

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

**ON THE 07<sup>th</sup> OF MAY, 2024**

**WRIT PETITION No.15169 of 2023**

**BETWEEN:-**

**RAHUL AGARWAL, AGED ABOUT 63 YEARS, S/O SHRI  
HAKIKAT RAI AAGRWAL, OCCUPATION BUSINESS, R/O  
NAI BASTI KATNI, DISTRICT KATNI (MP)**

**....PETITIONER**

***(BY SHRI ASHUTOSH DHARMADHIKARI – ADVOCATE AND SHRI MUKESH  
AGRAWAL – ADVOCATE)***

**AND**

- 1. STATE OF MP THROUGH THE SECRETARY  
HOME DEPARTMENT MANTRALAYA, VALLABH  
BHAWAN, BHOPAL (MP)**
- 2. THE SUPERINTENDENT OF POLICE KATNI  
DISTRICT KATNI (MP)**
- 3. THE THANA IN-CHARGE, THANA KOTWALI,  
DISTRICT KATNI (MP)**
- 4. SATISH SARAOGI S/O LATE SHRI OMPRAKASH  
SARAOGI, R/O KOTWALI, DISTRICT KATNI (MP)**
- 5. PIYUSH KUMAR SARAOGI S/O SATISH SARAOGI,  
AGED ABOUT 24 YEARS, DOB 9/10/1999, HAVING  
AADHAAR NO. 753285054111, JOHPS0606Q, R/O  
WARD NO. 22, HANUMAN GANJ WARD, GHANTA  
GHAR, MURWARA, KATNI, MADHYA PRADESH  
483501, POLICE STATION KOTWALI KATNI MOB.  
9285313333, EMAIL  
[TOPIYUSHSARAOGI@GMAIL.COM](mailto:TOPIYUSHSARAOGI@GMAIL.COM), DIRECTOR  
(DIN 08060220) OF MVS LEASING PVT. LTD. (CIN  
U65900MP1989PTC0355 (MP)**
- 6. INSPECTOR GENERAL OF REGISTRATION AND**

**SUPERINTENDENT OF STAMPS, MADHYA PRADESH, HAVING ITS OFFICE AT PANJIYAN BHAWAN 35-A, ARERA HILLS, BHOPAL (MP)**

7. **STAMP VENDOR THROUGH THE SUPERINTENDENT, DISTRICT TREASURY DISTRICT KATNI, 483501 WHO HAS ALLEGEDLY SOLD THE STAMP NO. 990139 (MP)**
8. **RAKESH CHATURVEDI, ADVOCATE/NOTARY HAVING R.NO. M.P. 25/03/08/BADWARA (KATNI)/21/(B-2)/2018, R/O TEHSIL BADWARA, DISTRICT KATNI (MP)**
9. **SHRI ARUN KUMAR GOEL S/O SHRI BHAGAT RAM AGARWAL, AGED ABOUT 48 YEARS, HAVING DOB 14/11/1975, HAVING AADHAAR NO. 8569 1233 0267, HAVING PAN NO. AEQPG3821F, R/O H.NO. 5, MITRA VIHAR COLONY, NEAR GAYATRI MANDIR, WARD NO.14, MURWARA, KATNI MADHYA PRADESH 483501, POLICE STATION KOTWALI, KATNI, MOB 9826153138, EMAIL ARUNGOEL171@GMAIL.COM (MP)**
10. **SHRI MOHAN LAL BAJAJ S/O SHRI KUNJI LAL BAJAJ, AGED ABOUT 62 YEARS, HAVING DOB 24/11/1960, HAVING AADHAAR NO.8695 4056, 6921, HAVING PAN NO.ADDPB2735K R/O MIG-II 22, HOUSING BOARD COLONY, MURWARA KATNI MADHYA PRADESH 483501, POLICE STATION KOTWALI KATNI, ALSO AT SHOP NO.6 RAJASTHAN BHAWAN, MARKET, HANUMAN GANJ WARD, KATNI MADHYA PRADESH 483501, POLICE STATION KOTWAL (MP)**

