HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

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SB:- Hon'ble Shri Justice G. S. Ahluwalia

MCRC 10333/2016

Jagdish Valecha
vs.
State of MP & Others

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Shri Yash Sharma, counsel for the applicant.
Shri Pramod Pachauri, Public Prosecutor for the respondent Nos. 1 to 4.
Shri Atul Sharma, counsel for the respondent No.5/complainant.

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ORDER

(Passed on 16/07/2018)

This petition under Section 482 of CrPC has been filed for quashing the FIR in Crime No.154/2016 registered at Police Station Maharajpura, District Gwalior for offence under Sections 420, 406, 506, 294 and 34 of IPC.

(2) The undisputed fact is that the applicant is one of the Directors of the Company i.e. M/s. Valecha Engineering Limited [in short ''VEL''], registered under the Indian Companies Act listed in Bombay Stock Exchange and is in the business of construction and infrastructure.

(3) The necessary facts for the disposal of the present petition, in short, are that the complainant/respondent No.5 Vinod Sharma lodged a FIR against the applicant and one Dinesh Valecha on the allegation that an offer was given by the applicant and another co-accused for purchase of ''crushed stone aggregate'' in large quantity and it was assured by them that ''crushed stone aggregate'' may be supplied on regular basis and the payment shall be made regularly. Relying on the assurance given by the applicant and the co-accused, the complainant supplied ''crushed

stone aggregate'' on regular basis. The receipts were also issued by the applicant and the co-accused. The ''crushed stone aggregate'' was delivered to the Company at the site. It is further alleged that the Company has made payment of certain materials, but did not make payment of Rs.1,09,95,257/- and in spite of repeated requests, the applicant and the co-accused were always avoiding the payment and when instead of repeated requests the applicant and the co-accused did not make payment, therefore, the complainant/respondent No.5 went to Mumbai on 15/04/2015 and met with the applicant and the co-accused at their registered address. In a meeting between the applicant and the co-accused Dinesh Valecha, the co-accused accepted his liability to make the payment and assured that half of the remaining outstanding amount shall be paid by 12/05/2015 and the remaining amount shall be paid by 30/05/2015 and accordingly, a written document was executed. However, the applicant and the co-accused did not make the payment as assured by them and, therefore, the respondent No.5/complainant went to the registered Office of the Company at Mumbai on 13/07/2015 and then, he came to know that the applicant and the co-accused have also not made payment of the amount of the material purchased by them to different various persons. Therefore, on 13/07/2015, the respondent No.5 made a complaint at Police Station Amboli, Andheri, Mumbai and the co-accused was summoned in the Police Station where co-accused Dinesh Valecha gave in writing accepting his liability and an assurance was given that the outstanding amount shall be paid within four months. However, in spite of that written assurance, the applicant and the co-accused have not made the payment of outstanding amount. The complainant/respondent No.5 has come to know that the applicant and the co-accused have also cheated the other suppliers and accordingly, the FIRs have been registered against the applicant and the co-accused, which are still pending. The other persons have also filed criminal complaints under Section 138 of the

Negotiable Instruments Act, which are also pending. It was also mentioned that the intention of the Directors of M/s.VEL was to cheat the complainant from the very inception of transaction and their intention was not to make the payment for the materials, which were supplied. If respondent No.5/ complainant had any inclination about the intention of the applicant and the co-accused, then he would not have entered into such type of transaction. Now, the applicant and the co-accused have refused to make the payment and on making the demand, they are abusing the complainant and they are also extending a threat to the life of the complainant/respondent No.5, as a result of which the complainant is deeply frightened and the applicant and co-accused have misappropriated the materials supplied by the complainant. On this report, the police has registered Crime No.154/2016 at Police Station Maharajpura, District Gwalior for offence under Sections 420, 406, 506, 294 and 34 of IPC.

(4) Challenging the FIR lodged by the complainant, it is contended by the counsel for the applicant that the investigation is still in progress and no charge sheet has been filed. It is further submitted that the Company i.e. M/s.VEL had got the contract/work of construction of four-way lane between Itawah-Mainpuri(UP) and accordingly, the Company entered into a contract with the complainant respondent No.5, for the supply of ''crushed stone aggregate'' to work site at Four- Laning of Etawah-Mainpuri- Kurawali Road Project. It is further submitted that accordingly, an agreement was executed between the Company and the respondent No.5 on 20/06/2014. As per the contract, the payment was to be made on monthly basis. Clause(D) of the agreement provides for the ascertainment of quality and quantity. Clause(D) of the agreement reads as under:-

> ''D). Quality and quantity.
>
> 1) The payment will be made as actual measurement taken by out site supervisor/weight bridge operator (VEL).''

Clause G contained provision for ''Termination of the Work

Order and reads as under:-

> ''G) Termination of the Work Order:-
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> 1) The company reserves the right to cancel or terminate the order any time material supplied do not conform the specification, delay in supply, or on account of whatsoever without any notice and such case no claim will be entertained.''

(5) It is further submitted that as per the allegations, the complainant had supplied the materials worth Rs.2,99,30,867/- to the Company out of which an amount of Rs.1,09,95,257/- has not been paid by the Company and is still outstanding against the Company. It was also submitted that the complainant/respondent No.5 had supplied certain materials of inferior quality and also supplied insufficient quantity as a result of which there was a delay in supply of materials and as a result of which, substantial loss has been caused to the complainant and accordingly, on 31/01/2015, the Company issued a notice to the complainant about the supply of inferior quality/substandard materials. It was also submitted by the counsel for the applicant that it is a growing tendency in business circles to convert the civil disputes into criminal cases with an obvious impression that the civil remedies are time-consuming remedies and do not adequately protect the interest of creditors/lenders. It was further submitted that now, an impression has developed in the mind of the complainant that in case, if a person somehow succeeds in entangling in a criminal prosecution, then there is a possibility of imminent settlement. It is further submitted that it is well settled principle of law that the civil dispute should not be given the colour of criminal dispute. To buttress his contention, the counsel for the applicant has relied upon the judgments passed by the Supreme Court in the cases of **Uma Shankar Gopalika vs. State of Bihar and Ors.** reported in **(2005) 10 SCC 336, B. Suresh Yadav vs. Sharifa Bee and Ors.** reported in **(2007) 13 SCC 107, Paramjeet Batra vs. State of Uttarakhand and Ors.** reported in **(2013) 11 SCC 673, International Advanced Research Centre for Power**

Metallurgy and New Materials (ARCI) and Other vs. Nimra Cerglass Technics Private Limited and Another, reported in **(2016) 1 SCC 348** and the judgment passed by this Court in the case of **Shyam Sunder Banka and Others vs. State of MP and Others,** reported in **1983 MPLJ 869**. It is further submitted that it is well-established principle of law that when the complaint discloses the breach of commercial transaction, the police before registering the FIR, must conduct a preliminary enquiry. To buttress his contention, the counsel for the applicant has relied upon the judgment passed by the Supreme Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh and Ors,** reported in **(2014) 2 SCC 1**. It is further submitted that in order to attract the provisions of Section 420 of IPC, there has to be the dishonest intention at the very inception of contract/transaction and mere subsequent failure to fulfil the promise or commercial issues would not bring the offence within the purview of Section 420 of IPC. In order to buttress his contention, the counsel for the applicant has relied upon the judgment passed by the **Delhi High Court** in the case of **Wolfgang Reim and Others vs. State and Anr. [Criminal MC No. 1942 of 2004 decided on 2nd July, 2012].** The counsel for the applicant has also placed reliance on the judgment passed by the Supreme Court in the case of **State of Haryana and Others vs. Ch. Bhajan Lal and Others,** reported in **AIR 1992 SC 604**.

