HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

PRESENT:

HON'BLE MR. JUSTICE G.S. AHLUWALIA

Misc. Criminal Case No. 8307 OF 2016

Jagdish Valecha

-Vs-

State of M.P. & Ors.

Shri Vivek H. Kedar with Shri Yash Sharma, Counsel for the applicant.

Ku. Sudha Shrivastava, Panel Lawyer for the respondents No.1 to 4/State.

Shri Prashant Sharma, Counsel for the respondent No.5.

O R D E R
(27/04/2017)

This petition under Section 482 of Cr.P.C. has been filed for quashing the FIR in Crime No. 98/2016 registered by Police Station University, District Gwalior registered for offence punishable under Sections 420, 406, 506, 34 of IPC.

The undisputed fact is that the applicant is one of the Director of M/s Valecha Engineering Ltd., Valecha Chambers, 4th Floor, New Link Road, Andheri (W), Mumbai, Maharashtra.

The necessary facts for the disposal of the present petition in short are that the complainant Ramnivas Sharma lodged a FIR against the applicant and four other persons on the allegation that the complainant is the partner of M/s Shri Ram Sharma Stone Crusher, Gwalior. The applicant and the other co-accused persons made a request to the complainant to supply Two Lac Metric Tone “crushed stone aggregate” at

the work site of Four Lane Etawah-Mainpuri-Kurwali Road Project as Valecha Engineering Ltd. (hereinafter "V.E.L. in short) had got the contract for construction of Four Lane at Etawah-Mainpuri-Kurwali Road. Accordingly a purchase order dated 10.4.2014 was placed by V.E.L. through one Manoj Kumar Pandey, Project Manager, Valecha Engineering Ltd. The work order has been placed on record as Annexure P/1 along with this petition. It was further alleged that an agreement between M/s Shri Ram Sharma Stone Crusher and V.E.L. was executed at Gwalior on 10.4.2014 and 10.7.2014. It was mentioned that M/s Shri Ram Sharma Stone Crusher would supply the "crushed stone aggregate" at the construction site and the payments shall be made by cheque. Accordingly, Shri Ram Sharma Stone Crusher supplied the "crushed stone aggregate" to V.E.L. on its construction site and the cheques were given to the complainant. It was further alleged that those cheques were ultimately returned back by the Bank on the ground of "insufficient funds". It was alleged that in between 30.4.2014 and 15.2.2015 total "crushed stone aggregate" worth Rs. 14,40,13,779/- was supplied and out of which a total amount of Rs. 6,47,84,000/- was outstanding for which the cheques were given which ultimately stood bounced on the ground of "insufficient funds", as a result of which the complainant is on the verge of bankruptcy. It was further alleged that the applicant and other co-accused persons are deliberately not making payment of the outstanding amount as it was the intention of the applicant and other co-accused persons to cheat the complainant. It was further alleged that on 7.3.2016, the complainant from his mobile No.9425111696 contacted the co-accused Dinesh Valecha on his mobile No.8450925745 and again requested that his payments may be made but in reply the co-accused Dinesh Valecha started abusing the complainant and gave a threat that in case a

demand is made for payment by the complainant then he would get him abducted and would kill him. Thus, it was alleged that the applicant and the other accused persons have cheated the complainant and inspite of supply of "crushed stone aggregate", the applicant and other co-accused persons have not made the payment. On this complaint, the police registered the FIR for offence punishable under Sections 420, 406, 506, 34 of IPC.

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 so far. It is further submitted that in the year 2012-2013, a contract was awarded to V.E.L. for construction of Four Way Lane Road from Etawah-Mainpuri Districts (U.P.). For the construction of road, the V.E.L. entered into an agreement with the respondent No.5 for supply of "crushed stone aggregate". Although the goods were supplied and part payments were made by V.E.L. but as cheques amounting to Rs. 6,47,84000/- stood bounced, therefore, the complainant has also filed a criminal complaint under Section 138 of Negotiable Instruments Act against the applicant and co-accused Dinesh. The notice under Section 138(b) of Negotiable Instruments Act was also issued to the co-accused Dinesh and the applicant Jagdish, whereas the criminal complaint has been filed against five persons i.e. four Directors and one Manager namely Sadashiv Kavi. It is submitted by the counsel for the applicant that the cheque was signed by Dinesh Valecha and there is a suppression in the FIR to the effect that the complainant has already filed a complaint under Section 138 of Negotiable Instruments Act. Further, there is a delay in lodging the FIR as according to the complainant, the cheques stood bounced in the month of April, 2015 whereas the FIR under challenge was lodged on 14.3.2016. It was further

