

ARUN BHANDARI

v.

STATE OF U.P. AND OTHERS
(Criminal Appeal No. 78 of 2013)

JANUARY 10, 2013

[K. S. RADHAKRISHNAN AND DIPAK MISRA, JJ.]

Constitution of India, 1950 – Art. 226 – Commercial transaction – Subsequently, purchaser filed criminal case against the sellers u/ss.406 and 420 IPC – Police report that the case was of civil nature and no criminal offence made out – In protest petition by the complainant, CJM took cognizance of the case – Writ petition against order of CJM – High Court quashed the criminal case in respect of one of the accused – Held: A case which may apparently look to be of civil nature may also contain ingredients of criminal offences – The facts of the instant case show that it was not purely civil in nature – Neither the FIR nor the protest petition was mala fide, frivolous or vexatious, hence interference of High Court in exercise of its jurisdiction u/Art.226 was not justified – Prima facie case is made out against the accused that they had the intention to cheat – Penal Code, 1860 – ss.406 and 420.

Respondent No.2 and her husband respondent No.3, claimed to be the owners of the property in question and offered to sell the same to the appellant. They jointly received a sum of Rs.1,05,00,00/- from the appellant towards part payment of the sale consideration. The agreement was executed on the basis of a registered agreement executed in favour of respondent No.3 by the original allottee to sell the property in question. The appellant came to know that respondent No.2, in whose favour the original allottee had executed a power of attorney, had already transferred the property in question

A to some other person. The appellant demanded refund
of the advance amount. As the same was not refunded,
he lodged an FIR. The police gave its report that the case
was of civil nature and no criminal offence was made out.
On the protest petition of the appellant, the Chief Judicial
B Magistrate (CJM) held that even if the suit could be filed,
the facts of the case revealed criminal culpability and
hence he took cognizance u/ss.420 and 406 IPC. The
Criminal Revision, against the order was dismissed
approving the order of CJM. Respondent filed writ
C petition. High Court dismissed the writ petition so far as
respondent No.3 (husband) was concerned holding that
there was *prima facie* case for offences u/ss.406 and 420
IPC. The petition was allowed so far as respondent No.2
(wife) was concerned holding that there was no privity of
D contract between respondent No.2 and the complainant.
Hence the present appeal by the complainant.

Allowing the appeal, the Court

HELD: 1. The High Court, while exercising power
E under Article 226 of the Constitution or Section 482 of the
CrPC, has to adopt a very cautious approach. The
powers possessed by the High Court u/s. 482 Cr.P.C. are
very wide and the very plentitude of the power requires
great caution in its exercise. The court must be careful
F to see that its decision in exercise of this power is based
on sound principles and such inherent powers should
not be exercised to stifle a legitimate prosecution. It is not
proper for the High Court to analyse the case of the
complainant in the light of all probabilities in order to
G 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 could not be proceeded with. The meticulous

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analysis of the case is not necessary and the complaint has to be read as a whole and if it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is *mala fide*, frivolous or vexatious, in that event there would be no justification for interference by the High Court. One of the paramount duties of the superior court is to see that person who is absolutely innocent is not subjected to prosecution and humiliation on the basis of a false and wholly untenable complaint. [Paras 27] [983-C-G; 984-A]

Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS and Anr. (2006) 7 SCC 188; 2006 (4) Suppl. SCR 450; *R. Kalyani v. Janak C. Mehta and Ors.* (2009) 1 SCC 516; 2008 (14) SCR 1249; *Gian Singh v. State of Punjab and Anr.* (2012) 10 SCC 303; 2012 (8) SCR 753 – relied on.

Janata Dal v. H.S. Chowdhary (1992) 4 SCC 305; 1992 (1) Suppl. SCR 226; *Raghubir Saran (Dr.) v. State of Bihar* AIR 1964 SC 1; 1964 SCR 336; *Hamida v. Rashid* (2008) 1 SCC 474; 2007 (5) SCR 937; *State of Orissa v. Saroj Kumar Sahoo* (2005) 13 SCC 540; 2005 (5) Suppl. SCR 548 – referred to.

