the light of the judgment of the Hon'ble Supreme Court discussed hereinabove when this Court applies the principles of quashing under Section 482 Cr.PC, in the facts of the present case, to this Court it is clear that the complainant was acting as a distributor under a distribution agreement dated 30th November, 2011. The allegations made in the complaint petition do not even remotely suggest that there was any inducement made by the petitioners in the matter of entering into the distributorship agreement. All that is stated is that the



accused named in paragraph '9' of the complaint started to visit the head office of the complainant company daily and stayed there for 2 to 3 hours to persuade the complainant to enter into an agreement with a view to start the work. There is no allegation that there was any fraudulent inducement by the accused persons which led to execution of the distributorship agreement.

40. This Court, therefore, finds that in the present case, the prosecution of the petitioners is nothing but an abuse of the process of the court. Thus, this Court, in exercise of its inherent power under Section 482 Cr.PC would quash the order taking cognizance and issuance of summons as also the entire criminal proceeding against the petitioners.

41. The impugned order is set-aside. Entire prosecution is quashed. Both the applications are allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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