

**HIGH COURT OF JUDICATURE AT JABALPUR
BENCH GWALIOR**

S.B : Hon'ble Mr. Justice G.S.Ahluwalia

M.Cr.Case No.5394/2015.

**Telecommunication Consultants India Ltd.
Through Executive Director & others.**

Vs.

State of M.P. And others.

Shri Ratan Kumar Singh Sr.Advocate with Shri Nishank
Tyagi, Advocate for the applicants.

Shri G.S.Chauhan, PP for the respondent no.1 and 2
/State.

Shri Arun Katare, counsel for the respondent no.3.

O R D E R.

(Passed on 22nd March, 2017)

This application under Section 482 of Cr.P.C has been filed for quashing the FIR in Crime No.112 of 2015 registered by PS Kotwali District Datia for the offences punishable under Section 420 of IPC.

Applicant no.1 is the Government of India Undertaking and the applicant no.2 is Director (Civil) and applicant no.3 is Project Director Pichhore Dinara-Datia project, TCIL Bhawan, New Delhi and applicant no.4 is the Accounts Officer, Pichhore Dinara-Datia Project, TCIL Bhawan, New Delhi and they are officials of applicant no.1. Hence, the applicants no.2 to 4 are the employees of Government of India Undertaking. The respondent no.3 is the complainant who had filed criminal complaint against the applicants.

The applicant no.1 Telecommunication Consultants India Ltd. Company is a company registered under the provisions of Companies Act, 1956 having it's registered office at Greater Kailash

Part 1, New Delhi. It is Central Government owned undertaking and is engaged in the business of providing telecommunication and allied services including services related to monitoring of networking systems and related solutions.

It is submitted by the applicants that during the ordinary course of its business, the applicant no.1 had submitted its bid in response to NIT dated 5.12.2006 issued by the Madhya Pradesh Road Development Corporation by which, the bids were invited for contractual work for upgradation, rehabilitation and strengthening of Pichhore-Dinara-Datia road project and Datia-Seondha Road project. The contract for the work of Pichhore-Dinara-Datia Road Project was issued in favour of applicant no.1 and one Sunil Trading Co. Ltd. was appointed by the applicant no.1 as a sub contractor and an agreement was executed between applicant no.1 and Madhya Pradesh Road Development Corporation on 26.3.2007. Thereafter, an agreement was executed between applicant no.1 and Sunil Trading Company through its Partner Pawan Jain on 10.4.2007. As per Article 13 of the agreement, the applicant no.1 was to take risk policy. Article 13 of the agreement dated 10.4.2007 reads as under :

“TCIL shall take contractors all risk policy for the period of construction and deduct 0.7% of the contract value from the running bills of the agency towards premium”;

According to the agreement an arbitration clause was provided which is Article 17.4 which reads as under :

“If any dispute or difference arises between TCIL and the agency in relation to or in

connection with this agreement, either party may give notice to the other party of the existence of such dispute or difference. Such dispute shall be referred to arbitration of CMD, TCIL, who shall appoint the arbitrator. The award given by the arbitrator shall be final and binding on both the parties. Provisions of the Indian Arbitration and Conciliation Act, 1996 shall be applicable. The venue of arbitration shall be New Delhi Notwithstanding any of the provisions of this agreement the performance of the agency shall continue during such arbitration proceedings”.

It was submitted by counsel for the applicants that accordingly, the respondent no.3 proceeded to take up the contractual work.

