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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Judgment reserved on: 20.09.2022**

**Judgment pronounced on: 06.03.2023**

+ **CRL.M.C. 1757/2021 & CRL.M.A.12231/2021**

ARUN KUMAR

..... Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Adv.  
with Mr. Siddharth Mehta, Ms. Dikshita  
Kapoor, Mr. Harsh Yadav and Mr.  
Vishwajeet Singh, Advs.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Aashneet Singh, Ld. APP  
Insp. Sanjeev Kumar, PS EOW  
Mr. Maninder Singh, Sr. Adv. with Mr.  
Yash Varma, Ms. Anshika Batra and  
Mr. Harsh Vashisht, Advs.

+ **W.P.(CRL) 1593/2021 & CRL.M.A. 13363/2021**

AMIT MAVI

..... Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Adv.  
with Mr. Siddharth Mehta, Ms. Dikshita  
Kapoor, Mr. Harsh Yadav and Mr.  
Vishwajeet Singh, Advs.

versus

STATE(GNCTD) & ANR.

..... Respondents

Through: Mr. Sanjeev Bhandari, Ld. ASC with  
Mr. Sushant Bali and Mr. Kunal Mittal,  
Advs. for State with Insp. Sanjeev  
Kumar, PS EOW  
Mr. Maninder Singh, Sr. Adv. with Mr.  
Yash Varma, Ms. Anshika Batra and  
Mr. Harsh Vashisht, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE JASMEET SINGH**

**JUDGMNET**

: **JASMEET SINGH, J**

1. The present petitions have been filed by the petitioners seeking quashing of FIR No. 147/2020, dated 05.10.2020 under sections 406/420/120B IPC, registered at P.S. Economic Offences Wing.
2. The petitioners in CRL. M.C 1757/2021 and W.P. (CRL) 1593/2021 are Mr. Arun Kumar and Mr. Amit Mavi respectively. The respondents are the same in both the petitions.
3. Brief facts of the case are-
  - i. Two companies, namely Alisa Infratech Pvt. Ltd and Baya Weaver Ltd (hereinafter called the accused companies) were jointly developing a project on land being Plot No. C3-A, measuring 18,898 sq. mtrs falling in Khasra No. 554M, 577M, 578M 579M (partly), 576 (partly) of Village Gheja, Tilastabad, Sector 129, Noida, Gautam Budha Nagar, Uttar Pradesh, under the name of "Oh My God". Mr. Arun Kumar was the Director of Alisa Infratech Pvt Ltd, while Mr. Amit Mavi was the main shareholder in both the accused companies. The petitioners were to develop the aforesaid project but by 2019, despite their best efforts, they were only able to develop 5% of the project and took a loan from IIFL, which they were unable to repay. As a result, they approached respondent No.2 (Saya Cementation Limited), to take over the project and develop it further. The petitioners proposed acquiring of the accused companies through a Share Purchase Agreement (herein referred to as "SPA") with respondent No.2.

- ii. Two Share Purchase Agreements (SPA's) were executed by respondent No.2 with the petitioners on 30.03.2020, whereby the respondent No.2 acquired all the equity shares of the accused companies and assumed responsibility for the project's construction and development and all the liabilities of the accused companies. Accordingly, Rs. 5 lakh was to be paid for Baya Weaver Ltd and Rs. 3.13 crore was to be paid for Alisa Infratech Pvt. Ltd. The total valuation of equity shares of the accused companies was assessed at Rs. 3,13,34,100/-The relevant terms of the SPA agreement read as under -:

*“Article 2.2 - Purchase and Sale of the Sale Securities - Simultaneously with the payment of the Consideration by the Buyers in the manner specified in Article 2.3.2 herein below, the Sale Securities shall be transferred in favour of the Buyers in the manner specified in Article 7 herein below. Upon the transfer of all the Sale Securities, the Buyer shall collectively hold all 100% of the total issued and paid up share capital of the company. The shareholding pattern of the company post transfer of the Sale Securities is set forth in Schedule B of this agreement*

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### **2.3 Purchase Price**

*2.3.1. The total consideration for purchase of the Sale Securities shall be INR 31,334,100 (Rupees Three Crores Thirteen Lakhs Thirty Four Thousand One Hundred Only) (the "**Consideration**"). The Consideration shall be paid by Buyers to the Sellers in the manner as specified in Article 2.3.2 of this Agreement.*

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*Article 7.1.1 (ii) - Remittance of Consideration – The Sellers shall hand over to the Buyers Transfer Document representing the Sale Securities along with the share transfer slips and other required documents for credit of share transfer in Demat form in favour of the Buyers with respect to the Sale Securities and other undertakings, documents as mentioned Annexure 8 of this Agreement.”*