**....RESPONDENTS**

***(RESPONDENTS/STATE BY SHRI PUNIT SHROTI – GOVERNMENT ADVOCATE)***

***(RESPONDENT NOS.4, 5, 8, 9 AND 10 BY SMT. MANJIT P.S. CHUCKAL - ADVOCATE)***

.....  
***Reserved on : 15.04.2024***

***Pronounced on : 07.05.2024***

.....  
***This petition having been heard and reserved for orders, coming on***

*for pronouncement this day, the Court pronounced the following:*

**ORDER**

With the consent of learned counsel for the parties, the petition is heard finally.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner has claimed the following relief (s):-

- ‘(7.1) To issue writ in the nature of mandamus, directing the respondent no.2 & 3 to take suitable action on the complaints made by the petitioner (Annexure P/2) and, register criminal case under appropriate offences against the persons accused therein;
- (7.2) To issue writ in the nature of certiorari for quashing of criminal proceeding, if any, lodged by the respondent no.4 against the petitioner and his family members, to meet the ends of justice.
- (7.3) To direct suitable disciplinary action against the respondent no.2 & 3 for dereliction in performance of duties casted upon them as responsible police officers;
- (7.3A) Quash and set aside the FIR dated 29/06/2023 filed at Annexure-P/4 and after quashing and setting aside the same initiate appropriate action against the respondents for abusing the process of law and direct the police authorities to take action against respondent no.4 for lodging a false complaint against the petitioner and his family members, in the interest of justice.
- (7.4) Any other suitable relief deemed fit in the facts and

circumstances of the case may also kindly be granted together with the cost of the present case.’

3. Shorn of unnecessary details, the facts of the case which are requisite to be stated are that the petitioner being an owner of a property situated at Khasra No.371 of Village Pureni, District Katni, area admeasuring 0.526 hectare had filed a civil suit for removal of encroachment made thereon and in turn, vide judgment and decree dated 22.03.2016, he succeeded in the said suit.

(3.1) According to the petitioner, respondent No.4 is a habitual criminal against whom, the Enforcement Directorate has initiated as many as six cases under the provisions of the Prevention of Money Laundering Act, 2002. In addition to that, several cases of other nature have also been registered against respondent No.4 at various police stations. According to the petitioner, since respondent No.4 was interested in grabbing his land, therefore, for creating pressure upon the petitioner to sell his land on a very meagre price, respondent No.4 started threatening the petitioner and his family members against which, though the petitioner approached the police authorities by making a complaint against respondent No.4 (Annexure-P/2), but no action thereon has been taken.

(3.2) According to the petitioner, from a newspaper, he came to know about the fact that respondent No.4 posing himself to be an authorized representative of M/s MVS Leasing Private Company (in short the ‘Company’); which is a non-banking financial organization, registered office of which situates at Office-20, Chinar Park, Club Town Enclave Kolkata, West Bengal whereas the branch office situates at Gajanan Talkies Complex Malviya Ganj Ward Katni, has made a false written complaint against him, his wife and his son to the police mentioning

therein that in the year 2014, the petitioner for the purpose of his business had taken a loan amounting to Rs.4 crores from the Company with an assurance that except the principal amount, he will repay the interest levied on the said amount, but on account of loss suffered in the business, since the petitioner was unable to repay the principal so also the interest amount, therefore, on 29.03.2019, he entered into an agreement to sell with the Company in respect of his land situated at Khasra No.371, Patwari Halka No.40 of Village Pureni, District Katni. Respondent No.4 in his written complaint had also stated that though the petitioner at that time had apprised that involving the said land, a civil suit is already pending and as soon as it is adjudicated, he would execute the sale-deed in respect of that land in favour of the Company, but later on, with an intention to cheat, the petitioner had not only sold the said land to some other person by a registered sale-deed dated 28.06.2023 but also apprised respondent No.4 that he would not repay the amount taken on loan and as such, on the said complaint, an offence vide FIR No.476/2023 got registered against the petitioner, his wife and his son at Police Station Kotwali, District Katni, under Sections 420, 406 and 34 of the Indian Penal Code.

(3.3) According to the petitioner, the agreement dated 29.03.2019 is a fabricated document and it has never been executed by him. According to the petitioner, the nature of dispute involves this case is otherwise of civil nature for which respondent No.4, at the most, can avail the remedy by approaching appropriate forum, but just to create pressure upon him and his family members, respondent No.4 by misusing the document dated 29.03.2019 had approached the police authorities for lodging a complaint against them and in turn, the police authorities even without making any enquiry or recording the statement of petitioner has registered the alleged

offence which is very unfortunate on their part.