2. In the present case, 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 him to hand over a huge sum of money to both of them. Their

A 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 'M' on 28.7.2008 cannot be brushed aside at this stage. [Para 31] [985-E-H; 986-A]

B 3. Some times a case may apparently look to be of
 C civil nature or may involve a commercial transaction but
 D such civil disputes or commercial disputes in certain
 E circumstances may also contain ingredients of criminal
 F offences and such disputes have to be entertained
 notwithstanding they are also civil disputes. The present
 case falls in the category which cannot be stated at this
 stage to be purely civil in nature on the basis of the
 admitted documents or the allegations made in the FIR
 or what has come out in the investigation or for that
 matter what has been stated in the protest petition. *Prima
 facie* there is allegation that there was a guilty intention
 to induce the complainant to part with money. It is not a
 case where a promise initially made could not be lived up
 to subsequently. It is not a case where it could be said
 that even if the allegations in entirety are accepted, no
 case is made out. [Paras 24 and 27] [981-A-B; 983-A-C]

Mohammed Ibrahim and Ors. v. State of Bihar and Anr.
 (2009) 8 SCC 751; *Rajesh Bajaj v. State NCT of Delhi* (1999)
 3 SCC 259; 1999 (1) SCR 1012 – relied on.

*All Cargo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain
 and Anr.* AIR 2008 SC 247; 2007 (11) SCR 271 – referred
 to.

G 4. Therefore, the High Court, while exercising the
 H extraordinary jurisdiction, had not proceeded on the
 sound principles of law for quashment of order taking
 cognizance. The High Court has been guided by the non-
 existence of privity of contract and without appreciating
 the factual scenario has observed that the wife was

merely present. When the wife had the Power of Attorney in her favour and was aware of execution of the will, had accepted the money along with her husband from the complainant, it is extremely difficult to say that an innocent person is dragged to face a vexatious litigation or humiliation. The entire conduct of the respondent Nos. 2 and 3 would show that a *prima facie* case is made out and allegations are there on record in this regard that they had the intention to cheat from the stage of negotiation. [Para 31] [986-A-D]

Hridya Rajan Pd. Verma and Ors. v. State of Bihar and Anr. AIR 2000 SC 2341: 2000 (2) SCR 859; *Murari Lal Gupta v. Gopi Singh* (2006) 2 SCC (Cri.) 430; *B. Suresh Yadav v. Sharifa Bee and Anr.* (2007) 13 SCC 107: 2007 (11) SCR 238 – distinguished.

State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335: 1990 (3) Suppl. SCR 259; *Rupen Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill* AIR 1996 SC 309: 1995 (4) Suppl. SCR 237; *State of Kerala v. O.C. Kuttan* AIR 1999 SC 1044: 1999 (1) SCR 696; *State of Kerala v. A. Pareed Pillai and Anr.* AIR 1973 SC 326; *G.V. Rao v. L.H.V. Prasad and Ors.* (2000) 3 SCC 693: 2000 (2) SCR 123; *Jaswantrai Manilal Akhane v. State of Bombay* AIR 1956 SC 575: 1956 SCR 483; *Mahadeo Prasad v. State of W.B.* AIR 1954 SC 724; *S.N. Palanitkar and Ors. v. State of Bihar and Anr.* AIR 2001 SC 2960: 2001 (4) Suppl. SCR 397 – referred to.

Case Law Reference:

2000 (2) SCR 859	distinguished	Para 11	
(2006) 2 SCC (Cri) 430	distinguished	Para 11	G
2007 (11) SCR 238	distinguished	Para 11	
1990 (3) Suppl. SCR 259	referred to	Para 14	
1995 (4) Suppl. SCR 237	referred to	Para 14	H

A	1999 (1) SCR 1012	referred to	Para 14
	1999 (1) SCR 696	referred to	Para 14
	AIR 1973 SC 326	referred to	Para 19
B	2000 (2) SCR 123	referred to	Para 20
	1956 SCR 483	referred to	Para 20
	AIR 1954 SC 724	referred to	Para 20
C	2001 (4) Suppl. SCR 397	referred to	Para 21
	(2009) 8 SCC 751	relied on	Para 24
	2007 (11) SCR 271	referred to	Para 25
	1999 (1) SCR 1012	relied on	Para 26
D	2006 (4) Suppl. SCR 450	relied on	Para 27
	1992 (1) Suppl. SCR 226	referred to	Para 27
	1964 SCR 336	referred to	Para 27
E	2008 (14) SCR 1249	relied on	Para 28
	2007 (5) SCR 937	referred to	Para 28
	2005 (5) Suppl. SCR 548	referred to	Para 28
F	2012 (8) SCR 753	relied on	Para 30

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 78 of 2013.