- iii. Another important term was that the respondent No.2 was required to place a sum of Rs. 11,58,51,365 crores [(hereinafter referred to as Rs. 11.58 (approx.))] in a separate Current Account No. 120103000000010 in Nainital Bank, where the representative of IIFL, being Mr. Anurag Solanki would be a co-signatory along with Mr. Amit Mavi for settling the clients/consumers of the accused companies.
- iv. Respondent No.2 claims that despite having fulfilled their obligations under the SPA by paying the consideration for shares and settling the debts of several creditors amounting to approximately Rs.300 crores, the petitioners have allegedly refused to provide the documents of the accused companies as required under the SPA's. The petitioners, on the other hand, insist that they will only relinquish control of the accused companies to respondent No.2 once all the outstanding liabilities have been cleared, and assert that respondent No.2 still owes more than Rs.72 crores in liabilities. This disagreement has resulted in both parties initiating various civil and criminal cases against each other.

4. The State filed a report with additional facts as under:-
  - i. On 19.03.2020, a special resolution was passed by the accused companies by which a bank account in Nainital Bank, Greater Noida was opened specifically for client payments and was decided that Mr. Amit Mavi and Mr. Anurag Solanki (Director of IIFL) would operate the bank account jointly for making client payments. Accordingly, the bank account was opened and the complainant deposited Rs.11.58 crores (approx.) in the said account on 14.08.2020.
  - ii. However, on 18.08.2020, an authorization letter was presented to the bank by the accused company, signed by Mr. Arun Kumar and Mr. Rohtash Kumar. The said letter granted sole signing authority for all the cheques from the account to Mr. Amit Mavi, while stating that any instructions regarding the account from Mr. Anurag Solanki should not be accepted. This action was taken without informing or obtaining consent from Anurag Solanki.
  - iii. It is stated that out of the Rs. 11.58 crores deposited by respondent No.2 into the bank account specifically designated for making payments to specific creditors as per the SPA, the petitioners made payments of approximately Rs. 9 crores to its sister concerns, i.e, BOP Pvt Ltd having A/C No. 1201030000000004 at Nainital Bank, Greater Noida and Alisa Infratech Pvt Ltd having A/C No. 0651030000000004 at Nainital Bank, Vikas Marg, who were not mentioned in the list of creditors submitted to the Nainital Bank.
5. An FIR was registered on 05.10.2020 under section 406/420/120B IPC on the complaint of one Sh. Anuj Tyagi (AR of respondent No. 2 company) alleging that after receiving the sum of Rs.11.58 crores (approx.), the petitioners demanded an additional Rs. 5,31,97,061/-

crores for outstanding payments that were not part of the SPA. Nevertheless, respondent No.2 made the additional payment to advance the project's interests and to secure the original documents of the accused companies, which were to be handed over to respondent No.2 in accordance with the SPA. To sum up, the allegations against the petitioners are-

- (i) The documents conveying title of the accused companies have not been handed over by the petitioners to respondent No.2.
  - (ii) Respondent No.2 had put Rs.11.58 crores (approx.) in a bank account which had to be operated by two persons namely, one Mr. Amit Mavi and one representative of IIFL. Therefore, by changing the signing authority of the bank account, the petitioners are guilty of siphoning off funds.
  - (iii) The petitioners are deceiving IIFL, respondent No.2, and other project investors and are currently attempting to abscond from the country by embezzling funds worth over Rs. 400 crores.
6. There is also a subsequent complaint by Mr. Anurag Solanki (representative of IIFL) in this regard about embezzlement of Rs. 9.33 crores out of 11.58 crores (approx.)
  7. Mr. Aggarwal, learned senior counsel states that the entire substratum of the FIR stands obliterated, as is evident from the Status Report dated 17.08.2022 filed by the respondent No.1/State. He submits that neither the respondent No.2 nor the Investigating Agency, have either in the FIR or in the course of the pleadings in the above matters made any allegation with respect to any forgery and the said allegation has been made only with a view to create a prejudicial narrative against the petitioners knowing that all allegations in the FIR stand demolished.