4. Refuting the averments made in the petition, the respondents have filed return mentioning therein that taking into account the contents available in the written complaint made by respondent No.4 so also the document i.e. agreement to sell dated 29.03.2019, the police has rightly registered the offence against the petitioner and his family members in which nothing is illegal on their part.

5. In rebuttal, the petitioner has filed a rejoinder stating therein that in the alleged agreement to sell, on behalf of the Company, sign was made by respondent No.4 namely Satish Sarogi that too on the basis of letter of authority, however, according to the petitioner, it is a fabricated document for the reason that in the said document though there is a reference of a resolution passed by the Board of Directors of the Company, but it is an ambiguous resolution for the reason that it does not reveal the fact about the date or the meeting in which the said resolution was passed by the Board of the Directors of the Company. According to the petitioner, the resolution of Board of Directors of the Company further indicates that it is a fabricated document because the same is shown to be attested on 10.04.2019 whereas the agreement to sell is dated 29.03.2019. According to the petitioner, from the aforesaid document, it is clear that the said resolution of the Board of Directions of the Company got executed somewhere between 25.03.2019 to 10.04.2019. According to the petitioner, the document further reflects that one Piyush Sarogi being an authorized person has signed this resolution on behalf of the Company at Kolkata whereas Piyush Sarogi was neither the Director nor Additional Director of the Company on these two dates i.e. 25.03.2019 and 10.04.2019. The petitioner has further filed a document issued by the

Ministry of Corporate Affairs in its website showing the registered address of the Company at Gajanan Complex, Malviya Ganj, Katni (MP), but not at Kolkata. According to the petitioner, Piyush Sarogi was designated as an Additional Director in the Company only on 05.06.2019 and, therefore, it has been claimed that the resolution was signed by Piyush Sarogi that too with no authority. However, several other documents have also been filed by the petitioner to substantiate that respondent No.4 has fabricated the documents and, therefore, it is prayed that an enquiry may be directed to ascertain the correct facts.

6. Reiterating the facts as have already been mentioned in the return, an additional return has also been filed by the respondents.

7. Learned counsel for the petitioner has submitted that even if the allegations made in the FIR are considered to be true at their face value, then it will reflect that the dispute is purely of civil nature and under such circumstances, the offence registered against the petitioner and his family members vide FIR No.476/2023 at Police Station Kotwali, District Katni for the offence under Sections 420, 406 and 34 of the IPC is liable to be quashed. It is further argued by learned counsel for the petitioner that there is no element in the complaint made by respondent No.4 in respect of offence under Sections 420 and 406 of the IPC. In support of his contention, he has relied upon a case of Supreme Court reported in **(2011) 7 SCC 59 [Joseph Salvaraj A. Vs. State of Gujarat]**, in which, it is held by the Supreme Court that there is growing tendency to file criminal cases in relation to civil dispute to create pressure on a litigant with a purpose to grab immovable property and this growing tendency should be immediately curbed by the Court by utilizing power provided under Section 482 of the Code of Criminal Procedure. He has further relied upon

the cases of Supreme Court reported in **(2014) 2 SCC 1 [Lalita Kumari Vs. Government of Uttar Pradesh and others]** and also in **(2015) 6 SCC 287 [Priyanka Shrivastava and another Vs. State of Uttar Pradesh and others]**. According to learned counsel for the petitioner, the alleged agreement was said to have been executed on 29.03.2019 whereas the same was reported to the police on 29.06.2023 that too without explaining the delay. He has further relied upon the cases reported in **(2014) 5 SCC 108 [State of Gujarat Vs. Kishanbhai and others]** and **(2000) SCC OnLine P&H 348 [Harbhajan Singh Bajwa Vs. Senior Superintendent of Police, District Patiala and another]**.

8. *Per contra*, learned Government Advocate has submitted that at best the petitioner should have availed the remedy available to him under Section 482 of the CrPC for quashing the FIR registered against him and his family members and as such, according to him, this petition is not maintainable. It is also stated that if cognizable offence is made out, then the FIR cannot be said to be illegal. It is further submitted that the criminal prosecution even in a matter which otherwise indicates the civil dispute, is permissible as there is no bar for initiating criminal prosecution. In support of his contention, learned Government Advocate has placed reliance upon the cases reported in **ILR 2023 MP 1137 [Virendra Patel Vs. State of MP and another]** and also in **ILR [2021] MP 1292 (DB) [Vishnu and others Vs. State of MP and others]**.