alleged that so far as the offence under Sections 420 and 406 of IPC are concerned, even if the entire allegations made in the FIR are accepted in toto then it cannot be said that any offence under Sections 420, 406 of IPC was made out. It is further submitted that the allegation of threat to life is nothing but an afterthought. It is further submitted that there is no allegation in the FIR to the effect that right from very inception the intention of the applicant or the co-accused was to cheat the complainant and, therefore, in absence of this specific allegation it cannot be said that an offence under Section 420 of IPC is made out. It is further submitted that in fact complainant has tried to convert the civil dispute into a criminal dispute and the criminal intent is not available on record. It is further submitted that as the quality of the material which was supplied by the complainant was inferior, therefore, its Principal has stopped the payment to V.E.L. and, therefore, the applicant or the other co-accused persons are not liable to make payment of the "crushed stone aggregate" so supplied by the complainant. It is further submitted that V.E.L. had given a notice dated 31.1.2015 which has been placed on record as Annexure P/3 mentioning therein specifically that the quality of the material supplied by complainant is substandard and the client of V.E.L. has not only rejected the material but has also refused to release further payment against the same and accordingly the complainant was warned that the respondent No.5 shall be solely responsible for repayment of money by the client of V.E.L., for the substandard quality material supplied by the respondent No.5. Accordingly, the respondent No.5 was requested to replace the material dumped at the site by good quality material as per specification of the applicant, otherwise, V.E.L. will not release payment after its refusal and non-payment of its client. Thus, it is submitted that as the

quality of the material supplied by the respondent No.5 was of substandard quality, therefore, the V.E.L. is well within its right to stop payment. It is further submitted that although the cheques were issued at Etawah, goods were supplied at Etawah but since in the purchase order dated 10.4.2015, it was specifically mentioned that all disputes are subject to the jurisdiction of Mumbai High Court, therefore, the Police Station-University, District Gwalior has no territorial jurisdiction to lodge the FIR.

Relying on the judgments passed by the Supreme Court in the cases of **State of Haryana vs. Bhajan Lal** reported in **AIR 1992 SC 604** and **Lalita Kumari Vs. State of U.P.** reported in **(2014) 2 SCC 1**, it is submitted that even if the entire allegations are accepted in toto, then no offence is made out against the applicant. It is further submitted that once the applicant is facing prosecution under Section 138 of Negotiable Instruments Act then on the similar allegation he cannot be prosecuted separately for offence under Sections 420, 406, 506, 34 of IPC. The counsel for the applicant has placed reliance on the judgment passed by Supreme Court in the case of **G.Sagar Suri vs. State of U.P.** reported in **(2000) 2 SCC 636**.

Per contra, it is submitted by the counsel for the respondent No.5 that it is not required that in the FIR each and every minute details should be mentioned. If the allegations made in the FIR discloses that the intention of the accused right from very inception was to cheat the complainant, then prima facie offence under Section 420 of IPC would be made out. It is further submitted that the factum of supply of "crushed stone aggregate" has not been denied by the applicant. Similarly, the applicant has not denied that an amount of Rs. 6,47,84,000/- is outstanding against V.E.L. As per the purchase order dated 10.4.2014, the cheque was to be

issued after carrying out the quality check by the Site Manager as well as the Lab Technician and as the applicant had not rejected the consignment at the time of the delivery then it cannot be said that the quality of "crushed stone aggregate" supplied by the complainant was of substandard quality. It is further submitted that so far as the letter dated 31.1.2015 written by V.E.L. is concerned, suffice it to say that there was no such condition under purchase order dated 10.4.2014. If the work carried out by the applicant company was not accepted by its Principal, then the complainant cannot be held liable for the same because there is no condition in the purchase order dated 10.4.2014 to the effect that the payments shall be released subject to approval by the Principal of the applicant/V.E.L. The applicant cannot unilaterally incorporate any condition in the agreement or in the purchase order dated 10.4.2014. The stand taken by the applicant that as its client/Principal had refused to make certain payments to the V.E.L., therefore, the amount which is outstanding against the V.E.L. has been withheld clearly shows that the intention of the applicant right from very inception was to release payment subject to payment made by the Principal of the V.E.L. If this was the intention then V.E.L. should have disclosed it at the very beginning to the complainant that the payment shall be released subject to approval by the Principal. However, the applicant and other other directors deliberately did not mention in the contract about the said condition and, therefore, it is clear that the work order was issued to the complainant by suppressing several facts. It is further submitted that the allegation of supply of sub-standard "crushed stone aggregate" is false perse. It is further submitted that it is incorrect to say that an accused cannot be tried for an offence under Sections 420, 406, 506, 34 of IPC separately when he is facing trial for