It is submitted by counsel for the applicants that in compliance of Article 13 of the agreement dated 13.4.2007, a policy No.221800/46/07/39/00000006 was obtained by the applicant no.1 from United India Insurance Co.Ltd for the period from 1.4.2007 till 31.3.2008. A copy of the policy has been placed on record as Annexure P/6. Thereafter, letter dated 27.2.2008 was written by the United India Insurance Company Ltd to the applicant no.1 informing the requirement of renewal of policy no. 221800/46/07/39/00000006 which was issued on 31.3.2008. It is submitted by counsel for the applicants that accordingly, the applicant no.1 by letter dated 31.3.2008 paid the premium amount by cheque and accordingly, a new policy No. 221800/46/08/39/00000002 was issued by the United India Insurance Company Ltd. It is further submitted that in this policy, the reference of old policy was mentioned which clearly shows that the old policy get

renewed by the new policy. The New Policy dated 1.4.2008 was valid till 31.3.2009 and has also been placed on record as Annexure P/8. During execution of the contractual work between 15th July, 2008, heavy rain occurred causing damage to the project work of the road constructed by the Sunil Trading Company Ltd. Accordingly, applicant no.1 lodged insurance claim with the United India insurance Company dated on 7.10.2008 for the damages caused by heavy rains. Accordingly, survey was conducted by the Surveyor S.K.Agrawal and company which was appointed by United India Insurance Company Ltd and the said Surveyor by its report dated 4.3.2009 recommended the settlement of insurance claim for Rs.23,69,734/-. A copy of the survey report dated 4.3.2009 is also being placed on record by the Surveyor as Annexure P/9.

As the respondent had raised dispute, therefore, in view of the arbitration clause as contained in the agreement dated 10.4.2007, the matter was referred to the Arbitrator on 8.9.2009 and one of the issues was with regard to the settlement of the insurance claim for the damages sustained by the respondent because of heavy rains. A copy of the claim which has been filed by the respondent no.3 before the Arbitrator against the applicants has been placed on record as Annexure P/10 and the reply filed by the applicants has also been placed on record.

It appears that the matter is still pending for finalization of the insurance claim with the Insurance company. One Mr. Vinay Kumar Wadhwa an employee of the United India Insurance Company Ltd issued a letter dated 30.3.2012 alleging that in fact under the

insurance policy which was taken by the applicants, the project in question was not covered. Copy of the letter dated 30.3.2012 issued by the insurance Company has also been placed on record as Annexure P/11.

The applicant no.1 vide it's letter dated 13.4.2012 immediately confronted the Insurance Company and claimed that the project was very much covered under the policy which has been reflected in the policy document also. Various letters sent by the applicant no.1 to the Insurance Company on 13.4.2012, 7.5.2012 and 15.5.2012 have also been placed on record. It is submitted by the counsel for the applicants that the matter has not been finalized by the United Insurance Company Ltd inspite of the repeated reminders sent by the applicant no.1. Even the United insurance Company has not rejected the claim so far. Thus, it was submitted that the applicant no.1 is still pursuing the insurance claim of the respondent no.3.

However, it appears that the respondent no.3 filed a complaint on 31.3.2015 under Section 156(3) and 200 of Cr.P.C before the court of CJM, Datia and the Magistrate by it's order dated 31.3.2015, rejected the plea of directing investigation under Section 156(3) of Cr.P.C and fixed the case for examination of complainant under Section 200 of Cr.P.C. On 8.4.2015, statement of complainant was recorded and thereafter, the Magistrate in exercise of it's power under Section 202 of Cr.P.C directed the police authorities to submit their report. It is further submitted that it appears that the police instead of conducting an inquiry thought that the order by Magistrate has been passed under Section 156 (3) of Cr.P.C and therefore immediately lodged the

FIR. In the FIR, it was alleged that under Article 13 of the agreement dated 10.4.2007, the applicant no.1 had deducted an amount of Rs.0.7% from the running bills of the respondent no.3 for the purpose of insurance but they did not get insurance done and hence, they have committed criminal breach of trust.