9. Learned counsel appearing for respondent Nos. 4, 5, 8, 9 and 10 has also supported the submissions advanced by learned Government Advocate and placed reliance upon a case of Supreme Court i.e. **Cr.A. No.335/2024 [Mariam Fasihuddin and another Vs. State By Adugodi Police Station and another]** and also of this Court passed in **M.Cr.C.**



**No.57102/2021 [Kailash Vs. Arjun Singh and others].**

10. I have heard the rival submissions of learned counsel for the parties and perused the record available.

11. Indisputably, on the basis of the contents mentioned in the written complaint filed by respondent No.4, offence got registered against the petitioner and his family members, therefore, to examine the same, it deems necessary to reproduce the contents of the written complaint, which read as under:-

‘प्रति

श्रीमान् पुलिस अधीक्षक महोदय  
कटनी जिला-कटनी

विषय-राहुल अग्रवाल आत्मज हकीकतराय अग्रवाल आयु लगभग 60 वर्ष, श्रीमती मधुलिका अग्रवाल धर्मपत्नी राहुल अग्रवाल आयु लगभग 55 वर्ष, एवं शिवम अग्रवाल आत्मज राहुल अग्रवाल आयु लगभग 30 वर्ष, सभी निवासी नई बस्ती कटनी जिला कटनी के द्वारा धोखाधड़ी करने के आशय से रुपये प्राप्त कर अपनी भूमि के विक्रय का अनुबंध करने के बावजूद किसी अन्य व्यक्ति को विक्रय करने के संबंध में।

महोदय,

निवेदन है कि मैं सतीष सरावगी आत्मज श्री ओमप्रकाश सरावगी आयु लगभग 50 वर्ष निवासी हनुमानगंज, घंटाघर कटनी का निवासी हूँ तथा एम वी एस लीजिंग प्राईवेट लिमिटेड कंपनी रजिस्टर्ड आफिस-20, चिनार पार्क, ब्लाक नंबर-1 फ्लेट नंबर- 5सी, क्लब टाउन एनक्लेव, कोलकाता पश्चिम बंगाल, ब्रान्च आफिस- गजानन टॉकीज काम्पलेक्स, मालवीय गंज वार्ड कटनी का अधिकृत प्रतिनिधि हूँ तथा उक्त कंपनी के द्वारा पारित रिजाल्यूशन के अनुसार मैं उक्त कंपनी के कार्यों को करने के लिये अधिकृत प्रतिनिधि हूँ। उक्त कंपनी एक नान बैंकिंग फाईनेन्शियल कंपनी है जो कि कंपनी एक्ट के उपबंधों के अनुसार रुपये ब्याज पर देने के लिये अधिकृत है। राहुल अग्रवाल, उसकी पत्नी मधुलिका अग्रवाल एवं उसके पुत्र शिवम अग्रवाल के द्वारा वर्ष 2014 में कंपनी से चार करोड रुपया उधार प्राप्त किया था जिसका विवरण निम्नानुसार है-

क्रमांक	दिनांक	राशि	पाने वाले का नाम	यू टी आर नंबर
1	29/01/2014	2,00,00,000	राहुल अग्रवाल	एएनडीबीएच 14029252510
2	29/01/2014	1,00,00,000	मधुलिका अग्रवाल	एएनडीबीएच 14029252700
3	30/01/2014	1,00,00,000	शिवम अग्रवाल	एएनडीबीएच 14030255820

उक्त राशि कंपनी के आन्ध्रा बैंक शाखा कोलकाता में स्थित खाता क्रमांक 007011100002999 से आरटीजीएस के जरिये राहुल अग्रवाल, मधुलिका अग्रवाल एवं शिवम अग्रवाल तीनों के यूनियन बैंक ऑफ इंडिया शाखा कटनी के खाता क्रमांक क्रमशः 325802010007349, 325802010008183 एवं 325802010675710 में कुल चार करोड रुपयों