offence under Section 138 of Negotiable Instruments Act. It is further submitted that every business transaction may involve civil element but if the case is not predominantly of civil in nature and the allegations made in the FIR involves the criminal intent also then it cannot be said that since a civil remedy is also available, therefore the accused cannot be proceeded under criminal law. It is further submitted by the counsel for the respondent that it is well established principal of law that by entering into a contract, the parties cannot confer a jurisdiction on a Court which otherwise do not have territorial jurisdiction to try the case. In the present case, the agreement was executed at Gwalior, the material was supplied at Etawah and the cheques were issued at Etawah, therefore either the jurisdiction has arisen at Etawah or it has arisen at Gwalior. Since no part of cause of action has arisen at Mumbai, therefore, the parties cannot confer jurisdiction on the Mumbai High Court and thus that condition is bad in law and, therefore, FIR cannot be quashed on the ground of lack of territorial jurisdiction. The Police Station Gwalior, District Gwalior has jurisdiction to investigate the matter because a part of cause of action has arisen at Gwalior. It is further submitted that a mere delay in lodging the FIR cannot be a ground to quash the proceedings unless and until the applicant/accused submits that the proceedings are barred by time as provided under Section 468 of Cr.P.C. Undisputedly the FIR lodged by the complainant is not barred by limitation, therefore, the FIR cannot be quashed merely on the ground of delay. It is further submitted that it is an admitted position that the applicant had received the material worth Rs. 6,47,84,000/- apart from the remaining material and had also utilized the same but has not made the payment of the said material. Unless and until the applicant makes the payment of the material supplied to V.E.L., it cannot be said that V.E.L.

became the owner of the said material. At the most it can be said that the V.E.L. was in possession of the said material in the capacity of a trustee and once the applicant/V.E.L. has converted the said material for its own use and has utilized the same without making payment of the cost of the material then it can be said that there is a prima facie material available on record to show that the applicant/V.E.L. has committed criminal breach of trust. It is further submitted that so far as the allegations of threatening by the co-accused Dinesh Valecha is concerned, it is specifically mentioned in the FIR that when the complainant contacted the co-accused Dilip Valecha for the payment of the remaining amount, at that time he was threatened by the co-accused and the complainant was directed not to contact again for the payment of the outstanding amount. Thus, it is submitted by the counsel for the complainant that the FIR prima facie discloses the commission of offence and as the investigation is pending, therefore, at this stage the legitimate prosecution of the applicant or the directors of V.E.L. should not be stifled.

Heard the learned counsel for the parties.

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.

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:
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> "**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".

Similarly, it is not out of place to mention here that the investigation is still pending and the charge sheet has not been filed.

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)
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> "*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."

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 placed.

The basic allegation in the present case is that inspite of receipt of full quantity of agreed material, the V.E.L. has not made payment of Rs. 6,47,84,000/-. 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 of contractual obligation.

Before adverting to the facts of the case, it would be appropriate to consider the purchase order dated 10.4.2014 issued by the V.E.L. which reads as under:-

"VALECHA ENGINEERING LIMITED

PURCHASE ORDER-KM-42.

Ref: PO/VEL/MNP/SRSSC/30/14-15 Date: 10.04.2014

To,

M/S SHRI RAM SHARMA STONE CRUSHER.
E-25, New Vivekananda Colony,
Thatipur, Guwalior (M.P.)
Ph. No. 0751-4098054.

Dear Sir,

Sub: Purchase order for supply of "CRUSHED STONE AGGREGATE" Two Lac Metric Tone for our work site at Four Laning of Etawah-Mainpuri-Kurawali Road Project.

With reference to your quotation dated 09.04.2014 and subsequent negotiations with our **Project Manager,** we are pleased to place this order on you for supply of **"CRUSHED STONE AGGREGATE" for Two Lac Metric Tone** for our work Four Laning of Etawah-Mainpuri-Kurawali Road Project, as per terms and conditions as detailed below:-

A.