Refuting the allegations made in the FIR, counsel for the applicants submitted that it is incorrect to say that although an amount of 0.7% was deducted from running bills of the respondent no.3 for the purpose of insurance but they did not get the insurance done. It is submitted that the insurance policies have already been placed on record. The matter is pending for adjudication of dispute between the applicant no.1 and the respondent no.3 before arbitrator which includes issue of payment of insurance amount. So far as report given by one Wadhwa an employee of the Insurance Company, to the effect that the policy taken by the applicant no.1 do not cover the project in question has been disputed by the applicant no.1 and that dispute is still pending between applicant and the insurance company. It was further submitted by counsel for the applicant that the Magistrate had issued an order under section 202 of Cr.P.C directing the police to conduct inquiry and for conducting inquiry, registration of FIR is not a condition precedent. Therefore, registration of FIR was neither warranted nor directed by the Magistrate. It is further submitted that even if the entire allegations are accepted in toto, then, it would be a dispute of civil in nature and the applicant with malafide intention has tried to give it the colour of criminal case. In order to pressurize the applicants to

settle the dispute, complaint has been filed by the respondent no.3. It is further submitted by counsel for the applicants that the complaint itself was not maintainable as it was not supported by an affidavit.

It is further submitted that considering the peculiar facts and circumstances of the case, where a defaulter with an intention to pressurize the officers of the bank had instituted several cases against the bank officers with an intention to get the matter settled out of the court, the Hon'ble Supreme Court in the case of **Priyanka Shrivastava Vs. State of UP (2015) Volume 6 SCC 187** has held that in order to take such type of frivolous litigations, the complaint must be supported by an affidavit. In the present case also, it is submitted that the arbitration proceedings are pending since 2009 and the matter is under adjudication then, all of a sudden, in the year 2015, this complaint was filed to the effect that inspite of deducting an amount at the rate of 0.7% from the running bills, the insurance was not got done. It is submitted that, in fact, it is United Insurance Company Ltd who has played fraud on the applicants as well as respondent no.3 and because of the in-correct report submitted by Mr. Wadhwa, the respondent is carrying a false impression in it's mind that the project was not got insured by the applicant no.1. It is submitted that if the entire allegations are accepted in toto, then no offence under section 420 of IPC shall be made out.

To butterace his contention, counsel for the applicants has relied upon the judgments of the Supreme Court in the cases of **Paramjeet Batra Vs. State of Uttarakhand and Others (2013) 11 SCC**

673, Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and Another AIR 2000 SC 2341, International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and Others Vs. Nimra Cerglass Technics (P) Ltd and Order (2016) 1 SCC 348, Anil Mahajan and Bhor Industries Ltd and Ors (2005) 10 SCC 228, All Cargo Movers (L) Pvt. Ltd and Ors Vs. Dhanesh Badarmal Jain and Another AIR 2008 SC 247, LML Ltd and Ors Vs. Shri Kailash Narain Rai and Another ILR (2012) MP 1471, Susanne Khan Vs. The State of Goa and Ors (2016) Bom CR (Cri) 169, Ssangyong Engineering and Construction Co. Ltd and Anr. Vs. Yograj Infrastructure Ltd H.R. (2011) MP 312, Cadbury Sewepes Beverage India Pvt. Ltd Vs. State of M.P. 2005 (4) MPLJ 20, Faisal Khan Vs. The State of West Bengal and Another 2016 SCC On line Cal. 4948, G.Sagar Suri and Another Vs. State of UP and Ors AIR 2000 SC 754, Indian Oil Corporation Vs. NEPC India Ltd. & Ors. AIR 2006 SC 2780, Arnesh Kumar Vs. State of Bihar and Another (2014) 8 SCC 273 and Rini Johar and Another Vs. State of M.P. And Others (2016) 11 SCC 703, Rajiv Thapar and Others Vs. Madanlal Kapoor (2013) 3 SCC 330 and State of Haryana and others Vs. Chaudhary Bhajanlal and Others 1992 SCC (Cri) 426.

Per contra, counsel for the respondent no.3 submitted that in view of the report given by Mr. Wadhwa, it is clear that the applicants did not get the project insured inspite of the fact that they had

deducted an amount at the rate of 0.7% from the running bills of the respondent no.3, therefore, the amount so deducted by the applicants towards the payment of premium has been misappropriated and thus, an offence under section 420 of IPC is clearly made out. However, he fairly submitted that by filing reply, he has not disputed the insurance policies issued by United India Insurance company Ltd.