(6) *Per contra,* it is submitted by the counsel for the respondent No.5 that on the similar allegations various different persons have lodged the FIR against the applicant and other co-accused persons, on the allegation that although the applicant and other co-accused persons had received the supply of ''crushed stone aggregate'' but they did not make payment of the same and accordingly, various cases for offence under Sections 420, 406, 506, 34 of IPC have been registered against the applicant and other persons. The present applicant had challenged the FIR in Crime No.98/2016 before this Court by filing a petition under

Section 482 of CrPC which was registered as MCRC 8307/2016. This Court by a detailed order dated 27/04/2017 passed in MCRC 8307 of 2016, has dismissed the petition filed by the applicant under Section 482 of CrPC and all the arguments, which have been advanced by the applicant, were taken into consideration including the nature of offence [whether it is civil or criminal] as well as the requirement of holding the preliminary enquiry, etc. as well as the fact that whether an offence under Section 420 of IPC is made out or not. It is further submitted that it is well established principle of law that merely because the dispute may involve civil transaction, would not *ipso facto* mean that the dispute is predominantly of civil in nature and the prosecution cannot be quashed merely on the said ground.

(7) To buttress his contention, the counsel for the applicant has relied upon the judgments passed by the Supreme Court in the case of **Vijayander Kumar and Ors. vs. State of Rajasthan and Others** reported in **2014(1) Crimes 240(SC), Mosiruddin Munshi vs. Md. Siraj and Another** reported in **2014(3) Crimes 213(SC), Arun Bhandari vs. State of Uttar Pradesh and Others,** reported in **(2013) 2 SCC 801** and **Ganga Dhar Kalita vs. State of Assam and Others reported in 2015(2) Crimes 333(SC).** It is further submitted that while exercising the power under Section 482 of CrPC, the High is not supposed to embark upon the enquiry whether the allegation in the FIR/charge-sheet is reliable or not and thereupon to give definite finding about the truthfulness or veracity of the allegations. The High Court can interfere with the prosecution or investigation only when the allegations made in the FIR and the charge sheet are taken on their face value and accepted in its entirety, even then no prima facie offence would be made against the applicant. The counsel for the respondent No.5 has relied upon the judgment passed by the Supreme Court in the case of **Central Bureau of Investigation vs. K.M.Sharan** reported in **(2008) 2 SCC (Cri) 430.**

(8) Heard the learned counsel for the parties.

(9) Before considering the submissions made by the Counsel for the parties, it would be appropriate to consider the scope of powers under Section 482 of Cr.P.C.

(10) The Supreme Court in the case of **K.M. Sharan (supra)** has held as under:-

> ''**24**. In Bhajan Lal case (supra), this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. 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 of the Constitution of India or the inherent powers under Section 482 of CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. This court in the said judgment made it clear that 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 to myriad kinds of cases wherein such power should be exercised. According to this judgment, the High Court would be justified in exercising its power in cases of following categories:-
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> "102. (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.
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> (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.
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> (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.
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> (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 Codeor 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."

25. This court in Janata Dal v. H. S. Chowdhary & Ors. (1992) 4 SCC 305 observed thus:

"132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

26. This court in Roy V.D. v. State of Kerala (2000) 8 SCC 590 observed thus:-

"18. It is well settled that the power under Section 482Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482Cr.P.C.to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

27. This court in Zandu Pharmaceutical Works Ltd. & Orss. vs. Mohd. Sharaful Haque & Anr. (2005) 1 SCC 122 observed thus:-

''8.....it would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

28. In Indian Oil Corporation vs. NEPC India Ltd. & Ors. (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that "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."

29. This Court in the case of Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS & Anr. (2006) 7 SCC 188 has reiterated the legal position. The Court observed that the powers possessed by the High Court under Section 482 of CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that the decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

30. Now, the crucial question which arises for our adjudication is whether the case of the respondent falls under any of the categories as enumerated in the celebrated case of Bhajan Lal (supra). On the basis of the material available on record and the allegations levelled against the respondent in the FIR and the charge-sheet, it cannot be concluded that no ingredients of offence under section 120B read with section 193 IPC are present in the instant case.

31. At this stage, the High Court in its jurisdiction under section 482 Cr.P.C. was not called upon to embark upon the enquiry whether the allegations in the FIR and the charge-sheet were reliable or not and

thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the concerned court after the entire material is produced before it on a thorough investigation and evidence is led.

32. In the impugned judgment, according to the settled legal position, the High Court ought to have critically examined whether the allegations made in the First Information Report and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the accused (respondent herein).''

The Supreme Court in the case of **Padal Venkata Rama Reddy Vs. Koveuri Satyanarayana Reddy** reported in **(2011) 12 SCC 437** has held as under:

"8. Section 482 of the Code deals with inherent power of the High Court. It is under Chapter 37 of the Code titled "Miscellaneous" which reads as under:

"**482.** *Saving of inherent powers of High Court*.— Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

This section* was added by the Code of Criminal Procedure (Amendment) Act of 1923 as the High Courts were unable to render complete justice even if in a given case the illegality was palpable and apparent. This section envisages three circumstances in which the inherent jurisdiction may be exercised, namely:

1. to give effect to any order under CrPC,

2. to prevent abuse of the process of any court,

3. to secure the ends of justice.

9. In *R.P. Kapur* v. *State of Punjab AIR 1960 SC 866* this Court laid down the following principles:

(*i*) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

(*ii*) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding e.g. want of sanction;

(*iii*) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the

offence alleged; and

(*iv*) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

10. In *State of Karnataka* v. *L. Muniswamy (1977) 2 SCC 699* this Court has held as under: (SCC p. 703, para 7)

"*7*. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers

to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita* v. *State 2000 Cri LJ 315* and *B.S. Joshi* v. *State of Haryana (2003) 4 SCC 675*). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi* v. *R. Prasanna Kumar 1990 Supp SCC 686*; *Ganesh Narayan Hegde* v. *S. Bangarappa (1995) 4 SCC 41* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque (2005) 1 SCC 122*.)