Sr. No.	ITEM DESCRIPTION	Quantity (MT)	Rate (Rs.)	Amount (Rs.)
1	40 mm	45000	350/-	15750000.00

	Aggregate		Per MT	
2	20 mm Aggregate	50000	475/- Per MT	23750000.00
3	10 mm Aggregate	50000	325/- Per MT	16250000.00
4	0 to 6 mm Stone Dust	55000	250/- Per MT	13750000.00
	TOTAL	200000 MT		69500000.00

B. Terms & Conditions

1) Loading charges of material will be borne by the supplier.
2) Vat 5% will be extra.
3) Royalty Rs. 30/- Per MT will be extra against submission of Original Royalty.

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 Weight Bridge and without receipt challan quantity will not be entertained.
2) We will issue PDC against supply of 30000 MT (Thirty Thousand only) @ 350/- per MT (Average Rate) and the PDC amount will be Rs. 10500000/- and you should be supplied 30000 MT in one month and the date of PDC will be 30 days from date of Purchase order. However, as mutually agreed you shall deposit the PDC in the bank after 30 days after discharged with our Project Manager.
3) TDS will be deducted from your running bills **if applicable** as per company norms.
4) You should be submitted valid pan card copy of our account section.
5) Payment will be released through A/c payee cheque payable at State Bank of India or Axis Bank Ltd.
6) Clause No. C(2) procedure is applicable for every months.

D) Quality and quantity:

1) The materials 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.

E) Time Period of Work Order.

1) The work order will be valid for three months

from the date of issue of work order (10.04.2014 to 10.10.2014.) for the supply of 200000 (Two lac) MT, however the total quantity of material should be supplied within the stipulated time period beyond that no supply is liable to be entertained.

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 the jurisdiction of Mumbai High Court.

I) OUR SALES TAX REGISTRATION NUMBERS 09865712830

Please sigh (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.

Project Manager
(Manoj Kumar Pandey)"

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. Weight Bridge and the payment shall 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/Weight 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 the

jurisdiction of Mumbai High Court. 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/Weight 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. 6,47,84,000/- 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 inspite 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 issued cheques for the payment of the said consignment then it cannot be said that the dispute is purely of civil in nature. Issuance of a post dated cheque knowing-fully well that there is no sufficient fund in the Bank account clearly shows that the intention of the applicant/V.E.L. was not to make payment of the material received by the V.E.L./applicant to the complainant. 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 substandard quality, therefore, the remaining outstanding amount of Rs.

6,47,84,000/- 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 10.4.2014, 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.

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. 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 payment of Rs. 8 Crores and the fact that initially they made the payment of Rs. 8 Crores clearly shows that their intention was bonafide and only because of subsequent supply of sub-standard "crushed stone aggregate", the applicant/V.E.L. was forced to stop the payments.

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 undisputed that the cheques which were issued by the applicant/V.E.L. were returned back by the Bank on the ground of "insufficient funds". If the applicant/V.E.L. had stopped the payment because of supply of sub-standard quality of "crushed stone aggregate" then the payment should have been stopped by the applicant/V.E.L. on the said ground and should not have allowed the cheques to stand bounced on the ground of "insufficient funds". 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.

It is next contended by the counsel for the applicant that the complainant has deliberately suppressed the factum of pendency of criminal complaint under Section 138 of Negotiable Instruments Act in the FIR and thus on the basis of suppressed facts he has got the FIR registered. It is further contended by the Counsel for the applicant that since, the applicant is already facing Trial for offence under Section 138 of Negotiable Instruments Act, therefore, his prosecution for

offence under Sections 420,406,506,34 of I.P.C. is unwarranted. To buttress his contentions, the Counsel for the applicant relied upon the judgment of Supreme Court in the case of **G. Sagar Suri Vs. State of U.P.** reported in **(2000) 2 SCC 636**. The Counsel for the applicant submitted that since, a criminal complaint under Section 138 of Negotiable Instruments Act is already pending against the applicant and Dinesh Valecha therefore, if it is found that the applicant has committed any offence, then he would suffer the consequences however, there is no occasion for the complainant to prosecute the applicant and the F.I.R. is nothing but a clear abuse of process of law.