Counsel for the respondent no.1 and 2 fairly contended that in fact, an order under section 202 of Cr.P.C was issued by the Magistrate after taking cognizance of the offence and therefore, registration of FIR was not a condition precedent for holding inquiry but submitted that the FIR has been registered. Therefore, the same cannot be quashed on the ground that only an inquiry report was requisitioned by the Magistrate.

Heard, learned counsel for the parties.

The centripetal question for determination involved in the present case is whether, the applicants after deducting 0.7% of the total contract value from the running bills of the respondent no.3 had got the project insured or not. If the amount from the running bills of the respondent no.3 was deducted and the project was not got insured then, it may make out a prima facie offence under Section 420 of IPC. But if the project in question was got insured by the applicant no.1 and for the reasons best known to the United India Insurance Co. Ltd., is trying to avoid in making payment of the insured amount, then it cannot be said that the applicants are at fault.

The applicants have relied upon certain

documents which are not part of the police case diary or the complaint filed by the respondent no.3. The question would be that whether this court in exercise of power under Section 482 of Cr.P.C can look into those documents which are not part of the police case diary.

The Hon'ble Supreme Court in the case of **Rajiv Thapar and Others Vs. Madanlal Kapoor (2013) 3 SCC 330**, has held as under :

“Recently, this Court again had an occasion to examine the ambit and scope of [Section 482](#) of the Cr.P.C. in *Rukmini Narvekar Vs. Vijaya Satardekar & Ors.*, (2008) 14 SCC 1, wherein in the main order it was observed, that the width of the powers of the High Court under [Section 482](#) of the Cr.P.C. and under [Article 226](#) of the Constitution of India, was unlimited. In the instant judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed, that under [Section 482](#) of the Cr.P.C., the High Court was free to consider even material, that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under [Section 482](#) of the Cr.P.C. in the facts and circumstances of this case.

The High Court, in exercise of its jurisdiction under [Section 482](#) of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the

defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

The issue being examined in the instant case is the jurisdiction of the High Court under [Section 482](#) of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under [Section 482](#) of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent

jurisdiction under [Section 482](#) of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under [Section 482](#) of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) 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?

(ii) 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.

(iii) 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?

(iv) 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?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. 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.

Thus, it is clear that if the material relied upon by the accused is reasonable, sound and of sterling and impeccable quality, then, if those material are sufficient to rule out the assertions contained in the charges levelled against him, then, certainly those/material and documents which have not been refuted by the complainant can be relied upon by this Court.

Present application under Section 482 of Cr.P.C was filed on 10.6.2015 and the respondent no.3 appeared before this court by filing a Vakalatnama on

1.7.2015. An application for vacating stay was filed by respondent no.3 merely by saying that the premium amount was not deposited as the project was not covered under the insurance policy, therefore, interim protection granted by this court on 11.6.2015 be vacated. However, no detailed reply has been filed by the respondent no.3 disputing the documents filed by the applicants along with present application. Even during arguments, the correctness and the authenticity of the insurance policies having filed by the applicants have not been challenged. The only argument of the respondent no.3 is based on the letter dated 30.3.2012 issued by United India Insurance Company Ltd to the applicant no.1, in which, it was mentioned that as per verification report submitted by Shri Wadhwa we find that above protection is not appearing in the project detail submitted by him and therefore, the same is not covered under the said policy.

As the insurance policies which have been relied upon by the applicants have not been challenged by the respondent no.3, therefore, this court is of the view that the said documents can be relied upon by this court while deciding the present case.

The applicants have filed insurance policy No. 221800/46/07/39/00000006 which was issued by United India Insurance Company Ltd. At the bottom of the said policy, it is specifically mentioned that as "Rs.28,23,04000/- New Road Project- Pichhore, Datia, Dinara 52 KM Road".