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana* v. *Bhajan Lal 1992 Supp (1) SCC 335*, *Janata Dal* v. *H.S. Chowdhary (1992) 4 SCC 305*, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill (1995) 6 SCC 194* and *Indian Oil Corpn.* v. *NEPC India Ltd. (2006) 6 SCC 736*.

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18. In *State of Orissa* v. *Saroj Kumar Sahoo (2005)*

13 SCC 540 it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus: (SCC p. 550, para 11)

"*11*. … It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* this Court held as under: (SCC p. 695, para 7)

> "*7*. 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 the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692*, has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao case (1988) 1 SCC 692* was reconsidered and explained by this Court in *State of Bihar* v. *P.P. Sharma 1992 Supp (1) SCC 222* which reads as under: (SCC p. 271, para 70)

> "*70. Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre (1988) 1 SCC 692* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read

> with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. … Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."
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> 22. Thus, the judgment in *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia (1988) 1 SCC 692* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal".

The Supreme Court in the case of **State of Orissa v. Ujjal Kumar Burdhan** reported in **(2012) 4 SCC 547** has held as under :

> **"8.** It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with

circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation.

9. In *State of W.B.* v. *Swapan Kumar Guha*, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)

"*65*. … *An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large*. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. *If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed*. …

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. … *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence*."

(emphasis supplied)

10. On a similar issue under consideration, in *Jeffrey J. Diermeier* v. *State of W.B.*[4], while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

> "*20*. … The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order under the Code; (*ii*) to prevent abuse of the process of court; and (*iii*) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The Supreme Court in the case of **Vinod Raghuvanshi Vs. Ajay Arora,** reported in **(2013) 10 SCC 581** has held as under :

> **"30.** It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein."

(11) Similarly, it is not out of place to mention here that the investigation is still pending and the charge sheet has not been filed, as there is an interim order dated 14/10/2016 for not taking any coercive step against the applicant.

(12) The undisputed facts of this case are that the V.E.L. got a contract for construction of four lane road from Etawah -Mainpuri-Kurawali. Accordingly, the V.E.L. was in need of "crushed stone aggregate" for the purposes of construction of road, therefore, the V.E.L. entered into a contract with the complainant and all the directors as well as the Manager of V.E.L. persuaded the complainant to supply "crushed stone aggregate" and accordingly

a purchase order was also executed.

(13) The basic allegation in the present case is that in spite of receipt of full quantity of agreed material, the V.E.L. has not made payment of Rs.1,09,95,257/-. Now, the centripetal question for determination is that whether the allegations made in the FIR discloses the commission of offence under Section 406, 420, 506, 34 of IPC or not or it is merely a case of failure to fulfill the contractual obligation.

(14) Before adverting to the facts of the case, it would be appropriate to consider the purchase order dated 20/06/2014 issued by the V.E.L. which reads as under:-

"PURCHASE ORDER

REF	PO/VEL/MNP/QQMPL/34/14-15	Date	20.06.2014

To

M/S Suryansh Stone
Bellua Crusher Plant Gwalior-(MP)
TIN 23359069460
Kind Attn: Mr. Vinod Sharma

Dear Sir,

Sub	Purchase order of ''CRUSHED STONE AGGREGATE'' for Twenty Thousand Ton for our work site at Four Laning of Etawah- Mainpuri- Kurawali Road Project.

With reference to your quotation dated 01-07-2014 and subsequent negotiations with our General Manager, we are pleased to place this order on you of ''CRUSHED STONE AGGREGATE'' for Twenty Thousand Metric Ton for our work four Lanning of Etawah- Mainpuri- Kurawali Road Project, as per terms and conditions as detailed above:

A

Sr. No.	ITEM DESCRIPTION	Quantity (MT)	Rate (Rs.)	Amount (Rs.)
1	G.S.B.	10000	200/- Per MT	2000000.00
2	Dust (0 to 6 mm)	3500	200 /- Per Per MT	700000.00

3	20 mm Aggregate	3000	200/- Per MT	600000.00
4	10 mm Aggregate	3500	200/ Per MT	700000.00
	TOTAL	10500 MT		4000000

B. Terms & Conditions

1) Loading charges of material will be borne by the supplier.
2) Vat 5% will be extra.
3) Further we will require more Quantity then quantity to be extended for same terms and conditions.

C. Payment terms and condition.

1) Payment will be made after 30 days from the date of submission of monthly bill along with material receipt challan and weighing slip which issued from VEL Weigh Bridge and without receipt challan quantity will not be entertained. Remaining 50% payment will be made next 30 days.
2) TDS will be deduced from your running bills if applicable as per company norms.
3) You should be submitted valid pan card copy to your account section.
4) Clause No.C(2) procedure is applicable for every months.

D) Quality and quantity:

1) The material should be supplied as per specifications given by the site Engineer/Lab Technician. The payment will be made as per actual measurement taken by our site supervisor/weigh bridge operator.
2) Moister content will not be accepted above 2%. If the moisture content above 2% then excess moisture will be deducting from your bill.

E) Time Period of Work Order.

1) The work order will be valid for Six months from the date of issue of work order for the supply of 20000 (Twenty Thousand only) MT, however the total quantity of material should be supplied within the stipulated period beyond that no supply is liable to be entertained. The material will be lifting as per our requirement.

F) Liability:

1) As per policy of the company, you have to manage all other issues if any, pertaining to local or, any other person or by any unseen means occur.

G) Termination of the Work order:

1) The company reserves the right to cancel or terminate the order any time material supplied do not confirm the specification, delay in supply, or on account of whatsoever without any notice and such case no claim will be entertained.

H) Disputes:

1) All disputes are subject to mutual understanding.

I) OUR SALES TAX REGISTRATION NUMBER IS: 09865712830(UP) 23094006404(M.P.)

Please sign (with date and stamp) the duplicate copy of this order in token of your acceptance of the same and return it to us under your covering letter.