The submission made by the Counsel for the applicant cannot be accepted for the simple reason that the nature of the offence punishable under Section 138 of Negotiable Instruments Act is different from that of offence under Section 406 and 420 of I.P.C. Even if the applicant is acquitted or convicted under Section 138 of Negotiable Instruments Act, his subsequent prosecution for offence under Sections 406 and 420 of I.P.C. on the same set of allegations is maintainable and the principle of Double Jeopardy would not apply.

The Supreme Court in the case of **Sangeetaben Mahendrabhai Patel Vs. State of Gujarat (2012) 7 SCC 621** has held as under **:**

> "9. The sole issue raised in this appeal is regarding the scope and application of the doctrine of double jeopardy. The rule against double jeopardy provides foundation for the pleas of *autrefois acquit* and *autrefois convict*. The manifestation of this rule is to be found contained in Section 300 CrPC; Section 26 of the General Clauses Act and Section 71 IPC.
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> **10.** Section 300(1) CrPC reads:
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> "**300. Person once convicted or acquitted not to be tried for same**

offence —(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof."

11. Section 26 of the General Clauses Act, 1897 reads:

"**26. Provision as to offences punishable under two or more enactments.**—Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

12. Section 71 IPC reads:

"**71. Limit of punishment of offence made up of several offences**.—Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such of his offences, unless it be so expressly provided."

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33. In view of the above, the law is well settled that in order to attract the provisions of Article 20(2) of the Constitution i.e. doctrine of *autrefois acquit* or Section 300 CrPC or Section 71 IPC or Section 26 of the General Clauses Act, the ingredients of the offences in the earlier case as well as in the latter case must be the same and not different. The test to ascertain whether the two offences are the same is not the identity of the allegations but the identity of the ingredients of the offence. Motive for committing the offence cannot be termed as the ingredients of offences to determine the issue. The plea of *autrefois acquit* is not

> proved unless it is shown that the judgment of acquittal in the previous charge necessarily involves an acquittal of the latter charge.
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> **37.** Admittedly, the appellant had been tried earlier for the offences punishable under the provisions of Section 138 of the NI Act and the case is sub judice before the High Court. In the instant case, he is involved under Sections 406/420 read with Section 114 IPC. In the prosecution under Section 138 of the NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under IPC involved herein, the issue of mens rea may be relevant. The offence punishable under Section 420 IPC is a serious one as the sentence of 7 years can be imposed.
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> **38.** In the case under the NI Act, there is a legal presumption that the cheque had been issued for discharging the antecedent liability and that presumption can be rebutted only by the person who draws the cheque. Such a requirement is not there in the offences under IPC. In the case under the NI Act, if a fine is imposed, it is to be adjusted to meet the legally enforceable liability. There cannot be such a requirement in the offences under IPC. The case under the NI Act can only be initiated by filing a complaint. However, in a case under IPC such a condition is not necessary.
>
> **39.** There may be some overlapping of facts in both the cases but the ingredients of the offences are entirely different. Thus, the subsequent case is not barred by any of the aforesaid statutory provisions."

Thus, in the light of the judgment passed by the Supreme Court in the case of **Sangeetaben (Supra)** it is clear that merely because the accused is acquitted/convicted for offence under Section 138 of Negotiable Instruments Act, 1881, then the simultaneous or subsequent prosecution of the

accused for offence under Section 420 of I.P.C. would not amount to double jeopardy because the nature of both the offences are different. In the present case, even the principle of Double Jeopardy would not apply as the criminal case under Section 138 of Negotiable Instruments Act is pending and has not resulted in either conviction or acquittal. As the nature of offence under Section 138 of Negotiable Instruments Act is different from that of offence under Sections 420,406 of I.P.C., therefore, it cannot be said that the prosecution of the applicant for offence under Section 406,420 of I.P.C. would be bad in law.

It is next contended by the counsel for the applicant that there is a delay in lodging the FIR and on that ground also the FIR is liable to be dismissed. According to the FIR the incident took place in between 30.4.2014 and 14.2.2015 and the FIR was lodged on 14.3.2016. Merely because a FIR has been lodged belatedly, the same cannot be dismissed on the said sole ground, unless and until it is pointed out by the counsel for the applicant that the prosecution of the applicant is barred by limitation as provided under Section 468 of Cr.P.C. In the present case the offence has been registered under Sections 420, 406, 506, 34 of IPC and in view of the sentence provided for Sections 420 and 406 of IPC, it cannot be said that the FIR is barred by limitation in the light of Section 468 of Cr.P.C. Merely because the FIR was lodged after about a one year of the date of incident would not be sufficient by itself to quash the proceedings.