It is not in dispute by counsel for the parties that if the policy was issued by United India Insurance Co. for Pichhore-Datia-Dinara 52 Kms road then, it would

be clear that the project in question was got insured by the applicants. This policy was issued on 27.6.2007 and was valid till 31.3.2008. From the documents filed by the applicants in their support, it is clear that a letter dated 27.2.2008 was issued by United India Insurance Co.Ltd to the applicant no.1 informing that the policy No. 221800/46/07/39/00000006 will expire on 31.3.2008 and requires renewal. It appears that on 31.3.2008, applicant no.1 sent a cheque for the renewal of the policy and accordingly, a new policy No.221800/46/08/39/00000002 was issued by the United India Insurance Co. Ltd. Although, the details of the project which are covered under this policy have not been mentioned, but there is specific reference to the previous policy No.221800/46/07/39/00000006. Thus, it is clear that by the new policy No.221800/46/08/39/00000002, United India Insurance Co.Ltd had renewed the previous policy No.221800/46/07/39/00000006.

Thus, in view of this endorsement made in the new policy, it would be clear that the projects which were insured by the applicant no.1 by the Insurance Policy No.221800/46/07/39/00000006, got automatically renewed by the new policy No. No.221800/46/08/39/00000002. The new policy was valid from 1.4.2008 till 31.3.2009. The case of respondent no.3 is that due to heavy rains in the month of July, 2008, it had suffered major loss because of extensive damage to the roads. Thus, it would be clear that the new policy also covers the project as well as the duration in question.

Now, if the United India insurance Company is

trying to avoid it's part of the contract, then, it cannot be said that the applicants have committed any criminal offence. Since the applicants had got the project insured and if the insurance company is not respecting it's part of the contract, then, whether, the applicant no.1 would be liable under the civil law for payment of damages to the respondent no.3 or not is a question which is to be decided by the arbitrator and therefore, merely because, the applicants are not criminally liable for the offence under Section 420 of IPC would not mean that the the civil claim put forth by the respondent no.3 against the applicants before Arbitrator for the payment of loss suffered by the applicant no.3 would not be tenable.

Thus, without prejudice to the arbitration matter which is pending before the arbitrator for adjudication, it is held that as the applicants have prima facie succeeded in showing that after deducting the amount of Rs.0.7% of the contract value from the running bills of respondent no.3, they have got the project insured, this court is of the view that the allegations as contained in the complaint do not reflect criminal intent on the part of the applicants warranting their prosecution under Section 420 of IPC.

The Supreme Court in the case of **All Cargo Movers (I) Pvt. Ltd. And Ors Vs. Dhanesh Badarmal Jain and Another AIR 2008 SC 247**, has held as under :

“We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, This Court may not only take into consideration the admitted facts but it is

also permissible to look into the pleadings of the plaintiff-respondent No.1 in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie cannot notice the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. Superior Courts while exercising this power should also strive to serve the ends of justice”.

The Supreme Court in the case of **Paramjeet Batra Vs. State of Uttarakhand and Ors (2013) 11 SCC 673** has held as under :

“While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a

situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court”.

The Supreme Court in the case of **International Advanced Research Centre for Powder metallurgy and new Materials (ARCI) and Ors Vs. Nimra Cerglass Technics (P) Ltd and Ors (2016) 1 SCC 348** held as under :

“12. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is, as to whether uncontroverted allegations as made in the complaint establish the offence. The High Court being superior court of the State should refrain from analyzing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution. Power under Section 482 Cr.P.C. is to be used sparingly only in rare cases. In a catena of cases, this Court reiterated that the powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in criminal proceedings would depend upon facts and circumstances of each case. Vide State of Haryana & Ors. vs. Bhajan Lal & Ors., 1992 Supp.(1) SCC 335; State of T.N. vs. Thirukkural Perumal, (1995) 2 SCC 449; and Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr. (2006) 7 SCC 188.

13. In the light of the well-settled principles, it is to be seen whether the allegations in the complaint filed against ARCI 1 and its officers for the alleged failure to develop extruded ceramic honeycomb as per specifications disclose offences punishable under Sections 419 and 420 IPC. It is to be seen that whether the averments in the complaint make out a case to constitute an offence of

cheating. The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

14. Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In *S.W. Palanitkar & Ors. vs. State of Bihar & Anr.* (2002) 1 SCC 241, this Court held as under:

“21In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had

fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating." The above view in Palanitkar's case was referred to and followed in Rashmi Jain vs. State of Uttar Pradesh & Anr. (2014) 13 SCC 553.