Thanking you,

Yours truly,

For Valecha Engineering Limited. For Suryansh Stone

General Manager Authorized Signatory
(M.H. Mehta)

(15) From the plain reading of the purchase order, it is clear that the payment was to be made after 30 days from the date of submission of monthly bill along with material receipt challan and weighing slip issued by V.E.L. Weigh Bridge and the payment were to be released through account payee cheque. With regard to the quality and quantity of the material, it is provided that the materials should be supplied as per specifications given by the Site Engineer/Lab Technician. The payment was to be made as per actual measurement taken by the Site Supervisor/Weigh Bridge Operator. It is also provided that the company reserves the right to cancel or terminate the order at any time if the material supplied do not confirm with the specification and all disputes shall be subject to mutual understanding. Thus, it is clear that as far as the quality and quantity of the material is concerned, it was to be supplied as per the specifications given by the Site Engineer/Lab Technician and the payment was to be released by V.E.L. as per actual measurement taken by the Site Supervisor/Weigh Bridge Operator. Further, it was mentioned that the payment shall be made after 30 days from the date of submission of monthly bill. It is the case of the applicant that some of the material supplied by the complainant was of sub-standard quality. It is not the case of the applicant that after the

receipt of the material supplied by the complainant the payment of the said consignment was stopped because of sub-standard quality. In the purchase order, it was specifically mentioned that the payment will be made after 30 days from the date of submission of monthly bill along with material receipt challan and weighing slip issued from V.E.L. Weight Bridge. Undisputedly, the material was supplied in different phases at different point of time. If the applicant/V.E.L. was of the view that the quality of the material which has been supplied by the complainant is of sub-standard quality then before accepting the next consignment and without utilizing the said material, the V.E.L. should have stopped the payment and should have directed the complainant to take back the material as it is not in conformity with the specifications as given by the Site Engineer/Lab Technician. Undisputedly, the applicant/V.E.L. continued to accept the consignments of "crushed stone aggregate" sent by the complainant without taking any objection with regard to its quality. Thus, it is clear that the intention of the applicant appeared to be to receive the entire consignment without taking any objection with regard to the quality of the material and then to stop the payment on the basis of sub-standard quality. Had the V.E.L./applicant restrained the complainant from sending the another consignment without replacing the earlier sub-standard consignment then at least the complainant would not have suffered such a huge loss. At the most there could have been some dispute between the applicant/V.E.L. and the complainant over the sub-standard quality of a particular consignment. Even during arguments it is not alleged by the applicant that the entire material worth Rs.1,09,95,257/- was of sub-standard quality. Further in case of sub-standard quality, the applicant/V.E.L. was well within its right to terminate the order at any time but no such action was ever taken by the V.E.L./applicant. If the complainant was informed about the sub-standard quality of the material and if he had not improved the quality of the material in spite of the objection

raised by the applicant/V.E.L. then it could have been said that as the applicant had raised a dispute with regard to the sub-standard quality of the material, therefore, the dispute between the applicant and the complainant is of civil in nature. But where the applicant/V.E.L. had accepted the entire supply without raising any dispute with regard to its quality and had also consumed the entire material, then it cannot be said that the dispute is purely of civil in nature. If the material was of sub-standard then the applicant should not have accepted the consignment and should not have utilized the same. If the site Manager or the Lab Technician of the V.E.L. did not raise any objection with regard to the quality of the material supplied by the complainant then it cannot be said that as some of the material supplied by the complainant was of substandard quality, therefore, the remaining outstanding amount of Rs.1,09,95,257/- was rightly stopped. The another submission made by the counsel for the applicant is that as his client had stopped certain payments and, therefore, they in turn has stopped the payment to the complainant. So far as the non-payment of money by the Principal of V.E.L. is concerned, in the present case there is a written document available on record pointing out terms and conditions of the agreement. In the entire purchase order dated 20/06/2014 there is not a single whisper of the fact that the payments to the complainant were to be released only after the work is approved by the Principal of V.E.L. and only after the payment is made by the Principal of the V.E.L. Non mentioning of this condition in the purchase order clearly shows that it was not the intention of the parties at the time of the agreement that the payments to the complainant will be released only after the receipt of payment by V.E.L. from its Principal.

(16) The counsel for the respondent No.5 is right in saying that had this condition of non-payment of money to the complainant till the payment is released by the Principal of V.E.L. was disclosed at the time of agreement then he would not have agreed for the same. The suppression of this condition which was going in the

mind of the applicant or other Directors of V.E.L. clearly shows that the intention of the applicant right from very inception was not to make payment for the material received by them but the intention was only to release the payment after the V.E.L. receives the payment from its Principal or the intention was not to release the payment at all. The counsel for the respondent is also right in saying that if the quality of any of the consignment was not in accordance with the specifications, then the applicant/Site Engineer of V.E.L. should have rejected the same then and there and once they have accepted the consignment and had utilized the same then it cannot be said that the quality was of sub-standard. From the facts and circumstances of the case, prima facie it appears that the non-rejection of a consignment by the applicant/V.E.L. and continuous acceptance of the same by the applicant/V.E.L. and utilization of the same clearly shows that their intention was to receive the entire quantity, to utilize the same and thereafter to raise objection with regard to its quality. It is submitted by the counsel for the applicant that if the intention of the applicant/V.E.L. was to cheat the complainant at the very beginning of the contract, then they would not have made part payment out of Rs.2,99,30,867/- and the fact that initially they made the payment of approximately Rs. 1 Crores Ninty Lakhs clearly shows that their intention was bona fide and only because of subsequent supply of sub-standard “crushed stone aggregate”, the applicant/V.E.L. was forced to stop the payments.

(17) The submission made by the counsel for the applicant cannot be accepted for the simple reason that if the applicant/V.E.L. had not made the payment at the initial stage then the complainant would have stopped the supply of “crushed stone aggregate” which the applicant/V.E.L. did not want. The sole intention of the applicant/V.E.L. in making payment of the earlier supply made by the complainant appears to continue to receive the supply of “crushed stone aggregate”. Therefore, prima facie it appears that the intention of the applicant/V.E.L. right from very

inception was to cheat the complainant and, therefore, they deliberately did not make the provision in the purchase order with regard to making payment only after receipt of the same from its Principal. Further in order to keep the complainant under confidence that timely payments shall be made for the goods supply by it, the applicant/V.E.L. made the payment at the initial stage but stopped the payment towards the end of the supply. If the stand taken by the applicant/V.E.L. in the present case that the payment was not made because of sub-standard quality of "crushed stone aggregate" is considered then first of all there is nothing on record to support the contention of the applicant that the supplied material was of sub-standard quality. Secondly, there is no explanation by the applicant that why its Site Manager/Site Supervisor accepted the consignment of "crushed stone aggregate" without getting it verified/checked that whether the same is in conformity with the specifications as agreed upon between the parties or not. If the applicant/V.E.L. chose to accept the supply and utilized the same for carrying out its project then it is not open for the applicant/V.E.L. to stop the payment on the ground of supply of sub-standard quality of "crushed stone aggregate". Further, it is well established principle of law that when the highly disputed questions of fact are involved in the case requiring adjudication then this Court in exercise of powers under Section 482 of Cr.P.C. should not consider the defence of the applicant as well as should not adjudicate upon the highly disputed questions of fact.