It is next contended by the counsel for the applicant that the allegation of threat given by the co-accused Dinesh Valecha on telephone is nothing but has been alleged because of malafides of the informant. The question that whether the allegation made in the FIR is false or correct cannot be considered by this Court while exercising powers under

Section 482 of Cr.P.C., it is for the Trial Court to decide the allegations after examining the witnesses in the trial.

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. 1 has tried to give colour of criminal case which is not permissible. It is further submitted that the respondent no.1 has an efficacious remedy of filing suit for specific performance of contract 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 **ARCI v. Nimra Cerglass Technics (P) Ltd., (2016) 1 SCC 348, 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 applicants 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 applicants.

The Supreme Court in the case of **State of Haryana and Ors. Vs. Bhajan Lal & Ors.** reported in **1992 Supp (1) SCC 335** 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 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.
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> **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.
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> **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)
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> "*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."
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> **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 v. Mohd. Siraj** reported in **(2014) 14 SCC 29,** 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 v. State of Assam**, reported in **(2015) 9 SCC 647** 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)
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> "*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)
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> "*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 **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.
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> **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.
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> **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.
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> **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 v. State of Rajasthan,** reported in **(2014) 3 SCC 389** 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.*

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.

It is next contended by the counsel for the applicant that as the contract was executed at Mumbai, therefore, only High Court at Mumbai had a jurisdiction and the police at Gwalior has no jurisdiction to entertain the complainant and to register the FIR.

According to the allegations made in the FIR, it is clear that the contract was entered into between the parties at Gwalior and the cheques were issued at Etawah and the goods were supplied at Etawah. Nothing can be seen from the FIR which may indicate that any part of cause of action had arisen at Mumbai. It is well established principle of law that if two Courts have jurisdiction then the parties by contract may confer jurisdiction on one of the said two Courts but at the same time it is also clear that the parties by their contract cannot confer a jurisdiction on a Court which otherwise do not have a territorial jurisdiction to try the said case. In the present case there is nothing on record to indicate that any cause of action has arisen at Mumbai and, therefore, the parties by the contract cannot confer a jurisdiction on a Court which otherwise do not have territorial jurisdiction. Further, it is clear that if any information with regard to commission of cognizance offence is received by police station then the police cannot refuse to register the said report even on the ground of lack of territorial jurisdiction. If the police is of the view that it has no territorial jurisdiction to investigate the offence then it shall transfer the same to the police station having jurisdiction to investigate the same. However, the FIR registered by a

police station cannot be quashed on the ground that the police had no territorial jurisdiction to investigate the matter. In the present case viewed from any angle it is clear that the FIR registered by Police Station University, District Gwalior cannot be quashed on the ground that the parties have conferred jurisdiction on Mumbai High Court.

The Supreme Court in the case of **A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd.,** reported in **(2012) 2 SCC 315,** has held as under:

> **"15.** This leads us to the next question as to whether, if two courts have the jurisdiction to entertain a suit, whether the parties may by mutual agreement exclude the jurisdiction of one of the courts, having regard to the provisions of Sections 23 and 28 of the Contract Act, 1872. Section 23 of the aforesaid Act indicates what considerations and objects are lawful and what are not, including the considerations or objects of an agreement, if forbidden by law.
>
> **16.** Section 28 of the Act, which has a direct bearing on the facts of this case, clearly spells out that any agreement in restraint of legal proceedings is void. For the sake of reference, the same is extracted hereinbelow:
>
> "**28. Agreements in restraint of legal proceedings void**.—Every agreement,—
>
> (*a*) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, or
>
> (*b*) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.
>
> **Exception 1**.—**Saving of contract to**

refer to arbitration dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

* * *

Exception 2.—**Saving of contract to refer questions that have already arisen**.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration."

17. Basically, what Section 28 read with Section 23 does, is to make it very clear that if any mutual agreement is intended to restrict or extinguish the right of a party from enforcing his/her right under or in respect of a contract, by the usual legal proceedings in the ordinary tribunals, such an agreement would to that extent be void. In other words, parties cannot contract against a statute.