The apex Court in the case of **State of Haryana Vs. Chaudhary Bhajanlal AIR 1992 SC 604** has held that, inherent powers of the Court can be invoked for quashing the criminal proceedings where, continuance of the same would only be abuse of process of law. The Hon'ble Apex Court has held as under :

- (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 in allegations in the first information report and other materials, if any, accompanying the FIR do not disclose 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 in 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.

This Court in the case of **LML Ltd and Ors Vs. Shri Kailash Narain Rai and Another ILR (2012) MP 1471**, has held as under :

“In State of West Bengal Vs. Swapan Kumar Guha AIR 1982 SC 949, the Hon. Supreme Court has similarly held that in appropriate cases, the court may take into consideration the relevant facts and circumstances of the case,. While considering the question whether a first information report giving rise to investigation by the police should be quashed, the Hon. Supreme Court observed in paragraph 65 as follows (AIR 1982 SC 972) :

“In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the court has mainly to take into consideration the complaint or the first information report and the court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the court has to come to the

conclusion whether an offence is disclosed or not” ;

It is further submitted by counsel for the applicants that in the claim put forth by the respondent no.3 before arbitrator he has specifically raised a dispute with regard to non payment of damages suffered by the respondent no.3 due to heavy rains. The Additional claim no.14 which has been put forth by the respondent no.3 before arbitrator is reproduced as under :

“18. Additional Claim No.14 : Claim for Rs.65,08,988/- towards the payment of insurance claim amount claimed on United India Insurance Co. Ltd. Noida by the Respondents :

I. That kindly refer Article No.13 of the agreement between TCIL and STC according to which, the respondent had recovered a @ 0.70% from each and every bill paid by the MPRDC. The contents of Article No.13 are reproduced as under :

“Article 13: Insurance : TCIL shall take contractor's all risk policy for the period of construction and a deduction @ 0.7% of the contract values from the running bills of the agency towards premium”.

ii. That, in this connection it is submitted that there were heavy rains during July, August 2008 in the area of the project and due to plying of heavy axie load vehicles the road was damaged during the rainy season to the extent that the work had to be redone at an extra cost incurred amounting to Rs.62,32,988/- by the claimant. The claimant had submitted the details before the Respondents for lodging a claim on the United India Insurance Company. It is learnt that the Insurance Company has paid a sum of Rs.23,00,000/- in May, 2009 to the Respondents but this payment has also not been paid to the claimant. Since the TCIL has covered the complete risk by deducting amount @ 0.7% , hence, the claimant is entitled to recovery of full amount of loss amounting to Rs.62,32,988/-. If the TCIL had got the insouciance done for lesser amount to cover lesser risk then also, TCIL is responsible to reimburse the full cost of damages to the work which had been redone by the claimant.

Therefore, the claimant hereby claims the following amounts under this head :

- I. Insurance claims received by the Respondents from the Insurance Co. in May, 2009 which is not yet paid to the claimant; 23,00,000.00.
- ii. Interest on Rs.23,00,000/- @ 18% per annum w.e.f 01.06.09 to 31.1.2010; Rs.2,76,000.00.
- iii. Balance amount of loss not covered by the insurance due to fault on the part of Respondents. Rs.39,32,988.00.
- | | |
|---|------------------|
| a) Total Loss | Rs.62,32,988.00. |
| b) Amount reimbursed by the insurance Co. | Rs.23,00,000.00. |
| c). Balance amount. | Rs.39,32,988.00. |

Rs.65,08,988.00.

Therefore, a sum of Rs.65,08,988/- is hereby claimed under this head which may kindly be awarded along with interest".