(18) It is next contended by the counsel for the applicant that in fact the complainant has tried to convert the civil litigation into a criminal litigation, which cannot be permitted. It is submitted by the Counsel for the applicant that even if the entire allegations as made in the complaint are taken on their face value, then it would be clear that the case is predominantly of Civil in nature and the respondent no. 5 has tried to give colour of criminal case which is not permissible. It is further submitted that the respondent no.5

has an efficacious remedy of filing money suit and in a case of mere breach of contract, criminal proceedings should not be allowed to continue. To buttress his contentions, the Counsel for the applicants has relied upon **Nimra Cerglass Technics (supra), V.Y.Jose v. State of Gujarat, (2009) 3 SCC 78** and **Sharon Michael v. State of T.N., (2009) 3 SCC 375** and submitted that mere failure on the part of the applicant and the co-accused to keep their promise at a later stage would not bring the case within the meaning of Cheating. Further, it was submitted that unless and until, there is an intention to cheat the complainant on the day one, no offence can be said to be made against the applicant.

(19) The Supreme Court in the case of **Bhajan Lal & Ors. (supra)** has held as under:-

> "**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 formulate 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.
> (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."

The submission made by the counsel for the applicant cannot be accepted.

The Supreme Court in the case of **Sesami Chemicals (P) Ltd. Vs. State of Meghalaya** reported in **(2014) 16 SCC 711** has held as under :

> **"10.** The case of the contesting respondent-accused is as follows: the contesting respondent-accused admit the fact that on 2-3-2008 they purchased ferrosilicon worth Rs 46,79,890 from the appellant Company and paid Rs 10,00,000. On receipt of the goods, they found that the goods were substandard and informed the same to the appellant and demanded their money back.
> **11.** According to the contesting respondent-accused, the appellant initially agreed to return their money and to take back its goods but later the appellant instructed the accused to sell off the goods in the open market and appropriate the same. But subsequently the signatures of the contesting respondent-accused were taken on certain

> blank papers at gunpoint at the instance of the appellant. The cheque which is the subject-matter of Crime Case No. 87(S) of 2012 is one such document obtained at gunpoint.
>
> **12.** It is in the background of the abovementioned disputed question of fact, the learned Judge of the High Court thought it fit to quash the FIRs i.e. Case No. 43(10) of 2011 dated 12-10-2011 with a cryptic order. The only relevant portion for the present purpose reads as follows: (*Sanjay Kabra case*[1], SCC OnLine Megh para 8)
>
> "*8*. After hearing the submissions advanced by the learned counsel at Bar, considering the fact and circumstances of the case, I am of the considered view that, the matter of disputes is purely covered by civil law and not by criminal law, therefore, I do not see any reason that FIR dated 12-10-2011 has any stand in the eye of the law, so it needs to be quashed."
>
> **13.** We are of the opinion that the petition filed by the contesting respondents under Section 482 of the Code of Criminal Procedure, 1973 is an abuse of the process of the Court. As already noticed, the facts are seriously in dispute. The truth or otherwise of such facts can only be established by evidence at the trial. We are, therefore, of the opinion that the High Court erred in quashing FIR No. 43(10) of 2011 dated 12-10-2011. We, therefore, set aside the order[1] of the High Court. The first respondent is directed to proceed with FIR No. 43(10) of 2011 dated 12-10-2011 in accordance with law."

The Supreme Court in the case of **Mosiruddin Munshi (supra)** has held as under :

> **"10.**The High Court has adopted a strictly hypertechnical approach and such an endeavour may be justified during a trial, but certainly not during the stage of investigation. At any rate it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a civil transaction wherein no semblance of criminal offence is involved."

The Supreme Court in the case of **Ganga Dhar Kalita (supra)** has held as under :

> **''9.** In *Arun Bhandari* v. *State of U.P.* this Court has held that if the allegations in the first information report are not frivolous, mala fide or vexatious, it cannot be simply quashed for the reason that civil suit is also pending in the matter. Paras 2, 3 and 33 of the said case are reproduced below: (SCC pp. 804-805 & 816)
>
> "*2*. The factual score as depicted is that the appellant is a non-resident Indian (NRI) living in Germany and while looking for a property in Greater Noida, he came in contact with Respondent 2 and her husband,

Raghuvendra Singh, who claimed to be the owner of the property in question and offered to sell the same. On 24-3-2008, as alleged, both the husband and wife agreed to sell the residential plot bearing No. 131, Block Cassia Fistula Estate, Sector Chi-4, Greater Noida, U.P. for a consideration of Rs 2,43,97,880 and an agreement to that effect was executed by Respondent 3, both the husband and wife jointly received a sum of Rs 1,05,00,000 from the appellant towards part-payment of the sale consideration. It was further agreed that Respondents 2 and 3 would obtain permission from the Greater Noida Authority to transfer the property in his favour and execute the deed of transfer within 45 days from the grant of such permission.

3. As the factual antecedents would further reveal, the said agreement was executed on the basis of a registered agreement executed in favour of Respondent 3 by the original allottee, Smt Vandana Bhardwaj to sell the said plot. After expiry of a month or so, the appellant enquired from Respondent 3 about the progress of delivery of possession from the original allottee, but he received conflicting and contradictory replies which created doubt in his mind and impelled him to rush to Noida and find out the real facts from the Greater Noida Authority. On due enquiry, he came to know that there was a registered agreement in favour of the third respondent by Smt Vandana Bhardwaj; that a power of attorney had been executed by the original allottee in favour of Respondent 2, the wife of Respondent 3; that the original allottee, to avoid any kind of litigation, had also executed a will in favour of Respondent 3; and that Respondent 2 by virtue of the power of attorney, executed in her favour by the original allottee, had transferred the said property in favour of one Monika Goel who had got her name mutated in the record of the Greater Noida Authority. Coming to know about the aforesaid factual score, he demanded refund of the money from the respondents, but a total indifferent attitude was exhibited, which compelled him to lodge an FIR at Police Station Kasna, which gave rise to Criminal Case No. 563 of 2009.