8. He states that during the course of arguments, an application under section 156 (3) Cr.PC had been filed by the respondent No.2 company for monitoring of the investigation. Pertinently, it was found that the same has been filed after hearing the order dated 26.07.2022, when this Hon'ble Court had listed the present matter for final arguments. He states that this is clearly an abuse of law and has been done to create a superficial argument.
9. He further states that the instant dispute is at best ex-facie a civil dispute and the allegations with respect to the offence of cheating qua the accused are based on the premise that M/s Alisa Infratech Pvt Ltd had failed to hand over the documents in pursuance of the Share Purchase Agreement are vague and absurd because the same was not done owing to the non-compliance of certain reciprocal obligations by the Respondent No.2 and since the terms of the agreement were under dispute.
10. It is stated that the documents qua the ownership of the accused companies have now been transferred to the respondent No.2 and any such dispute between the parties culminating into the instant FIR no longer persists. He also submits that the offence of criminal breach of trust under section 406 IPC is not made out as per the allegations of the instant FIR as there is no entrustment of any property from the respondent No.2 to the petitioner herein or any other accused persons. Without such 'entrustment' which is the pre-requisite of the offence under section 406, the same cannot be made out against the petitioner and other accused persons.
11. In this regard, it is stated that the cases pertaining to the offences of section 420/406 IPC are an exception to the general rule that concept of locus standi is inapplicable for the purpose of registration of an FIR. He

submits that it is trite that for the alleged commission of offences under section 420/406 IPC, only an aggrieved party can register an FIR.

12. It is also submitted that the allegation regarding misappropriation of funds of Rs.11.58 crores (approx.) payable to specific creditors is completely false and without any basis. It is stated that the petitioners have already entered into settlement agreements with the said creditors.
13. He relies upon a judgement of this Court titled as “*Narinder Singh v. Rajinder Kumar Lamba & Ors*” [(2007) 94 DRJ 614], and more particularly paras 4 and 11 which reads as-

*“4. The petitioner accepts the execution of the agreement to sell whereby he agreed to sell his 02/7th share in the undivided property in question to the complainant for a consideration of Rs. 48.50 lacs. Case put up by him, however, is that out of this amount, the complainant had paid a sum of Rs. 3.50 lacs and the balance amount of Rs. 45.00 lacs was to be paid at the time of final documentation, which the complainant failed to pay on one pretext or the other. Just to gain time, the complainant filed a suit being CS(OS) No. 2100/1996 for specific performance of contract in this regard on or about 28.9.1996 and obtained interim injunction. His submission is that as an afterthought, much thereafter in the year 1999, a criminal complaint was filed by the complainant in which process was issued on 8.8.2000. Contention of the petitioner, therefore, is that the entire dispute is of civil nature and the cognizance of the complaint was wrongly taken by the learned MM.*

*11. In the backdrop of earlier findings and observations of the learned ASJ, the aforesaid conclusion would not be correct one. Once he himself found that there was no dishonest intention and*

*fraudulent intention at the inception, in the facts of this case, I fail to comprehend as to how such an intention was developed afterwards. The only reason given is that the accused No. 2 did not handover the possession as promised. However, it could not be disputed that the petitioner had only undivided 2/7th share in the property. It is also not in dispute that the petitioner had filed a suit for partition, which is pending in this Court. In the absence of there being partition by metes and bounds, he could not have given the possession. He could only give symbolic possession of his 2/7th undivided share and not actual physical possession. Further, insofar as the petitioner/accused No. 1 is concerned, in the suit for specific performance filed by the complainant he had made a categorical statement that he was ready to fulfill his part of the agreement by selling his 2/7th share in the property. Agreement with M/s. SS Associates is entered into by the accused No. 2, which is in respect of the remaining 5/7th share, namely, 1/7th undivided share belonging to the accused No. 2 and 2/7th undivided share each belonging to her other two brothers. Neither the accused No. 2 nor her two brothers were party to the agreement to sell between the petitioner and the complainant. Agreement to sell, insofar as the complainant is concerned, is in respect of the 2/7th undivided share of the petitioner only. There is nothing on record to suggest that the accused No. 2 had agreed to sell her share or the share of her two brothers to the complainant. The complainant admits that the accused No. 2 was having Power of Attorney on behalf of the two brothers. Therefore, had there been any intention to sell by the accused No. 2, she could have sold the remaining 5/7th share as well when the agreement to sell was executed between the petitioner and the*

*complainant. We have to see the element of cheating on the part of the petitioner which is totally lacking.*

*In G. Sagar Suri (supra), the Supreme Court made the following pertinent observations:—*

*“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 other wise to secure the ends of justice.*

*9.....In State of Karnataka v. E. Muniswamy this court said that in the exercise of the wholesome power under Section 482 of the code of High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceedings are to be quashed.”*

14. He has also relied upon a judgement of Supreme Court titled as “**Vesa Holdings (P) Ltd. v. State of Kerala**” [(2015) 8 SCC 293] wherein it was held-