G From the Judgment & Order dated 29.01.2011 of the High
Court of Judicature at Allahabad in Criminal Misc. Writ Petition
No. 69 of 2011.

Amit Khemka, Ambhoj Kumar Sinha, Sanorita D. Bharali
for the Appellant.

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Chetan Sharma, Manjit Singh Ahluwalia, Kamal Mohan Gupta for the Respondent. A

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted. B

2. Calling in question the legal pregnability of the order dated 29.1.2011 passed by the High Court of Judicature at Allahabad in Criminal Misc. Writ Petition No. 69 of 2011 whereby the learned single Judge in exercise of jurisdiction under Articles 226 and 227 of the Constitution has quashed the order dated 5.6.2010 passed by the learned Chief Judicial Magistrate, Gautam Budh Nagar, taking cognizance under Sections 406 and 420 of the Indian Penal Code (for short "the IPC") against the respondent No. 2 in exercise of power under Section 190(1)(b) of the Code of Criminal Procedure (for short "the CrPC") and the order dated 4.12.2010 passed by the learned Sessions Judge, Gautam Budh Nagar affirming the said order, on the foundation that the allegations made neither in the FIR nor in the protest petition constitute offences under the aforesaid sections, the present appeal by special leave has been preferred. C D E

3. The factual score as depicted are 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 No. 2 and her husband, Raghuvinder 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-Fastula 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 the respondent No. 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 the respondent Nos. 2 and 3 would obtain permission from Greater Noida Authority F G H

A to transfer the property in his favour and execute the deed of transfer within 45 days from the grant of such permission.

B 4. As the factual antecedents would further reveal, the said agreement was executed on the basis of a registered agreement executed in favour of the respondent No. 3 by the original allottee, Smt. Vandana Bhardwaj to sell the said plot. After expiry of a month or so, the appellant enquired from the respondent No. 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 3rd respondent by Smt. Vandana Bhardwaj; that a power of attorney had been executed by the original allottee in favour of the respondent No. 2, the wife of respondent No. 3; that the original allottee, to avoid any kind of litigation, had also executed a will in favour of the respondent No. 3; and that the respondent No. 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 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 the Police Station, Kasna, which gave rise to the Criminal Case No. 563 of 2009.

5. The Investigating Officer, after completing the investigation, submitted the final report stating that the case was of a civil nature and no criminal offence had been made out. The appellant filed a protest petition before the learned Magistrate stating, inter alia, that the accused persons had colluded with the Investigating Officer and the Station House Officer as a result of which the Investigation Officer, on 22.10.2009, had concluded the investigation observing that the dispute was of the civil nature and intended to submit the final

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report before the court. The appellant coming to know about the same submitted an application before the concerned Area Officer, who, taking note of the same, handed over the investigation to another S.S.I. of Police on 24.11.2009. The said Investigating Officer recorded statements of the concerned Sub-Registrar, the Chief Executive Officer of Greater Noida Authority, from whose statements it was evident that the accused persons were never the owners of the property in question and the original allottee had not appeared in the Greater Noida Authority and not transferred any documents. He also recorded the statement of original allottee who had stated that the property was allotted in her name in 2005 and on a proposal being made by Raghuvinder Singh, a friend of her husband, to sell the property she executed an agreement to sell in his favour and a General Power of Attorney in the name of his wife, Savita Singh, at his instance but possession was not handed over to them. He also examined one Sharad Kumar Sharma, who was a witness to the agreement to sell and the Power of Attorney executed by the original allottee, and said Sharma had stated that the General Power of Attorney was executed to implement the agreement to sell executed in favour of Raghuvinder Singh. The Investigating Officer obtained an affidavit from the complainant which was kept in the case diary, and on 25.2.2010 it was recorded in the case diary that a criminal offence had been made out against the accused persons. The case diary also evinced that there was an effort for settlement between the informant and the accused persons and the accused persons were ready to return the amount of Rs.1,05,00,000/- to the appellant. On 10.3.2010, he made an entry to file the charge-sheet against the respondents under Sections 420, 406, 567, 468 and 479 of the IPC. At this stage, the accused persons again colluded with the previous Investigating Officer and the Station House Officer and got the investigation transferred to the previous Investigating Officer. Coming to know about the said development, the appellant submitted a petition before the Senior Superintendent of Police, Gautam Budh Nagar on 6.5.2010, but before any steps could

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A be taken by the higher authority, the said Investigating Officer submitted a final report stating that no offence under the IPC had been made out. In the protest petition it was urged that the whole case diary should be perused and appropriate orders may be passed.