का भुगतान किया गया है तथा उक्त राशि के संबंध में निम्नानुसार राशि बतौर ब्याज दी गयी है—

कमांक	दिनांक	राशि	अदा करने वाले का नाम	रिफरेन्स नंबर
1	03/01/2014	555616.44	राहुल अग्रवाल	007725/यूबीआई
2	18/08/2014	401690.00	राहुल अग्रवाल	912010024682425
3	18/08/2014	200548.00	मधुलिका अग्रवाल	91201002576058
4	18/08/2014	197260.00	शिवम अग्रवाल	एनईएफओ

इसके पश्चात उसे व्यापार में नुकसान होने के कारण वह रकम व ब्याज नहीं दे पा रहा था इस कारण उसने अपनी ग्राम पुरैनी पटवारी हल्का नंबर 40 रानिमं.—मुडवारा तहसील व जिला कटनी के खसरा नंबर 371 में स्थित 0.526 है. भूमि कंपनी के साथ विक्रय करने का अनुबंध किया तथा उधार ली हुई मूल रकम तथा ब्याज राशि को संपूर्ण प्रतिफल के रूप में प्राप्त करते हुए दिनांक 29/03/2019 को विक्रय अनुबंध पत्र तहसील न्यायालय परिसर कटनी में निष्पादित किया था जिस पर उसने स्वयं व अपनी पत्नी मधुलिका अग्रवाल एवं अपने पुत्र शिवम अग्रवाल की ओर से हस्ताक्षर किये थे तथा उस समय यह भी कहा था कि उक्त भूमि के संबंध में न्यायालय में केस चल रहा है जैसे ही केस का निराकरण होगा वह कंपनी के पक्ष में रजिस्ट्री करा देगा। किन्तु उनके मन में बेईमानी आ जाने के कारण तथा कंपनी का रूपया हडप जाने की नियत से उनके द्वारा उक्त इकरारशुदा भूमि के न्यायालय में चल रहे केस के निराकृत होने की जानकारी हमें नहीं दी तथा उक्त भूमि का विक्रय दिनांक 27/06/2023 को किसी अन्य व्यक्ति के पक्ष में कर दिया इस बात की मुझे दिनांक 28/06/2023 को जानकारी प्राप्त हुई तो मैंने राहुल अग्रवाल से संपर्क किया किन्तु उसने कोई जवाब नहीं दिया और कहा कि तुम्हें जो करना हो कर लेना, मैंने जमीन बेच दी है और रूपया भी नहीं दूंगा।

यह कि राहुल अग्रवाल आत्मज हकीकतराय अग्रवाल आयु लगभग 60 वर्ष, श्रीमती मधुलिका अग्रवाल धर्मपत्नी राहुल अग्रवाल आयु लगभग 55 वर्ष, एवं शिवम् अग्रवाल आत्मज राहुल अग्रवाल आयु 30 वर्ष द्वारा अवैध लाभ प्राप्त करने के उद्देश्य से अमानत में खयानत करते हुये बेईमानीपूर्ण आशय से आवेदक कंपनी की रकम को हडपने के उद्देश्य से यह जानते हुये कि उनके द्वारा अपनी ग्राम पुरैनी पटवारी हल्का नंबर 40 रानिमं.—मुडवारा तहसील व जिला कटनी के खसरा नंबर 371 में स्थित 0.526 हे. भूमि को विक्रय करने का अनुबंध आवेदक कंपनी के साथ किया है इसके बावजूद उक्त भूमि को किसी अन्य व्यक्ति को विक्रय कर घोखाधडी की है।

अतः मान्नीय महोदय से प्रार्थना है कि राहुल अग्रवाल आत्मज हकीकतराय अग्रवाल आयु लगभग 60 वर्ष, श्रीमती मधुलिका अग्रवाल धर्मपत्नी राहुल अग्रवाल आयु लगभग 55 वर्ष, एवं शिवम् अग्रवाल आत्मज राहुल अग्रवाल आयु 30 वर्ष सभी निवासी नई बस्ती कटनी जिला कटनी के विरुद्ध धारा 406, 420, 34, भा. दवि के तहत मामला पंजीबद्ध करते हुये दण्डित किये जाने की कृपा करें।

