

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. \_\_\_\_\_ OF 2009**

**[Arising out of Special Leave Petition (Criminal) No. 3176 of 2008]**

**STATE OF MAHARASHTRA**

**... APPELLANT**

**Versus**

**SAYED MOHAMMED MASOOD & ANR.**

**... RESPONDENTS**

**JUDGMENT**

**S.B. SINHA, J.**

1. Leave granted.
2. The State of Maharashtra is before us aggrieved by and dissatisfied with a judgment and order dated 3<sup>rd</sup> March, 2008 passed by a Division Bench of the High Court of Judicature at Bombay in Criminal Writ Petition No. 2333 of 2007 quashing a First Information Report (“FIR”) lodged by the respondent No.2 herein at the Cuff Parade Police Station, Mumbai.

3. The first respondent is the Chairman-cum-Managing Director of M/s City Limouzines (India) Ltd. (hereinafter called and referred for the sake of brevity as, “the said Company”). He established the said Company. A scheme known as “Go/Vehicle on rental basis and earning by sitting at home” was floated. In terms of the said Scheme, assurances were given to the people for earning money in easy way. A public advertisement was also issued in a newspaper. They also issued pamphlets and thereby attracted huge investments. In terms of the said Scheme, Rs.97,907/- was to be invested in ‘rent a car’ scheme wherein agreement was executed inter alia providing that the car would be purchased in the name of investor but would be used by the Company on rent to others wherefor the investor would receive a sum of Rs.4,000/- per month for a period of five years. After 60 months, i.e., at the end of the agreement, the investor may take back his car in proper working condition. It was equally provided that an investor was entitled to inspect the vehicle given on lease/rent once in three months upon giving 15 days prior notice.

4. Clauses 4, 8, 10 and 15 of the said agreement read as under:

“4. Inspection: The Lessor is entitled to inspect the Vehicle given on Lease/rent once in 3 months by giving 15 days prior notice to the above stated

address and inspect the vehicle at any of the offices of the Lessee in India.

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8. Buy Back: The Lessee will have the option at the discretion of the Lessor/registered owner to purchase the vehicle at a fair market value upon mutual consent after the expiry of the agreement. However, this buyback clause is not to be construed to be conferring any enforceable right on the Lessee but the first option to buy the car shall be that of the Lessee herein.

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10. Completion of contract: Upon successful completion of the terms of this agreement, the Lessor shall receive the leased Vehicle in proper working condition including the tyres and battery in good condition with normal wear and tear acceptable depending on the period of use.

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15. Issue of Preference Shares: The Lessee undertakes to issue redeemable Preference shares to the Lessor towards the margin money paid (excluding Insurance & RTO Charges) which will be held by the Lessor as security for the entire period of the validity of the agreement being 60 months from the date of issue to ensure smooth installment payments to the bank and the lease/hire charges to the Lessor.”

5. The complainant – respondent No.2, pursuant to the said advertisement, invested a sum of Rs.97,907/-. Indisputably, he was paid

Rs.4,000/- per month for a period of five years. However, despite demand, he was not given the car. He was, however, given three post-dated cheques of ABN Amro Bank amount to Rs. 25,000/-, Rs.20,000/- and Rs.10,000/- although he had asked for the said amount in cash.

6. In the said FIR, it was inter alia alleged:

“As mentioned above, Directors of the said Company in their office without listening anything from me, as per their own wishes making changes on the document of agreement, when I noticed that then I enquired about the same in more detail. It is transpired that the said company by showing false inducement about big return in various financial schemes and transferring the motor vehicle in the name of investor, till date has accepted deposits of crores of rupees under various schemes from 25000 investors. But I came to know that said company has purchased motor car only in the name of 500 investors.

All aspect of above mentioned schemes are in existence only on paper but in reality not even a single scheme is in force as per the scheme shown on the document. I also came to know that apart from the above mentioned office of the company at Bombay, and other places said company has office on rental basis and Sayyed Masood Jamadar, in collusion with other directors of the Company, induces people for making investment and amount invested by people is being utilized for other purpose, other than the original purpose and is being utilized personally or for some other purposes. The said company on the internet at its

website namely [www.citylimouzines.com](http://www.citylimouzines.com) & [www.city-money.com](http://www.city-money.com) has projected the said company as bearing ISO-9001-2000 certification and inducing common poor people to invest money in the said company and thereby cheating the people. If immediate legal action is not taken against the said company then there will be huge financial loss to ordinary investors. Since Directors of the said company threatened investors whenever investors go to ask back money therefore, rein of fear against them is created.