B 6. On the basis of the aforesaid protest petition the Chief
C Judicial Magistrate, on 5.6.2010, perused the final report submitted by the Investigating Officer, the entire case diary, the protest petition and the statements recorded under Section 161 of the CrPC by the previous Investigating Officer and came to hold that even if a suit could be filed, the fact situation prima facie revealed criminal culpability and, accordingly, took cognizance under Sections 420 and 406 of the IPC against the respondents and issued summons requiring them to appear before the court on 9.7.2010.

D 7. Being dissatisfied with the said order, the respondents preferred Criminal Revision No. 108 of 2010 before the learned Sessions Judge contending, inter alia, that the FIR had been lodged with an ulterior motive to pressurize the respondents to return the earnest money and the complainant had, in fact, committed breach of the terms of the agreement; that the allegations made in the FIR could only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction regard being had to the nature of the dispute; that the learned Magistrate had taken cognizance without any material in the case diary; and that the exercise of power under Section 190(1)(b) of the CrPC was totally unwarranted in the case at hand. The revisional court scanned the material brought on record, perused the case diary in entirety, took note of the conduct of the Investigating Officer who had submitted the final report stating that the allegations did not constitute any criminal offence despite the material brought on record during the course of investigation by the Investigating Officer, who was appointed at the instance of the Area Officer, scrutinized the substance of material collected to the effect that Raghuvinder

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Singh had no right, title and interest in the property and a General Power of Attorney was executed in favour of his wife to sell, transfer and convey all rights, title and interest in the plot in question on behalf of the original allottee and that the husband and wife had concealed the material factum of execution of Power of Attorney from the complainant and opined that both the accused persons had fraudulent and dishonest intention since the beginning of the negotiation with the complainant and, therefore, the allegations prima facie constituted a criminal offence and it could not be said that it was a pure and simple dispute of civil nature. Being of this view he gave the stamp of approval to the order passed by the learned Magistrate.

8. The unsuccess in revision compelled the respondents to approach the High Court in a writ petition and the Writ Court came to hold that on the basis of the allegations made in the FIR and the evidence collected during investigation it could not be said that the instant case is simpliciter a breach of contract not attracting any criminal liability as far as the husband was concerned and there was a prima facie case triable for offences under Section 406 and 420 of the IPC. However, while dealing with the allegations made against the wife, the High Court observed that there being no entrustment of any property by the complainant to her and further there being no privity of contract between them, she was under no legal obligation to disclose to the complainant that she held a registered Power of Attorney from the original allottee to sell and alienate the property in question and such non-disclosure of facts could not be said to have constituted offence either under Section 406 or Section 420 of the IPC. Being of this view the High Court partly allowed the writ petition and quashed the order taking cognizance and summoning of the wife, the respondent No. 2 herein.

9. We have heard Mr. Amit Khemka, learned counsel for the appellant, and Mr. Chetan Sharma, learned senior counsel appearing for the respondent Nos. 2 and 3.

10. It is submitted by Mr. Khemka learned counsel for the

A appellant that the High Court could not have scrutinized the material brought on record as if it was sitting in appeal against the judgment of conviction and also committed error in ignoring certain material facts which make the order sensitively susceptible. It is his further submission that the learned Sessions Judge had considered the entire gamut of facts and appositely opined that the order taking cognizance could not be flawed but the High Court by taking note of the fact that there was no privity of contract and the non-disclosure was not material has completely erred in its conclusion and, hence, the order deserves to be lanced.