संलग्न,

विक्रय अनुबंध की छाया प्रति

दिनांक 29-6-23

कटनी

सतीष सरावगी आत्मज श्री ओमप्रकाश सरावगी  
निवासी हनुमानगंज, घंटाघर कटनी जिला— कटनी'

However, on perusal of aforesaid written complaint and allegations levelled therein, it is clear that in pursuance a loan transaction, an amount of Rs.4 crores was said to have been disbursed in favour of the petitioner by the Company, which is to be repaid by the petitioner along with interest levied over the principal amount. It is further stated in the complaint that because of loss suffered in the business, since the petitioner was not in a position to repay the principal and interest amount, therefore, an agreement to sell of his land got executed by him on 29.03.2019 in favour of the Company, but thereafter, he sold the said land to some other person by a registered sale-deed dated 27.06.2023. Under such circumstances, to recover the amount said to have been disbursed in favour of the petitioner in the year 2014 that too on a loan sanctioned in his favour so also for implementing the agreement to sell, the Company had to file a suit within a period of three years therefrom, but it has not been done and, therefore, *prima facie*, for initiating civil litigation, the claim of the Company is barred by time. Even otherwise, if any agreement to sell got executed by the petitioner in favour of the Company and instead of the Company, if the petitioner had sold the said land to some other person, then for setting aside the said sale-deed, the Company had to file a suit, but that has also not been done.

12. So far as the offence of Section 420 of the IPC is concerned, it is a cheating and dishonestly inducing delivery of property which reads as under:-

**‘420. Cheating and dishonestly inducing delivery of property.-**

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.’

However, cheating has been defined under Section 415 of the IPC, which reads as under:-

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

From the aforesaid provisions, it is clear that the required ingredients of cheating are; (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he was not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property as has been observed by the Supreme Court in a case reported in **(2002) 1 SCC 241 [S.W. Palanitkar and others Vs. State of Bihar and another]**. However, in the written complaint made by respondent No.4, it has not been alleged that from very inception, the intention of the petitioner was of cheating. When an amount said to have been disbursed in favour of the petitioner in the year 2014; an agreement to sell said to have been executed by the petitioner in the year 2019 and till 2023 nothing was done, then the sale-deed executed by the petitioner in respect of his land, cannot be considered to be cheating for the reason that the petitioner only on the basis of alleged agreement to sell, cannot sit silent or make any transaction in respect of his land. The allegation made in the written

complaint is silent as to what happened after 2019 and as to what type of litigation is pending in respect of said property and as such, it is clear that respondent No.4 is giving shape of civil litigation, which is apparently time barred, into a criminal litigation.

13. The Supreme Court in the case of **Joseph Salvaraj A.** (supra) has observed as under:-

‘15. Criminal breach of trust is defined under Section 405 IPC and Section 406 thereof deals with punishment to be awarded to the accused, if found guilty for commission of the said offence i.e. with imprisonment for a term which may extend to three years, or with fine, or with both. Section 420 IPC deals with cheating and dishonestly inducing delivery of property. Cheating has been defined under Section 415 IPC to constitute an offence. Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning, which is sine qua non to hold the accused guilty for commission of the said offence. Categorical and microscopic examination of the FIR certainly does not reflect any such dishonest intention ab initio on the part of the appellant. Section 506 IPC deals with punishment for criminal intimidation. Criminal intimidation, insult and annoyance have been defined in Section 503 IPC but the FIR lodged by the complainant does not show or reflect that any such threat to cause injury to person or of property was ever given by the appellant to the complainant.

16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet, documents, etc. or not.

17. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in *Devendra v. State of U.P.* [(2009) 7 SCC 495 : (2009) 3 SCC (Cri) 461 : (2009) 3 SCC (Civ) 190] , relevant part thereof is reproduced hereinbelow: (SCC p. 505, para 27)

“27. ... A distinction must be made between a civil wrong and a

criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.”

**18.** In fact, all these questions have been elaborately discussed by this Court in the most oftquoted judgment in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] where seven cardinal principles have been carved out before cognizance of offences, said to have been committed by the accused, is taken. The case in hand unfortunately does not fall in that category where cognizance of the offence could have been taken by the court, at least after having gone through the FIR, which discloses only a civil dispute.’