* * *

33. Applying the aforesaid parameters we have no hesitation in coming to hold that neither the FIR nor the protest petition was mala fide, frivolous or vexatious. It is also not a case where there is no substance in the complaint. The manner in which the investigation was conducted by the officer who eventually filed the final report and the transfer of the investigation earlier to another officer who had almost completed the investigation and the entire case diary which has been adverted to in detail in the protest petition prima facie makes out a case against the husband and the wife regarding collusion and the intention to cheat from the very beginning, inducing the appellant to hand over a

> huge sum of money to both of them. Their conduct of not stating so many aspects, namely, the power of attorney executed by the original owner, the will and also the sale effected by the wife in the name of Monika Singh on 28-7-2008 cannot be brushed aside at this stage."
>
> **10.** No doubt, where the criminal complaints are filed in respect of property disputes civil in nature only to harass the accused, and to pressurise him in the civil litigation pending, and there is prima facie abuse of process of law, it is well within the jurisdiction of the High Court to exercise its powers under Section 482 of the Code to quash the criminal proceedings. However, the powers under the section are required to be exercised sparingly. In *Kamaladevi Agarwal* v. *State of W.B.* this Court has observed as under: (SCC pp. 559-60, para 7)
>
> "*7*. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

The Supreme Court in the case of **State of Punjab Vs. Inder Mohan Chopra and others** reported in **AIR 2009 SC (Supp) 198** has held as under :

> **''10**.As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See : The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892); Dr. Raghubir Saran v. State of Bihar and another (AIR 1964 SC 1)). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be

sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. (See : Mrs. Dhanalakshmi v. R. Prasanna Kumar and others (AIR 1990 SC 494); State of Bihar and another v. P. P. Sharma, I.A.S. and another (1992 Suppl (1) SCC 222); Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another (1995 (6) SCC 194); State of Kerala and others v. O.C. Kuttan and others (1999 (2) SCC 651); State of U.P. v. O. P. Sharma (1996 (7) SCC 705); Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada (1997 (2) SCC 397); Satvinder Kaur v. State (Govt. of NCT of Delhi) and another (1999 (8) SCC 728); Rajesh Bajaj v. State NCT of Delhi and others AIR 1999 SC 1216); State of Karnataka v. M. Devendrappa and another (2002 (3) SCC 89) and State of Andhra Pradesh v. Bajjoori Kanthaiah and Anr. [2008 (11) JT 574].''

The Supreme Court in the case of **Amit Kapoor Vs. Ramesh Chander,** reported in **(2012) 9 SCC 460** has held as under :

"**27.** Having discussed the scope of jurisdiction under

these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under

> Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.
>
> **27.15.** Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.
>
> 27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

The Supreme Court in the case of **Indian Oil Corporation v. NEPC India Ltd.,** reported in **(2006) 6 SCC 736,** held as under :

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

examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

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. Such a tendency is seen in several family disputes also, leading to irretrievable break down 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 vs. State of UP [(2000) 2 SCC 636], 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."
>
> 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. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

The Supreme Court in the case of **Vijayander Kumar (supra)** has held as under :

> **''11.** No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the appellants in their defence in accordance with law for due consideration at appropriate stage.
>
> 12. The learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/ complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of this Court as noted in para 16 of the judgment in *Ravindra Kumar Madhanlal Goenka* v. *Rugmini Ram Raghav Spinners (P) Ltd.''*

The Supreme Court in the case of **Lee Kun Hee Vs. State of U.P.** reported in **AIR 2012 SC 1007** has held as under :

> ''**26**.We have given our thoughtful consideration to the last contention advanced at the hands of the learned counsel for the appellants. We are of the considered view, that in offences of the nature contemplated under the summoning order, there can be civil liability coupled with criminal culpability. What a party has been deprived of by an act of cheating, can be claimed through a civil action. The same deprivation based on denial by way of deception, emerging from an act of cheating, would also attract criminal liability. In the course of criminal prosecution, a complainant cannot seek a reciprocal relief, for the actions of the accused. As in the instant case, the monetary consideration under the bill of exchange dated 1.2.2001, cannot be claimed in the criminal proceedings, for that relief the remedy would be only through a civil suit. It is therefore not possible for us to accept, that since a civil claim has been raised by the complainant-JCE Consultancy, based on the alleged breach of the agreement dated 1.12.2001, it can be prevented from initiating proceedings for penal consequences for the alleged offences committed by the accused under the Indian Penal Code. It would not be appropriate for us, to delve into the culpability of the appellants at the present juncture, on the basis of the factual position projected by the rival parties before us.The culpability (if at all) would emerge only after evidence is adduced by the rival parties before the trial court. The only conclusion that needs to be drawn, at the present juncture is, that even on the basis of the last submission canvassed on behalf of the appellants, it is not possible to quash the summoning order at this stage. In the aforesaid view of the matter, it is left open to the appellants to raise their objections, if they are so advised, before the trial court. The trial court shall, as it ought to, adjudicate upon the same in consonance with law, after allowing the rival parties to lead evidence to substantiate their respective positions.''

The Supreme Court in the case of **M/s Suryalakshmi Cotton Mills Ltd. Vs. M/s Rajvir Industries Ltd and others** reported in **AIR 2008 SC 1683** has held as under :

> ''**18**.Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of

> unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the complainant immediately. The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.''

(20) Thus, it is clear that where the complaint discloses the criminal ingredients also, then the criminal prosecution cannot be quashed only because of the fact that civil dispute is also involved and the transactions are business transactions. Only a case which is predominantly of civil in nature cannot be allowed to be given a color of criminal nature**.** This Court in previous paragraphs have already held that right from very inception the intention of applicant/V.E.L. was to cheat the complainant and, therefore, it cannot be said that the present case is predominantly of civil in nature without there being any criminal intent. Thus, the FIR made against the applicant cannot be quashed.

(21) It is next contended by the Counsel for the applicant that although there is no provision in the purchase order dated 20/06/2014 (Annexure P2) providing that the payments to the complainant shall be released only after the work is approved by the Principal, but as the complainant was aware of the fact that as the “crushed stone aggregate” is being purchased for utilizing the same for the purposes of carrying out Road Project, therefore, the intentions of the parties were writ large and now the complainant cannot say that the payment cannot be withheld by the applicant.

The submission made by the counsel for the applicant is misconceived and cannot be accepted.

(22) The Supreme Court in the case of **Bank Of India Vs. K. Mohandas** reported in **(2009) 5 SCC 313** has held as under :

> **"28.** The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.
>
> **29.** In *Ottoman Bank of Nicosia* v. *Ohanes Chakarian AIR 1938 PC 26*, Lord Wright made these weighty observations: (AIR p. 29)
>
> "… that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it."
>
> **30.** In *Ganga Saran* v. *Firm Ram Charan Ram Gopal AIR 1952 SC 9* a four-Judge Bench of this Court stated: (AIR p. 11, para 6)
>
> "*6*. … Since the true construction of an agreement must depend upon the import of the words used and not upon what the parties choose to say afterwards, it is unnecessary to refer to what the parties have said about it."
>
> **31.** It is also a well-recognised principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. (*North Eastern Railway Co.* v. *Lord Hastings 1900 AC 260*)
>
> **32.** The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under the Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of a contract that if the terms applied by one party are unclear, an interpretation against that party is preferred (*verba chartarum fortius accipiuntur contra proferentem*).
>
> 33. What was, in respect of pension, the intention of the banks at the time of bringing out VRS 2000? Was it not made expressly clear therein that the employees seeking voluntary retirement

> will be eligible for pension as per the Pension Regulations? If the intention was not to give pension as provided in Regulation 29 and particularly sub-regulation (5) thereof, they could have said so in the Scheme itself. After all much thought had gone into the formulation of VRS 2000 and it came to be framed after great deliberations. The only provision that could have been in mind while providing for pension as per the Pension Regulations was Regulation 29. Obviously, the employees, too, had the benefit of Regulation 29(5) in mind when they offered for voluntary retirement as admittedly Regulation 28, as was existing at that time, was not applicable at all. None of Regulations 30 to 34 was attracted."