C 11. Mr. Chetan Sharma, learned senior counsel, resisting the aforesaid contentions, canvassed that mere presence of the respondent No. 2 at the time of signing of the agreement to sell does not amount to an offence under Section 420 of the IPC as she did not sign the document nor did she endorse the same as a witness. It is urged by him that no criminal liability can be fastened on her, for the *sine qua non* for attracting criminality is to show dishonest intention right from the very inception which is non-existent in the case at hand. It is submitted by him that if the criminal action is allowed to continue against her that would put a premium on a commercial strategy adopted by the appellant in roping a lady only to have more bargaining power in the matter to arrive at a settlement despite the breach of contract by him. The learned senior counsel would further contend that the appellant has taken contradictory stands inasmuch as in one way he had demanded the forfeited amount and the other way lodged an FIR to set the criminal law in motion which is impermissible. To bolster the said contentions reliance has been placed on the judgments rendered in *Hridya Rajan Pd. Verma & Others v. State of Bihar and Another*¹, *Murari Lal Gupta v. Gopi Singh*² and *B. Suresh Yadav v. Sharifa Bee and Another*³.

1. AIR 2000 SC 2341.

2. (2006) 12 SCC (Cri) 430.

H 3. (2007) 13 SCC 107.

12. At the very outset, it is necessary to state that on a perusal of the FIR, the protest petition and the order passed by the learned Magistrate, it is demonstrable that at various stages of the investigation different views were expressed by the Investigating Officers and the learned Magistrate has scrutinized the same and taking note of the allegations had exercised the power to reject the final report and take cognizance. The court taking cognizance and the revisional court have expressed the view that both the respondents had nurtured dishonest intentions from the very beginning of making the negotiation with the complainant and treated non-disclosure of execution of Power of Attorney in favour of the respondent No. 2 herein by the original owner as a material omission as a consequence of which damage had been caused to the complainant. The learned counsel for the appellant would submit that the High Court has misguided itself by observing that there was no entrustment of any property to the wife and further there was no privity of contract and non-disclosure on her part do not constitute an offence. The learned senior counsel for the respondent has highlighted the factum of absence of privity of contract. Regard being had to the allegations brought on record, the question that emerges for consideration is whether the High Court is justified in exercising its extraordinary jurisdiction to quash the order taking cognizance against the respondent No. 2 herein.

13. At this juncture, we may note that Raghuvinder Singh, respondent No. 3, had filed SLP (Cri) No. 3894 of 2011 which has been dismissed on 13.5.2011.

14. As advised at present we are inclined to discuss the decisions which have been commended to us by the learned senior counsel for the respondent. In *Hridya Rajan Pd. Verma* (supra) a complaint was filed that the accused persons therein had deliberately and intentionally diverted and induced the respondent society and the complainant by suppressing certain facts and giving false and concocted information and

A assurances to the complainant so as to make him believe that the deal was a fair one and free from troubles. The further allegation was that the accused person did so with the intention to acquire wrongful gain for themselves and to cause wrongful loss to the Society and the complainant and they had induced

B the complainant to enter into negotiation and get advance consideration money to them. The two-Judge Bench referred to the judgment in *State of Haryana v. Bhajan Lal*⁴ wherein this Court has enumerated certain categories of cases by way of illustration wherein the extraordinary power under Article 226

C or the inherent powers under Section 482 of the CrPC could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. The Bench also referred to the decisions in *Rupen Deol Bajaj (Mrs.) v. Kanwar Pal Singh Gill*⁵, *Rajesh Bajaj v. State NCT of Delhi*⁶ and *State of Kerala v. O.C. Kuttan*⁷ wherein the principle laid down in *Bhajan Lal* (supra) was reiterated. The Court posed the question whether the case of the appellants therein came under any of the categories enumerated in *Bhajan Lal* (supra) and whether the allegations made in the FIR or the complaint if

D accepted in entirety did make out a case against the accused-appellants therein. For the aforesaid purpose advertence was made to offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint. The Court took the view that main offence alleged to have been committed by the appellants is cheating punishable under Section 420 of the IPC. Scanning the definition of 'cheating' the Court opined that there are two separate classes of acts which the persons deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second

E class of acts set-forth in the section is the doing or omitting to

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4 1992 Supp (1) SCC 335.

5 AIR 1996 SC 309.

6. (1999) 3 SCC 259.

H 7. AIR 1999 SC 1044.

do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. Thereafter, the Bench proceeded to state as follows:-

"16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

15. After laying down the principle the Bench referred to the complaint and opined that reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction had neither been expressly stated nor indirectly suggested in the complaint. All that the respondent No. 2 had alleged against the appellants was that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No. 2 part with property was not alleged expressly

A or even impliedly in the complaint. Therefore, the core postulate
of dishonest intention in order to deceive the complainant-
respondent No. 2 was not made out even accepting all the
averments in the complaint on their face value and, accordingly,
ruled that in such a situation continuing the criminal proceeding
B against the accused would be an abuse of process of the Court.