18. One of the earlier cases in which this question had arisen, was *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies (1989) 2 SCC 163*. In the said case, the cause of action for the suit had arisen both within the jurisdiction of the civil court at Salem in Andhra Pradesh and in the civil court of Kaira in the State of Gujarat. The question arose as to whether since by mutual agreement the jurisdiction had been confined only to the courts within Kaira jurisdiction, the suit filed at Salem was at all maintainable? This Court, inter alia, held that: (SCC p. 170, para 10)

"*10*. … there [could] be no doubt that an agreement to oust absolutely the jurisdiction of the court will be unlawful and void being against public policy."

> However, such a result would ensue if it is shown that the jurisdiction to which the parties had agreed to submit had nothing to do with the contract. If, on the other hand, it is found that the jurisdiction agreed would also be a proper jurisdiction in the matter of the contract, it could not be said that it ousted the jurisdiction of the court.
>
> **19.** After considering the facts involved in the said case and the submissions made on behalf of the parties, this Court observed as follows: (*A.B.C. Laminart case (1989) 2 SCC 163*, SCC p. 174, para 18)
>
> "*18*. … Thus it is now a settled principle that where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewithin, if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague it is not hit by Sections 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute."
>
> **20.** A similar view was taken by this Court in *Angile Insulations* v. *Davy Ashmore India Ltd. (1995) 4 SCC 153*, wherein the Hon'ble Judges while referring to the decision of this Court in *A.B.C. Laminart (P) Ltd. case*, inter alia, held that where two courts have the jurisdiction consequent upon the cause of action or a part thereof arising therein, if the parties agree in clear and unambiguous terms to exclude the jurisdiction of the other, the said decision could not offend the provisions of Section 23 of the Contract Act. In such a case, the suit would lie in the court to be agreed upon by the parties."

The Supreme Court in the case of **Harshad Chiman Lal Modi v. DLF Universal Ltd.,** reported in **(2005) 7 SCC 791**,

has held as under:

> **"23.** Earlier, more than thirty years ago, such a question came up for consideration before this Court in *Hakam Singh* v. *Gammon (India) Ltd. (1971) 1 SCC 286* It was the first leading decision of this Court on the point. There, a contract was entered into by the parties for construction of work. An agreement provided that notwithstanding where the work was to be executed, the contract "shall be deemed to have been entered into at Bombay" and the Bombay Court "*alone* shall have jurisdiction to adjudicate" the dispute between the parties. The question before this Court was whether the court at Bombay *alone* had jurisdiction to resolve such dispute.
>
> **24.** Upholding the contention and considering the provisions of the Code as also of the Contract Act, this Court stated: (SCC p. 288, para 4)
>
> "By clause 13 of the agreement it was expressly stipulated between the parties that the contract shall be deemed to have been entered into by the parties concerned in the city of Bombay. In any event the respondents have their principal office in Bombay and they were liable in respect of a cause of action arising under the terms of the tender to be sued in the courts at Bombay. *It is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the Code. But where two courts or more have under the Code of Civil Procedure jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act*."
>
> (emphasis supplied)
>
> **25.** *Hakam Singh (1971) 1 SCC 286* was followed and principle laid down therein reiterated in several cases thereafter. [See *Globe Transport Corpn.* v. *Triveni Engg.*

Works (1983) 4 SCC 707, *A.B.C. Laminart (P) Ltd.* v. *A.P. Agencies (1989) 2 SCC 163*, *Patel Roadways Ltd.* v. *Prasad Trading Co. (1991) 4 SCC 270*, *R.S.D.V. Finance Co. (P) Ltd.* v. *Shree Vallabh Glass Works Ltd. (1993) 2 SCC 130*, *Angile Insulations* v. *Davy Ashmore India Ltd. (1995) 4 SCC 153*, *Shriram City Union Finance Corpn. Ltd.* v. *Rama Mishra (2002) 9 SCC 613* and *New Moga Transport Co.* v. *United India Insurance Co. Ltd. (2004) 4 SCC 677*]