(emphasis supplied)

Likewise, in a case reported in **(2009) 7 SCC 495 [Devendra and others Vs. State of Uttar Pradesh and another]**, the Supreme Court has observed as under:-

‘**11.** The fact that the appellants are co-sharers is not in dispute. The dispute between them is confined to the extent of their respective shares. It must be determined only in a civil suit. If Appellants 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share over the entire properties, the same would not be binding on the respondent complainant. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceeding under Sections 144 and 145 of the Code of Criminal Procedure would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court.

\* \* \*

**24.** There is no dispute with regard to the aforementioned propositions of law. However, it is now well settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.

\* \* \*

**27.** Mr Das submits that a wrong committed on the part of a person may be a civil wrong or a criminal wrong although an act of omission or

commission on the part of a person may give rise to both civil action and criminal action. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

28. Furthermore, in a case of this nature where even, according to Mr. Da, no case has been made out for taking cognizance of an offence under Section 420 of the Penal Code, it was obligatory on the part of the learned Chief Judicial Magistrate to apply his mind to the contents of the charge-sheet. Such application of mind on his part should have been reflected from the order. (*See State of Karnataka v. Pastor P. Raju : (2006) 6 SCC 728 and Pawan Kumar Sharma v. State of Uttaranchal : Criminal Appeal No.1692 of 2007 decided on 10-12-2007*).

(emphasis supplied)

Similarly, the Supreme Court in a case reported in **(2000) 2 SCC 636 [G. Sagar Suri and another Vs. State of U.P. and others]**, in which, in a petition filed under Section 482 of the CrPC seeking quashing of offence registered against the appellants under Section 406/420 of IPC that too at the instance of Finance Company for recovering the loan granted to the appellants, the Supreme Court has observed that the jurisdiction of Section 482 of the CrPC has to be exercised to meet the ends of justice that too with a great care. In the said case, the Supreme Court has observed as under:-

‘14. We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do.

15. The appeal is allowed and the judgment of the High Court dated 6-5-1999 is set aside and prosecution of the appellants under Sections 406/420 IPC in Criminal Case No. 674 of 1997 (now Criminal Case No. 6054 of 1998) and pending in the Court of Chief Judicial Magistrate, Ghaziabad is quashed.’

Furthermore, in a case reported in **(2022) 7 SCC 124 [Vijay Kumar Ghai and others Vs. State of West Bengal and others]**, the Supreme Court has observed as under:-

‘38. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this Court in *Hridaya Ranjan Prasad Verma v. State of Bihar* [*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] , the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by Respondent 2 does not disclose dishonest or fraudulent intention of the appellants.

39. In *Vesa Holdings (P) Ltd. v. State of Kerala* [*Vesa Holdings (P) Ltd. v. State of Kerala*, (2015) 8 SCC 293 : (2015) 3 SCC (Cri) 498] , this Court made the following observation : (SCC pp. 297-98, para 13)

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed [*Maniprasad v. State of Kerala*, 2011 SCC OnLine Ker 4251] an error in refusing to exercise the power under Section 482CrPC to quash the proceedings.”

40. Having gone through the complaint/FIR and even the charge-sheet, it cannot be said that the averments in the FIR and the allegations in



the complaint against the appellant constitute an offence under Sections 405 and 420IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420IPC can be said to have been made out. In the instant case, there is no material to indicate that the appellants had any mala fide intention against the respondent which is clearly deductible from the MoU dated 20-8-2009 arrived at between the parties.

\* \* \*

47. The order of the High Court is seriously flawed due to the fact that in its interim order dated 24-3-2017 [Priknit Retails Ltd. v. State of W.B., 2017 SCC OnLine Cal 21484], it was observed that the contentions put forth by the appellant vis-à-vis two complaints being filed on the same cause of action at different places but the impugned order overlooks the said aspect and there was no finding on that issue. At the same time, in order to attract the ingredients of Sections 406 and 420IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused (the appellant herein). In the absence of these elements, no proceeding is permissible in the eye of the law with regard to the commission of the offence punishable under Section 420IPC. It is apparent that the complaint was lodged at a very belated stage (*as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e. after a delay of almost 4 years*) with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever.’

(emphasis supplied)

Moreover, in a case reported in **(2006) 6 SCC 736 [Indian Oil Corpn. Vs. NEPC India Ltd. and others]**, the Supreme Court has observed as under:-

‘13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously 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 breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle

civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

“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 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

\* \* \*

31. We accordingly hold that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of “criminal breach of trust” as defined under Section 405 IPC can be made out against NEPC India.