16. From the aforesaid decision it is quite clear that this
Court recorded a finding that there was no averment in the
complaint that intention to deceive on the part of the accused
was absent right from the beginning of the negotiation of the
C transaction as the said allegation had neither been expressly
made nor indirectly suggested in the complaint. This Court took
note of the fact that only non-disclosure was that one of their
brothers had filed a partition suit which was pending and the
allegation that such a disclosure was not made intentionally to
D deceive the complainant was absent. It is worthy to note that
this Court referred to certain averments in the complaint petition
and scrutinized the allegations and recorded the aforesaid
finding. The present case, as we perceive, stands on a different
factual matrix altogether. The learned Sessions Judge has
E returned a finding that there was intention to deceive from the
very beginning, namely, at the time of negotiation but the High
Court has dislodged the same on the foundation that the
respondent No. 2 was merely present and there was no privity
of contract between the complainant and her. We will advert to
F the said factual analysis at a later stage after discussing the
other authorities which have been placed reliance upon by the
learned senior counsel for the respondents.

17. In *Murari Lal Gupta* (supra) a two-Judge Bench
G quashed the criminal complaint instituted under Sections 406
and 420 of the IPC on the following analysis: -

“The complaint does not make any averment so as to infer
any fraudulent or dishonest inducement having been made
by the petitioner pursuant to which the respondent parted

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with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurize the petitioner for coming to terms with the respondent." A
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In our considered opinion the factual position in the aforesaid case is demonstrably different and, hence, we have no hesitation in stating that the said decision is not applicable to the case at hand. D

18. In *B. Suresh Yadav* (supra) the complainant, who was defendant in the suit, had filed a written statement from which it was manifest that she at all material times was aware of the purported demolition of the rooms standing on the suit property. It was contended in the written statement that the suit properties were different from the subject-matter of the deed of sale. After filing the written statement the respondent had filed the complaint under Section 420 of the IPC. The Court took note of the fact that there existed a dispute as to whether the property whereupon the said two rooms were allegedly situated was the same property forming the subject-matter of the deed of sale or not and a civil suit had already been filed pertaining to the said dispute. The Court also took note of the fact that at the time of execution of the sale deed the accused had not made any false or misleading representation and there was no omission on his part to do anything which he could have done. Under these circumstances, the Court opined that the dispute between the parties was basically a civil dispute. It is apt to note here E
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A that the Court also opined that when a stand had been taken
in a complaint petition which is contrary to or inconsistent with
the stand taken by him in a civil suit, the same assumes
significance and had there been an allegation that the accused
got the said two rooms demolished and concealed the said
B fact at the time of execution of the deed of sale, the matter
would have been different. Being of this view, this Court
quashed the criminal proceeding as that did amount to abuse
of the process of the court. On an x-ray of the factual score, it
can safely be stated that the said pronouncement renders no
assistance to the lis in question.
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19. Before we proceed to scan and analyse the material
brought on record in the case at hand, it is seemly to refer to
certain authorities wherein the ingredients of cheating have
been highlighted. In *State of Kerala v. A. Pareed Pillai and*
D *Another*⁸, a two-Judge Bench ruled that to hold a person guilty
of the offence of cheating, it has to be shown that his intention
was dishonest at the time of making the promise and such a
dishonest intention cannot be inferred from a mere fact that he
could not subsequently fulfil the promise.
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20. In *G.V. Rao v. L.H.V. Prasad and Others*⁹, this Court
has held thus: -

F “7. As mentioned above, Section 415 has two parts. While
in the first part, the person must “dishonestly” or
“fraudulently” induce the complainant to deliver any
property; in the second part, the person should intentionally
induce the complainant to do or omit to do a thing. That is
to say, in the first part, inducement must be dishonest or
fraudulent. In the second part, the inducement should be
G intentional. As observed by this Court in *Jaswantrao*
*Manilal Akhaney v. State of Bombay*¹⁰ a guilty intention

8. AIR 1973 SC 326.

9. (2000) 3 SCC 693.