26. The question, however, is whether the Delhi Court has jurisdiction in the matter. If the answer to that question is in the affirmative, the contention of the plaintiff must be upheld that since the Delhi Court also has jurisdiction to entertain the suit and parties by an agreement had submitted to the jurisdiction of that Court, the case is covered by Section 20 of the Code and in view of the choice of forum, the plaintiff can be compelled to approach that Court as per the agreement even if the other court has jurisdiction. If, on the other hand, the contention of the defendant is accepted and it is held that the case is covered by Section 16 of the Code and the proviso to Section 16 has no application, nor Section 20 would apply as a residuary clause and the Delhi Court has no jurisdiction in the matter, the order impugned in the present appeal cannot be said to be contrary to law. As we have already indicated, the suit relates to specific performance of an agreement of immovable property and for possession of plot. It is, therefore, covered by the main part of Section 16. Neither the proviso to Section 16 would get attracted nor Section 20 (residuary provision) would apply and hence the Delhi Court lacks inherent jurisdiction to entertain, deal with and decide the cause.

27. The High Court considered the submission of the plaintiff that the Delhi Court had jurisdiction to entertain the suit but negatived it. The Court, after referring

> to various decisions cited at the Bar, concluded:
>
> "From the aforesaid principles laid down by the Supreme Court it is abundantly clear that where the parties to a contract agreed to vest jurisdiction to a particular court although cause of action has arisen within the jurisdiction of different courts, including that particular court, the same cannot be said to be void or to be against the public policy. It was also made clear in the said decision that if however a particular court does not have any jurisdiction to deal with the matter and no part of the cause of action has arisen within the jurisdiction of that court, the parties by their consent and mutual agreement cannot vest jurisdiction in the said court. Therefore, a clause vesting jurisdiction on a court which otherwise does not have jurisdiction to decide the matter, would be void as being against the public policy."
>
> **28.** We are in agreement with the above observations and hold that they lay down correct proposition of law.

Thus, it is clear that the parties to the contract can confer a jurisdiction upon a Court where a part of cause of action has arisen, but cannot confer a jurisdiction on the Court which otherwise has no territorial jurisdiction to try the case. According to the F.I.R., the agreement was entered into at Gwalior whereas the Goods were supplied at Etawah and the Cheques were given at Etawah. Thus, it is clear that no part of cause of action has arisen within the territorial jurisdiction of Mumbai, therefore, it cannot be said that the police station-university, Gwalior has no jurisdiction to register the F.I.R. and to investigate the matter. Further the F.I.R. cannot be quashed on the basis of lack of territorial jurisdiction.

It is next contended by the Counsel for the applicant that by letter dated 31-1-2015, it was made clear by the VEL that as its client has withheld the payment on the ground of sub-

standard work therefore, the complainant shall be responsible for the same. It is contended by the Counsel for the applicants that although there is no provision in the purchase order dated 10-4-2014, 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 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."

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 10.4.2014.

It is next contended by the Counsel for the applicant that since, it is not mentioned in the F.I.R. that the intention of the applicant right from very inception was to cheat the applicant, therefore, in absence of such a specific allegation, the F.I.R. should not have been registered.

The submission made by the Counsel for the applicant cannot be accepted for the simple reason that the F.I.R. is not an encyclopedia and the only requirement is that the allegations made in the F.I.R. must disclose the commission of cognizable office.

The Supreme Court in the case of **CBI Vs. Tapan Kumar Singh** reported in **(2003) 6 SCC 175** has held as under :

> **"20.** It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an

> investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."

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 Vs. State of U.P.** reported in **(2014) 2 SCC 1,** 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."

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.

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 transacations are involved, the investigating officer may conduct a prelminary 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.

No other argument was advanced by the parties.

Before parting with this Case, this Court would like to mention that this Court is conscious of the fact that at the initial stage, the Superior Court should not give any observations or findings as it may prejudice the Trial of the accused. However, in the present case, the case was argued at length by the Counsel for both the parties and therefore, in order to meet the arguments advanced by the Counsel for the parties, it became necessary for this Court to give certain observations. But at the same time, it would not be out of place to mention here that the observations by this Court have been given in the light of the limited scope of interference in the F.I.R. and investigation under Section 482 of Cr.P.C. Therefore, this Court finds it appropriate to issue a word of caution to the Trial Court that in case the charge sheet is filed

and the applicant or others are tried, then it should not get prejudiced by any of the observation made by this Court in this order as they have been made considering the limited scope of interference. The Trial Court is directed to decide the Trial, strictly on the basis of the evidence which would ultimately come on record without getting prejudiced by any of the observation made by this Court in this order.

With aforesaid observations, the petition is **dismissed.**

(G.S. AHLUWALIA)
Judge

(alok)