*“12. From the decisions cited by the appellant, the settled proposition of law is 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 other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. 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 initial promise being absent, no offence under Section 420 of the Penal Code, 1860 can be said to have been made out.”*

15. Per contra, Mr. Maninder Singh, learned senior advocate appearing for respondent No.2 states that upon issuance of Notice to the Respondents, Respondent No.1 filed its Status Report wherein para 6 reads as-

*“6. Thereafter, on 18.08.2020, request was made by Amit Mavi and Anurag Solanki, jointly, to the bank for issuance of DDs to various creditors for an amount of Rs. 10.42 Crore. On 18.08.2020 itself, another authorization letter for signatory was submitted to the bank by the alleged company (Signed by Directors Arun Kumar &Rohtash Kumar), wherein, Sh Amit Mavi was solely authorized to sign all the cheques of the said account. It was further mentioned that any instruction in regard to the said account given Sh Anurag Solanki should not be entertained. This was done without intimation or consent of Anurag Solanki.”*

16. He states that this shows that the I.O. has clearly outlined the petitioner's modus operandi for siphoning off Rs. 9 crores. In accordance with the Share Purchase Agreement, Respondent No. 2

deposited Rs. 11.58 crores (approx.) into an Escrow account at the National Bank, which was meant to be used to pay creditors jointly under the signatures of co-accused Amit Mavi and Anurag Solanki from IIFL. As per the Status Report, on 18.08.2020, Amit Mavi and Anurag Solanki sent a letter to the National Bank requesting Demand Drafts for a total of Rs. 10.42 crores to pay various creditors. A new resolution dated 18.08.2020 made Amit Mavi the sole signatory for the National Bank account, thereby overriding the earlier Board Resolution of 19.03.2020, which had made the accused a joint signatory of the account with Anurag Solanki.

17. It is stated by learned counsel for respondent No. 2 that after passing the said resolution, the petitioner and other accused persons siphoned off Rs. 9 crores to sister concerns such as BOP Pvt. Ltd. and other related parties in violation of the Share Purchase Agreement. Moreover, he relies on para 10 of the said status report which reads as *“10. That, the reply received from the accused persons had vague answers and they did not disclose anything about siphoning off funds to the tune of approx Rs 9 Crore. Hence, their custodial interrogation was required to unveil the conspiracy hatched by them in siphoning off funds, which was exclusively paid for making clients payment. Accordingly, their office was raided, which was found to be already vacated by the alleged persons. Thereafter, their respective residences were raided, but the accused persons were not found available at the given premises. Accordingly, NBWs against accused Arun Kumar, Rohtash Kumar & Amit Mavi were obtained and raids were conducted to arrest them. As NBW against them remained unexecuted. Proclamation u/s 82 CrPC was issued by the Hon’ble CMM Court. Thereafter, the accused persons approached the Hon’ble CMM/NDD court and the Hon’ble High Court of Delhi, wherein, the Hon’ble Courts dropped the process*

*u/s 82 CrPC and cancelled the NBWs issued against them.*”and states that this clearly mentions that the petitioners did not have any response to the questions regarding siphoning of funds.

18. It is further stated that based on the aforementioned status report, respondent No. 2 discovered additional documents related to Baya Weaver Ltd including a fabricated Board Resolution dated 18.08.2020 and another Board Resolution dated 26.08.2020. It is a submission that the petitioners, in furtherance of a criminal conspiracy, authorized Mr. Amit Mavi to act as the sole signatory for a bank account maintained at Nainital Bank. Using these documents, respondent No. 2 filed an application under Section 156(3) of the Criminal Procedure Code (Cr.P.C.) before the learned CMM seeking investigation into offences under Sections 467/468/471/474 IPC for creating fraudulent and fabricated Board Resolutions. Accordingly, on 13.09.2022, the I.O filed an Action Taken Report (ATR) stating that more time was needed to investigate the allegations of forgery. Additionally, respondent No. 2 provided the IO with copies of resignation letters dated 30.03.2022 that were submitted by the petitioners and other co-accused to the complainant.
19. Counsel for respondent No.2 is praying for dismissal of the present petition on the following grounds amongst others:
  - (i) Existence of civil remedy is no bar to initiation of criminal proceedings if prima facie offences are made out.
  - (ii) The Respondent No. 1 is still investigating the offences of forgery which have come to light during investigation and thwarting investigation at this stage would amount to miscarriage of justice.
  - (iii) There is sufficient evidence on record to show that Petitioner and other Accused persons have siphoned off funds and said money trial is yet to be investigated.