H 10. (2000) 3 SCC 693.

is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "*mens rea*" on the part of that person, must be established. It was also observed in *Mahadeo Prasad v. State of W.B.*¹¹ that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

21. In *S.N. Palanitkar and Others v. State of Bihar and Another*¹², it has been laid down that in order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.

22. In the said case while dealing with the ingredients of criminal breach of trust and cheating, the Bench observed thus:-

"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence 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

11. AIR 1956 SC 575.

12. AIR 2001 SC 2960.

A 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 were
 not so deceived; and (iii) in cases covered by (ii)(b), the
 act of omission should be one which causes or is likely to
 B cause damage or harm to the person induced in body,
 mind, reputation or property.”

23. Coming to the facts of the present case, it is luminicent
 from the FIR that the allegations against the respondent No. 2
 do not only pertain to her presence but also about her total
 C silence and connivance with her husband and transfer of
 property using Power of Attorney in favour of Monika Goel. It
 is also graphically clear that the complainant had made
 allegations that Raghuvinder Singh and his wife, Savita Singh,
 had met him at the site, showed the registered agreement and
 D the cash and cheque were given to them at that time. It is also
 mentioned in the FIR that on 28.7.2008, Savita Singh had
 received the possession of the said plot and on the same day
 it was transferred in the name of Monika Goel. It is also
 reflectible that on 28.2.2007, Raghuvinder Singh and Savita
 E Singh had got prepared and registered two documents in the
 office of the Sub-Registrar consisting one agreement to sell in
 favour of Raghuvinder Singh and another General Power of
 Attorney in favour of the wife. The allegation of collusion by the
 husband and wife has clearly been stated. During the
 F investigation, as has been stated earlier, many a fact emerged
 but the same were ignored and a final report was submitted.
 In the protest petition the complainant had asseverated
 everything in detail about what emerged during the course of
 investigation. The learned Chief Judicial Magistrate after
 G perusal of the case diary and the FIR has expressed the view
 that a case under Sections 406 and 420 of the IPC had been
 made out against both the accused persons. The learned
 Sessions Judge, after referring to the ingredients and the role
 ascribed, concurred with the same. The High Court declined
 H to accept the said analysis on the ground that it was mere

presence and further there was no privity of contract between the complainant and the respondent No. 2. A

24. At this stage, we may usefully note that some times a case may apparently look to be of civil nature or may involve a commercial transaction but such civil disputes or commercial disputes in certain circumstances may also contain ingredients of criminal offences and such disputes have to be entertained notwithstanding they are also civil disputes. In this context, we may reproduce a passage from *Mohammed Ibrahim and Others v. State of Bihar and Another*¹³: - B

“8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See *G. Sagar Suri v. State of U.P.*¹⁴ and *Indian Oil Corpn. v. NEPC India Ltd.*¹⁵)” C D E

25. In this context we may usefully refer to a paragraph from *All Cargo Movers (I) Pvt. Ltd. V. Dhanesh Badarmal Jain & Anr.*¹⁶ F

“.....Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said G

13. (2009) 8 SCC 751.

14. (2000) 6 SCC 636.

15. (2006) 6 SCC 736.

16. AIR 2008 SC 274. H

A allegations are prima facie cannot notice the
 correspondence exchanged by the parties and other
 admitted documents. It is one thing to say that the Court
 at this juncture would not consider the defence of the
 accused but it is another thing to say that for exercising
 B the inherent jurisdiction of this Court, it is impermissible
 also to look to the admitted documents. Criminal
 proceedings should not be encouraged, when it is found
 to be mala fide or otherwise an abuse of the process of
 the court. Superior Courts while exercising this power
 C should also strive to serve the ends of justice.”

26. In *Rajesh Bajaj v. State NCT of Delhi and Others*,¹⁷
 while dealing with a case where the High Court had quashed
 an F.I.R., this Court opined that the facts narrated in the
 complaint petition may reveal a commercial transaction or a
 D money transaction, but that is hardly a reason for holding that
 the offence of cheating would elude from such a transaction.
 Proceeding further, the Bench observed thus: -

“11. The crux of the postulate is the intention of the person
 E who induces the victim of his representation and not the
 nature of the transaction which would become decisive in
 discerning whether there was commission of offence or not.
 The complainant has stated in the body of the complaint
 that he was induced to believe that the respondent would
 F honour payment on receipt of invoices, and that the
 complainant realised later that the intentions of the
 respondent were not clear. He also mentioned that the
 respondent after receiving the goods had sold them to
 others and still he did not pay the money. Such averments
 G would prima facie make out a case for investigation by the
 authorities.”