(23) Thus, it is clear that where the contents of a document/contract are clear and unambiguous, then its true effect cannot be changed by the course of conduct adopted by the parties. Even otherwise, Section 92 of Evidence Act prohibits the oral evidence in respect of contents of the documents. The intention of the parties are to be gathered from the contents of the documents and not from their subsequent conduct. Even otherwise, one party to the contract cannot unilaterally change the terms and conditions of the contract. Thus the applicant cannot get advantage of the letter dated 31-1-2015 for interpreting the terms and conditions of purchase order dated 20/06/2014.

(24) Lastly, it was contended by the Counsel for the applicant that in a case of commercial transactions, it was compulsory on the part of the investigating officer to conduct a preliminary enquiry before registering the F.I.R. To buttress his contentions, the Counsel for the applicant has relied upon the judgment passed by the Supreme Court in the case of **Lalita Kumari (supra)** in which it is held as under :

> **"120.** In view of the aforesaid discussion, we hold:
> **120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
> **120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted

> only to ascertain whether cognizable offence is disclosed or not.
>
> **120.3.** If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
>
> **120.4.** The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
>
> **120.5.** The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
>
> **120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
>
> (*a*) Matrimonial disputes/family disputes
>
> (*b*) Commercial offences
>
> (*c*) Medical negligence cases
>
> (*d*) Corruption cases
>
> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.
>
> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

(25) By referring to para 120.6, it is submitted by the Counsel for the applicant that where the dispute is with regard to commercial transactions, then a preliminary enquiry must be conducted and in absence of any preliminary enquiry, the F.I.R. cannot be registered and therefore, the F.I.R. in question is liable to be quashed on the ground that no preliminary enquiry was conducted. It is further submitted by the Counsel for the applicant that the word "may" used in Para 120.6 of the judgment passed in **Lalita Kumari (Supra)** must be read as "shall" and therefore, in absence preliminary enquiry, the F.I.R. is liable to be quashed on that ground only.

(26) The submission made by the Counsel for the applicant cannot be accepted. The use of word "may" by Supreme Court in para 120 of the judgment passed in **Lalita Kumari (Supra)** makes it clear that preliminary enquiry may be done. It is not mandatory on the part of the investigating officer to conduct a preliminary enquiry before registering the F.I.R. Although in a case where the business transactions are involved, the investigating officer may conduct a preliminary enquiry before registering the F.I.R., but the F.I.R. cannot be quashed only on the ground that the same is bad as no preliminary enquiry was conducted.

(27) It is next contended by the Counsel for the applicant, that the parties have compounded the offence and accordingly, an application under Section 320(2) of Cr.P.C. which has been registered as I.A. No.7586/2017 has been filed. The compromise between the parties has been verified and as per the order dated 25-9-2017 passed by a co-ordinate bench of this Court, the applicant has already deposited the Demand Draft with Shri S.K. Shrivastava, Advocate, therefore, the criminal proceedings may be quashed on the ground of compounding of offences.

(28) The submissions made by the Counsel for the applicant cannot be accepted for the following reasons :-

1. That all the offences which have been alleged against the applicant are compoundable.
2. Section 320(2) of Cr.P.C., provides that only that Court can grant permission to compound the offence, before which the prosecution of a party is pending.
3. That the investigation is pending and the charge sheet has not been filed and there is a specific provision in Criminal Procedure Code for acquittal of the accused on compounding of offences.
4. That when there is a specific provision in Cr.P.C., then the application under Section 482 of Cr.P.C. cannot be accepted.

(29) Section 320(2) of Cr.P.C. reads as under :

> ''(2)The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:—

(30) From the plain reading of Section 320(2) of Cr.P.C., it is clear that only that Court can grant permission to compound the offence, before which any prosecution for such offence is pending. Undisputedly, no prosecution is pending before this Court for any such offence. Thus, in view of specific provision of Section 320(2) of Cr.P.C., this Court cannot grant permission to the parties to compound the offence.

This Court in the case of **Monu alias Ranu Kushwah & Ors. vs. State of MP & Anr.**reported in **I.LR.[2017] M.P.489** has held as under:-

> "**21**.....Further the applicants have filed an application under Section 320(2) of CrPC for compromise. The offences as specified in Section 320(2) of CrPC, can be compounded with the permission of the Court before which any prosecution for such offences is pending. Admittedly in the present case, even investigation is not complete and no charge-sheet has been filed. No case is pending before this Court, therefore, the application under Section 320(2) of CrPC is otherwise not maintainable.''

(31) It is next contended by the Counsel for the applicant, that the present application under Section 320(2) of Cr.P.C. may be treated as an application under Section 482 of Cr.P.C. for quashment of the proceedings on the basis of compromise. In support of this contentions, the Counsel for the applicant has relied upon the judgments passed by the Supreme Court in the case of **Gian Singh Vs. State of Punjab,** reported in **(2012) 10 SCC 303**, **Narinder Singh Vs. State of Punjab,** reported in **(2014) 6 SCC 466**, **Parbatbhai Aahir vs. State of Gujarat**

and Another, reported in **(2017) 9 SCC 641** and **Anita Maria Das Vs. State of Maharashtra** reported in **(2018) 3 SCC 209.**

(32) So far as the submission of the Counsel for the applicant, that the High Court in exercise of power under Section 482 of Cr.P.C. can quash the proceedings is concerned, the legal position is very clear. Had there been any non-compoundable offence registered against the applicant, the High Court could have certainly entertained the application filed by the applicant for quashment of the proceedings on the basis of compromise, but in the present case, all the offences which have been registered against the applicant are compoundable, therefore, the moot question for determination is that when there is a specific provision in Cr.P.C., then by-passing the said specific provisions, whether the High Court should entertain the application for quashment of the proceedings on the ground of compromise or not?

(33) The Supreme Court in the case of **Girish Kumar Suneja Vs. C.B.I.** Reported in **(2017) 14 SCC 809** has held as under :-

> **''38.** The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) CrPC is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 CrPC is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues.''