Above mentioned persons namely Sayyed Mohammad Masood Jamadar and Geeta Razzaki and other persons have collusively established City Limouzines Ltd. Company and through that company several other companies are established and through them false inducement is given and financial investments is accepted from the people and misappropriation of the same on large scale is done and defrauded citizens and Government.”

7. The respondent No.1 filed a writ petition before the Bombay High Court praying for quashing the said FIR.

The Division Bench of the High Court keeping in view the various clauses in the agreement entered into by and between the complainant and the said Company opined that although the investor might have been entitled to the car at the end of the period of five years, but as there has been no intention to defraud him at the time of inception of execution of the

agreement and the dispute between the parties revolved on interpretation of the clauses of the agreement, no offence under Sections 406, 420 and 120B of the Indian Penal Code has been made out, stating:

“13. At the cost of repetition we may mention that the facts in the present case are not at dispute at all that the investment made by each of the consumers to the tune of Rs.97,907/- and in return they received Rs.2,40,000/-. The only question which remained was whether the investors were entitled to the car at the end of the period of five years or not. There has been no intention to defraud at the time of inception of execution of the agreement. There can be made several interpretations of the clauses in the agreement if the agreement is taken as a whole. It is a well accepted principle of interpretation that while interpreting clause of agreement, whole of the agreement has to be taken into consideration. Applying the principles laid down by the various judgments of the Supreme Court hereinabove referred, we do not think that in the facts and circumstances of the case an offence of cheating is made out.”

The High Court, however, in its judgment only considered the case from the point of view of Section 420 of the Indian Penal Code and not Sections 406 and 120B thereof.

8. Mr. T.K. Viswanathan, learned Senior Counsel appearing on behalf of the State would contend that having regard to the well settled principle of

law that the High Court does not quash an FIR save and except sparingly and in rarest of rare cases, the impugned judgment is not sustainable.

9. Our attention in this behalf has been drawn to various grounds taken in this Appeal to contend that the investigation so far conducted reveals that a large number of illegalities have been committed by the said Company including the violation of the provisions of Section 45(1A) of the Reserve Bank of India Act.

10. Ms. Bindu K. Nair, learned counsel appearing on behalf of the respondent, on the other hand, would take us through the FIR, agreement entered into by and between the parties, Lessee's covenants therein as also other documents to contend that no offence can be said to have been made out either under Section 406 of the Indian Penal Code or Section 420 thereof. It was urged that as no car was purchased in the name of the respondent No.2, there was no property and, thus, there was neither any question of any entrustment thereof nor any misappropriation. The complainant himself having redeemed the merging money in terms of the provisions of the agreement, the ingredients of the offence of Section 406 of the Indian Penal Code cannot be said to have been made out. Drawing our attention to the definition of 'cheating' as contained in Section 415 of the

Indian Penal Code, the learned counsel would contend that neither there was any inducement nor deception having been made and pursuant to the agreement no property having been delivered in favour of the accused by the complainant nor there was any act of omission on his part which caused or likely to cause any damage to the property, the question of commission of any offence under Section 420 of the Indian Penal Code does not arise.

11. The legal position in regard to exercise of jurisdiction by the High court for quashing of an FIR is now well settled. It is not necessary for us to delve deep therein as the propositions of law have recently been stated by this Court in R. Kalyani v. Janak C. Mehta [(2009) 1 SCC 516] in the following terms:

**“15.** Propositions of law which emerge from the said decisions are:

(1) 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.

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

(3) 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.

(4) 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.”

Yet again in Mahesh Choudhary vs. State of Rajasthan & Anr. [2009

(4) SCALE 66], this Court stated the law thus:

“13. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the Complaint Petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.”

We may also notice that in State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain [(2008) 1 SCC 213], this Court laid down the law in the following terms:

“14. The learned counsel would submit that *prima facie* the girl was above 16 years and she being a consenting party and having been getting consideration, no case under Section 376 IPC has been made out and, thus, this Court should not interfere with the impugned judgment.”

12. There cannot be any doubt or dispute whatsoever that a simple breach of contract or a case involving pure civil dispute would not attract the penal provisions contained in the Indian Penal Code either under Section 406 or Section 420 thereof.

13. Had the dispute between the parties rested in the aforementioned premise, probably we would not have interfered with the judgment of the High Court; but then, our attention has been drawn to certain evidences which have surfaced during investigation and disclosed before us by the State in the grounds stated in this Memo of Appeal.

We may notice a few of them:

“cc) Because preliminary findings shows that public at large especially middle class and lower class people have invested their hard earned money and or money received at the time of their VRS or amount received from insurance companies after casualty of their legal heirs, are likely to be cheated by the inducement of “Rosy picture” shown by the company with respect to motor vehicle scheme. Because as soon as influx of investors stops the company will stop payment to the old investors, as the company does not have any type of business which generates fair legal income/profit.