27. We have referred to the aforesaid decisions in the field
 to highlight about the role of the Court while dealing with such

H ¹⁷. AIR 1999 SC 1216.

issues. In our considered opinion the present case falls in the category which cannot be stated at this stage to be purely civil in nature on the basis of the admitted documents or the allegations made in the FIR or what has come out in the investigation or for that matter what has been stated in the protest petition. We are disposed to think that prima facie there is allegation that there was a guilty intention to induce the complainant to part with money. We may hasten to clarify that it is not a case where a promise initially made could not lived up to subsequently. It is not a case where it could be said that even if the allegations in entirety are accepted, no case is made out. Needless to emphasise, the High Court, while exercising power under Article 226 of the Constitution or Section 482 of the CrPC, has to adopt a very cautious approach. In *Central Bureau of Investigation v. Ravi Shankar Srivastava, IAS and Another*,¹⁸ the Court, after referring to *Janata Dal v. H.S. Chowdhary*¹⁹ and *Raghubir Saran (Dr.) v. State of Bihar*²⁰, has observed that the powers possessed by the High Court under Section 482 of the IPC are very wide and the very plentitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles and such inherent powers should not be exercised to stifle a legitimate prosecution. This Court has further stated that it is not 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 has been further pronounced that it would be erroneous to assess the material before it and conclude that the complaint could not be proceeded with. The Bench has opined that the meticulous analysis of the case is not necessary and the complaint has to be read as a whole and if it appears that on consideration of the allegations in the light of the statement made on oath of the

18. (2006) 7 SCC 188.

19. (1992) 4 SCC 305.

20. AIR 1964 SC 1.

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A complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

B 28. In *R. Kalyani v. Janak C. Mehta and Others*²¹, after referring to the decisions in *Hamida v. Rashid*²² and *State of Orissa v. Saroj Kumar Sahoo*,²³ this Court eventually culled out the following propositions: -

C "15. Propositions of law which emerge from the said decisions are:

D a. The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

E b. For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

F c. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

G d. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

G 29. It is worth noting that it was observed therein that one of the paramount duties of the superior court is to see that person who is absolutely innocent is not subjected to

21. (2009) 1 SCC 516.

22. (2008) 1 SCC 474.

H 23. (2005) 13 SCC 540.

prosecution and humiliation on the basis of a false and wholly untenable complaint. A

30. Recently in *Gian Singh v. State of Punjab and Another*²⁴ a three-Judge Bench has observed that: -

“55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.” B
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31. 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 him 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 F
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A sale effected by the wife in the name of Monika Singh on 28.7.2008 cannot be brushed aside at this stage. Therefore, we are disposed to think that the High Court, while exercising the extraordinary jurisdiction, had not proceeded on the sound principles of law for quashment of order taking cognizance. The High Court and has been guided by the non-existence of privity of contract and without appreciating the factual scenario has observed that the wife was merely present. Be it noted, if the wife had nothing to do with any of the transactions with the original owner and was not aware of the things, possibly the view of the High Court could have gained acceptance, but when the wife had the Power of Attorney in her favour and was aware of execution of the will, had accepted the money along with her husband from the complainant, it is extremely difficulty to say that an innocent person is dragged to face a vexatious litigation or humiliation. The entire conduct of the respondent Nos. 2 and 3 would show that a prima facie case is made out and allegations are there on record in this regard that they had the intention to cheat from the stage of negotiation. That being the position, the decision in *Hridya Rajan Pd. Verma & Others* (supra) which is commended to us by Mr. Sharma, learned senior counsel, to which we have adverted to earlier, does not really assist the respondents and we say so after making the factual analysis in detail.

32. In view of our aforesaid analysis we allow the appeal, set aside the order passed by the High Court and direct the Magistrate to proceed in accordance with law. However, we may clarify that we may not be understood to have expressed any opinion on the merits of the case one way or the other and our observations must be construed as limited to the order taking cognizance and nothing more than that. The learned Magistrate shall decide the case on its own merit without being influenced by any of our observations as the same have been made only for the purpose of holding that the order of cognizance is prima facie valid and did not warrant interference by the High Court.

H K.K.T.

Appeal allowed.