#### ***Section 415***

32. The essential ingredients of the offence of “cheating” are: (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no “cheating”. The High Court has relied on

several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear:

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.”

(emphasis supplied)

14. In view of the above legal position, it is clear that the alleged transaction between the parties was purely of civil nature even though it is alleged that there was breach of contract. However, if the allegations made by respondent No.4 against the petitioner are considered to be true at their face value, even though, it is not clear that from very inception, the intention of the petitioner was to cheat the Company. Although, the petitioner has disputed the alleged agreement to sell which in fact was the foundation of lodging the FIR, but this Court is not inclined to enter into the said arena and determine the sanctity of that agreement. Even otherwise, if the agreement to sell alleged to have been executed by the petitioner in favour of the Company and its terms have been violated by the petitioner, then the aggrieved party seeking implementation of the same or for claiming damages, should have filed a civil suit, but that has also not been done.

15. Insofar as the case of **Virendra Patel** (supra) on which learned Government Advocate has placed reliance is concerned, in the said case, the Court has observed that exercising the jurisdiction under Article 226 of

the Constitution of India for quashing the FIR, a criminal prosecution cannot be quashed merely on the ground that civil proceeding is pending. In addition, the Court has further observed that if the same set of facts may give rise to civil as well as criminal proceeding, then both can be initiated by the parties, but here in this case, considering the scope of allegations levelled and also the contents of FIR, since the required ingredients of cheating are missing, therefore, no alleged offence can be said to be made out against the petitioner and even under such circumstances, the alleged breach of contract, which is purely of civil nature cannot be given the colour of criminal prosecution.

16. However, in the case of **Mariam Fasihuddin** (supra), though the Supreme Court has quashed the criminal proceeding initiated against the accused persons, but so far as cheating is concerned, the Supreme Court considering the material ingredients of cheating has observed as under:-

‘10. Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term ‘cheating’. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as ‘cheating’ if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

11. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

**12.** It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.'

(emphasis supplied)

Even from the aforesaid observation of the Supreme Court, it is also clear that the Supreme Court is very specific in respect of offence of cheating that fraudulent and dishonest intention must exist from very inception when any promise or representation was made.

17. Here in this case, as has been discussed in the preceding paragraphs that if the contents of FIR are seen, then it will be clear that no such fraudulent intention was there in the mind of the petitioner at the time of executing the alleged agreement, but on the contrary, if the allegations levelled in the complaint are considered to be true, even then, it can be gathered that the fraudulent intention came in the mind of the petitioner after executing the agreement and it can be ascertained from the relevant portion of the FIR, which reads as under:-

‘.... किन्तु उनके मन में बेईमानी आ जाने के कारण तथा कंपनी का रूपया हडप जाने की नियत से उनके द्वारा उक्त इकरारशुदा भूमि के न्यायालय में चल रहे केस के निराकृत होने की जानकारी हमें नहीं दी तथा उक्त भूमि का विक्रय दिनांक 27/06/2023 को किसी अन्य व्यक्ति के पक्ष में कर दिया।....’

In view of the above, I am of the opinion that in the present case, the contents of FIR do not constitute any offence of cheating against the petitioner and his family members and as such, no case of criminal prosecution is made out against them and, therefore, in view of the

aforesaid legal position, I am also of the opinion that exercising the power provided under Article 226 of the Constitution of India, the FIR lodged against the petitioner and his family members can be quashed.

18. *Ex consequentia*, I allow this petition quashing the offence registered against the petitioner and his family members vide FIR No.476/2023 at Police Station Kotwali, District Katni, for the offence under Sections 420, 406 and 34 of the IPC. Needless to say that further proceedings based upon the said FIR shall also stand quashed.

19. So far as the relief claimed by the petitioner in the instant petition in respect of registering an offence against the accused persons pursuant to the complaint made by him is concerned, the said relief cannot be granted in this petition. However, the petitioner is at liberty to pursue his complaint by availing appropriate remedy for taking action against the accused persons for fabricating the documents and for committing forgery with him.

20. With the aforesaid, the petition stands **allowed**. No costs.

**(SANJAY DWIVEDI)**  
**JUDGE**