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- ff) Because another witness has stated in his statement dated 03/10/07 that he has invested Rs.1,07,000 for Maruti Omni in the month of January 2005 immediately after the agreement he has received three post dated cheques of Rs.4000/- each from CLIL. Company has taken Rs.25,630/- for RTO & Insurance Charges but has not purchased a vehicle in his name.

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- ii) Because another witness in his statement dated 17/11/07 that he is running Travelling Business in the name as "Amey Tourist." He owns Maruti Esteem Car No. MH-01-JA-6710 and the same is being used for his business purpose. Neither he has given his said m/v to CLIL nor has invested money in C.L.I.L. An enquiry has been made with Shri Arun Potade because CLIL data on first mirror image shows this car as one which is from their scheme as Indica and registered in the name of Smt. Jayshree Devgude (File no. 15971 of CLIL).
- jj) Because another witness has stated in his statement dated 19/11/07 that he had Kinetic Honda Scooter No. MH-01-E-6343 in his name but due to rusting/damage he had scraped the said m/v. He does not know anything about CLIL. An enquiry has been made with Shri Deepak R. Kalwar because CLIL data on first mirror image shows that Maruti Omni Car No. MH-01-E-6343 has been registered in the name of one Smt. Asha Thakur (file no.- 1738 of CLIL) and enquiry with RTO revealed that the vehicle No. MH-01-E-6343 is Kinetic Honda

Scooter and registered in the name of Deepak Kalwar.”

14. The allegation made in the FIR and the materials collected during investigation, in our considered opinion, should be allowed to be taken to its logical end.

15. We must, however, acknowledge that Ms. Nair has cited the following decisions for our consideration.

- i. Alpic Finance Ltd. vs. P. Sadasivan & Anr. [(2001) 3 SCC 513]
- ii. Radha Ballav Pal & Anr. vs. Emperor [AIR 1939 Calcutta 327]
- iii. Velji Raghavji Patel vs. The State of Maharashtra [AIR 1965 SC 1433]
- iv. Vir Prakash Sharma vs. Anil Kumar Agarwal & Anr. [(2007) 7 SCC 373]
- v. All Cargo Movers (India) Private Limited & Ors. vs. Dhanesh Badarmal Jain & Anr. [(2007) 14 SCC 776]
- vi. New India Insurance Co. Ltd. vs. Sadanand Mukhi & Ors. [(2009) 1 SCALE 252]

- vii. U. Dhar & Anr. vs. State of Jharkhand & Anr. [(2003) 2 SCC 219]
- viii. Uma Shankar Gopalika vs. State of Bihar & Anr. [(2005) 10 SCC 336]

In Alpic Finance Ltd. (supra) the dispute was found to be of pure civil nature.

In Radha Ballav Pal & Anr (supra), the Calcutta High Court looked to the policies and schemes floated by the Company to opine that in the fact of the said case no case has been made out for convicting the appellant therein. But the matter having reached the High court after a judgment of conviction was recorded, all the materials were brought on record by the parties by that time.

In Velji Raghavji Patel (supra), it involved a question of dealing with the assets of a partnership firm by a partner.

In Vir Prakash Sharma (supra), this case primarily revolved around bouncing of a cheque.

In Dhanesh Badarmal Jain (supra), the court found only a civil liability on the part of the accused and opined that it was at best a case of interpretation of agreement, stating

“16. We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is 782 another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice.”

Sadanand Mukhi & Ors. (supra) involved a pure civil dispute dealing with the compensation and insurance policies in the Motor Vehicle Claims Tribunal (MACT).

Similar was the position in Uma Shankar Gopalika (supra) wherein it was stated:

“....It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated 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 420 IPC.”

Hence the petition of complainant did not disclose any criminal offence at all much less any offence either under Section 420 or Section 120B of the Indian Penal Code. It was purely civil in nature.

16. We have, however, no doubt in our mind that the Investigating Officer shall conduct the investigation fairly and impartially and shall allow the company to carry on its business without any hindrance whatsoever. If any

books of account or other documents are required, the Investigating Officer subject to just exceptions may take the xerox copies thereof duly certified by the accused as also an undertaking that, as and when called upon, they would produce the said books of account in a court of law.

Subject to the aforementioned directions, the Investigating Officer shall carry out the investigation in accordance with law.

17. We, therefore, are of the opinion that in the peculiar facts and circumstances of this case and particularly in view of the materials which have surfaced during investigation, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed with the aforementioned directions.

.....J.  
[S.B. Sinha]

.....J.  
[Deepak Verma]

New Delhi;  
August 4, 2009