The Supreme Court in the case of **Madhu Limaye Vs. State of**

Maharashtra reported in **(1977) 4 SCC 551** has held as under :-

> **''8.** Under Section 435 of the 1898 Code the High Court had the power to "call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its .... jurisdiction for the purpose of satisfying itself ... as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court", and then to pass the necessary orders in accordance with the law engrafted in any of the sections following Section 435. Apart from the revisional power, the High Court possessed and possesses the inherent powers to be exercised *ex debito justitiae* to do the real and the substantial justice for the administration of which alone Courts exist. In express language this power was recognized and saved in Section 561-A of the old Code. Under Section 397(1) of the 1973 Code, revisional power has been conferred on the High Court in terms which are identical to those found in Section 435 of the 1898 Code. Similar is the position apropos the inherent powers of the High Court. We may read the language of Section 482 (corresponding to Section 561-A of the old Code) of the 1973 Code. It says:
>
> > "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.
>
> At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:
>
> **"(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;**
>
> **(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;**
>
> **(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code."**

The Supreme Court in the case of **Punjab State Warehousing Corporation, Faridkot Vs. M/s Shri Durgaji and others** reported in **AIR 2012 SC 700** has held as under :

> **''8**.It is trite law that the inherent power of the High Court ought to be exercised to prevent miscarriage of justice or to prevent the abuse of the process of the Court or to otherwise secure the ends of justice. The Court possesses wide discretionary powers under the Section to secure these ends.In this behalf it would be profitable to refer to the decision of this Court in Jeffrey J. Diermeier and Anr. v. State of West Bengal and Anr.[(2010) 6 SCC 243], wherein one of us (D. K. Jain, J.), speaking for the Bench, explained the scope and ambit of inherent powers of the High Court under Section 482 of the Code as follows:
> "20.....The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.
> 22. In Dinesh Dutt Joshi v. State of Rajasthan [(2001) 8 SCC 570 : (2001 AIR SCW 4068)], while dealing with the inherent powers of the High Court, this Court has observed thus (SCC p. 573, para 6):
> "6. ...The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are, however, required to be reserved, as far as possible, for extraordinary cases."

(34) Thus, it is clear that the powers under Section 482 of Cr.P.C. can be exercised in order to (i) prevent abuse of process of Court (ii) to give effect to an order under the Code and (iii) to

secure the ends of justice. If a case does not fall within any of the above mentioned categories, then the exercise of power under Section 482 of Cr.P.C. may be declined by the High Court.

(35) In the present case, although the parties may have decided to compromise the dispute, but in the light of the I.A. No. 5588/2018, it cannot be said that the present case fall within any of the above mentioned three categories. The applicant had handed over a demand draft to the receiver Shri S.K. Shrivastava, Advocate so that the same can be handed over to the respondent no.5, in case the compromise takes place between the parties. After the case was reserved for judgment, with the permission of the Court, the applicant has filed I.A. No.5588/2018 on 12-7-2018, and in the said application it has been mentioned as under :

> ''4. That, Petitioner as well as respondent No.5 undertakes in case the compromise would be effected by this Hon'ble Court, then demand draft would be handed over to the complainant and in case the compromise would not be effected, then same be return to the petitioner.
> 4. That, respondent no.5 also undertakes that if compromise would be effected and matter be quashed in lieu of the same, then the grievances of the complainant is settled once complainant/ respondent No. 5 received the demand drafts.
> 5. That it is further submitted that during the course of argument, the Counsel of petitioner also touches the merits of the case and in case the matter is quashed on the basis of the merits, then petitioner undertakes to handed over the aforesaid demand draft(s) to the respondent No. 5/complainant. It is further submitted that parties also undertakes in case matter not quashed, the drafts would be handed over to the Petitioner. ''

(36) Thus, it is clear that the applicant is of the view that unless and until the proceedings are quashed, he would not make payment to the applicant, although by handing over the demand draft to the receiver, the applicant, *prima facie* appears to have admitted his liability. The Supreme Court in the case of **Lee Kun Hee (Supra)** has already held that *Monetary considerations cannot be claimed in the criminal proceedings and for that relief, the remedy would be civil dispute.* Thus, the criminal proceedings

cannot be resorted to settle the civil claims. In I.A. No. 5588/2018, the claim of the applicant is that only in case, the proceedings are quashed either on the basis of the compromise or on merits, only then he would make the payment to the respondent no.5. This conditional offer made by the applicant, cannot be accepted. Thus, it is clear that while exercising the powers under Section 482 of Cr.P.C., this Court cannot bypass the specific provisions of Section 320 and 320(2) of Cr.P.C. It is contended by the Counsel for the applicant, that since, there was an interim order in the present case, therefore, the prosecution has not filed the charge sheet so far. For filing an application under Section 320(2) of Cr.P.C., the applicant would be required to appear before the Trial Court and would be required to undergo the entire process under which a person, arrayed as an accused has to go. Thus, in nutshell, the submission of the applicant is that in order to avoid arrest, the applicant does not want to file an application under Section 320 of Cr.P.C. for compounding.

(37) This submission made by the Counsel for the applicant, cannot be a good ground for bypassing the specific provisions of Section 320 of Cr.P.C.

(38) However, it is made clear that refusal by this Court, to exercise the powers under Section 482 of Cr.P.C., in view of the specific provisions of Section 320 and 320(2) of Cr.P.C., would not mean that the Trial Court should not decide the applications under Section 320 and 320(2) of Cr.P.C. on its own merits. In case, the applications under Section 320 and 320(2) of Cr.P.C. are filed before the Trial Court, then the Trial Court is requested to decide the said applications, in accordance with law, without getting prejudiced by refusal of this Court, to entertain the application under Section 482 of Cr.P.C.

(39) Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion, that the F.I.R. lodged by the respondent no.5, *prima facie* discloses the commission of offence under Sections 420,406,506,294 and 34 of

I.P.C. and therefore, the F.I.R. in crime No. 154/2016, cannot be quashed either on merits, or on the basis of compromise.

(40) Before parting with this order, this Court feels it appropriate to issue a word of caution, that the observations in this order, have been made by the Court, considering the limited scope of interference. The Trial Court is expected to decide the Trial, strictly in accordance with the evidence, which would come on record, without getting prejudiced by any of the observations.

(41) The interim order dated 14-10-2016, is hereby vacated.

(42) Since the applicant has submitted an application giving a conditional offer that he would make the payment to the respondent No.5 only in case if the proceedings are quashed and since the application filed by the applicant under Section 482 of CrPC has been dismissed, therefore, the applicant shall be free to receive back the Demand Draft from Shri S.K.Shrivastava, Advocate.

(43) Accordingly, this application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

*MKB