It is submitted by counsel for the applicants that the said claim has been replied by the applicants. The reply submitted by the applicants before the arbitrator in respect to claim No.14 is reproduced below :

"With regard to the Additional Claim No.14, which is claim for Rs.65,08,988/- towards the payment of Insurance Claim amount claimed on United India Insurance Co. Ltd. Noida by the Respondent, it is submitted that TCIL has not received any payment from United India Insurance co. Ltd. Against Insurance claim due to non providing of supporting documents by STC. Providing of documents for the insurance claim is the responsibility of M/s STC. STC has recently only submitted the requisite documents to United India Insurance Co. Ltd. A copy of the relevant documents is annexed herewith as Annexure 1. TCIL is

continuously following up the matters and same will be sorted out soon. Hence, this claim is premature at this stage”.

Thus, it is clear that the applicants have also taken a specific stand before the arbitrator pointing out that the matter is under persuasion with the Insurance Company and therefore, it is clear that the arbitration between the parties is pending. Therefore, indisputably, the civil proceedings are pending between the parties. If the entire allegations made in the complaint are considered in the context of the civil dispute pending before the Arbitrator as well as in the light of the insurance policy relied upon by the applicants in this case, coupled with the fact that those insurance policies have not been disputed by the respondent no.3 and the fact that the applicants have seriously disputed the receipt of letter from Mr. Wadhwa and as the said dispute between the applicants and the United India Insurance Co. Ltd has not been decided so far, this court is of the view that at this stage, it cannot be said that the applicants after deducting the amount of 0.7% of the contract value from the running bills of the respondent no.3 did not get that project insured. Once it is prima facie shown that the project was got insured by the applicants, then, merely because, claim of the respondent no.3 has not been settled by the insurance company, would not mean that the applicants have committed an offence under Section 420 of IPC.

From the record, it appears that respondent no.3 had filed a complaint before the Court of Magistrate and the Magistrate did not think it proper to pass an order under Section 156(3) of Cr.P.C and therefore, he

directed the said respondent no.3/complainant to lead evidence. After recording statements of complainant, the Magistrate issued an order under Section 202 of Cr.P.C calling inquiry report from the police.

It is well settled principle of law that the investigation is different from that of inquiry. In case of **Mohd. Yousuf vs Smt. Afaq Jahan & Anr (2006) 1 SCC 627**, the Supreme Court has held that while passing the order under Section 156(3) of Cr.P.C even if the Magistrate has not specifically directed for registration of an offence and since the investigation is required to be done in compliance of the order under Section 156(3) of Cr.P.C, therefore, registration of FIR is necessary because, in absence of the same, the investigation cannot start. However, that would not be a case of an inquiry. For initiation of an inquiry, the registration of FIR is neither essential nor warranted. Even the Magistrate while directing the police to submit inquiry report had not directed the police to register the FIR. Therefore, it was not essential for the police to register the FIR.

Whether, in a case where, the Magistrate has issued an order under Section 202 of Cr.P.C after taking cognizance of the complaint, if the police comes to a conclusion that the allegation prima facie makes out a cognizable offence, then whether it can register the crime or is only required to give an inquiry report is not being considered in this case as this court has already come to a conclusion that under the facts and circumstances of the case, it is clear that as the criminal intend on the part of the applicants is not present in the present case, therefore, no prima facie

evidence is available on record to hold that the applicants have committed an offence under Section 420 of IPC. Therefore, the question whether the police after receiving complaint for holding an inquiry, can register FIR or not, if it comes to the conclusion that the complaint makes out a cognizable offence, is left open to be decided in suitable case.

It is held that as the dispute is predominantly of civil in nature and even if the entire allegations are accepted in toto, then, as the respondent no.3 is not disputing correctness and validity of the insurance policy relied upon by the applicants in the present case, this court is of the view that prima facie material is available on record to hold that an offence under Section 420 of IPC is not made out against the applicants.

Accordingly, FIR registered against the applicants in Crime No.112 of 2015 by PS Kotwali District Datia is hereby quashed. The application hereby succeeds and is allowed.

Rks.

(G.S.Ahluwalia)
Judge