(iv) Grounds urged by the Petitioner are in the nature of their defence which can only be examined during trial. This Hon'ble Court cannot be asked to look into documents placed on record by the Petitioner at this stage.

(v) Courts under its inherent powers under Section 482 Cr.P.C. or under Articles 226 read with 227 of the Constitution are not to hold mini trial to ascertain veracity of allegations and the same is an executive function which has to be carried out by the Investigating agencies under the State.

(vi) Even assuming that the money siphoned off was repaid to Creditors finding mention in Schedule G of the SPA, the same was done after registration of FIR and therefore cannot absolve Petitioner of offences committed.

20. Mr. Maninder Singhas relied upon the judgement of the Hon'ble Apex Court titled as "***Priti Saraf v. State of NCT of Delhi***" [(2021) SCC Online SC 206] wherein it was held-

*"32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an*

*abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.”*

21. He has also relied upon “*Neeharika Infrastructure Pvt. Ltd. v State of Maharashtra*”[(2021)SCC Online SC 315] to state that Courts should not thwart investigation into cognizable offences, power of quashing should be used sparingly, criminal proceedings ought not to be scuttled at initial stage and quashing of complaint/FIR should be an exception. He has relied upon para 80, wherein the Supreme Court opined that-

*“80. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:*

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
- ii) Courts would not thwart any investigation into the cognizable offences;*

- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*
- vi) Criminal proceedings ought not to be scuttled at the initial stage;*
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*
- ix) The functions of the judiciary and the police are complementary, not overlapping;*
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

*xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

*xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

*xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

*xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

xvi) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while*

*dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

*xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

*xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”*

22. In reply to the judgements relied upon by the respondent No.2, Mr. Aggarwal has stated that the above mentioned judgements are inapplicable in the present case.
23. I have heard learned counsel for the parties.
24. It is an admitted fact that the arbitration proceedings are pending between the parties.
25. In section 17 application (under the Arbitration Act) filed by the respondent No.2, the respondent No.2 is seeking a direction to hand over the documents of the accused companies as per the terms and

conditions of the SPA and also seeks for specific performance of the SPA's.

26. Similarly, the petitioners herein are requesting the respondent No.2 to make payments that have become due and payable as per the list of allottees and creditors which is equivalent to Rs. 11,43,14,494/- and in the alternative, seeking direction to respondent No.2 to deposit a sum of Rs. 72 crores with the Tribunal which are due to be paid to the creditors, vendors as per Article 4.16 of the SPA.
27. The Arbitrator vide order dated 15.03.2021 has observed that both the parties essentially pray for specific performance of the SPA's.
28. The petitioner's case before the Arbitral Tribunal was that the respondent No.2 had to pay a sum of Rs. 370 crores (approx.) before the control of the accused companies could be handed over to respondent No.2. However, admittedly, approximately Rs. 298 crores have been paid by the respondent No.2. They state that they will handover the documents of the accused companies once the respondent No.2 clears the balance liabilities of about Rs. 72 crores.
29. On the other hand, it is the case of respondent No.2 before the Arbitral Tribunal that it has fulfilled its obligation of payment of consideration under the SPA and has cleared liabilities of nearly Rs. 300 crores but despite the same, the petitioners have not handed over the control of the accused companies.
30. In addition, the parties have also admitted before the Arbitral Tribunal that the interpretation of the terms and condition of the SPA is the only thing required to be decided by the Arbitral Tribunal.
31. The order of 15.03.2021 further records that the possession of the project has already been given to the respondent No.2 but respondent No.2 does not have effective control over the accused companies as the

documents required for complete handing over have not yet been executed.

32. After going through the terms of the contract, the Arbitral Tribunal was pleased to pass directions, wherein the respondent No.2 was to pay Rs. 11,43,14,494/- to the buyers on behalf of the companies and further, an irrevocable bank guarantee to the sum of Rs. 50 crores was required to be furnished by the respondent and the petitioners were required to hand over documents of the accused companies for effective control of the companies.
33. During the course of arguments, I am informed that all the documents have been executed and submitted to the respondent No.2.
34. The offence of cheating is defined in section 415 of IPC as-

*“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”.”*
35. The essential ingredients of cheating to constitute an offence under section 420 have been laid down in a judgement of Supreme Court titled as “**Archana Rana v. State of U.P**”[(2021) 3 SCC 751] as under-

*“7. Having heard the learned counsel appearing on behalf of the appellant and the learned counsel appearing on behalf of the respondent State and having gone through the averments in the complaint and the charge-sheet, even if the averments made in the complaint are taken on their face, they do not constitute*

*the ingredients necessary for the offence under Sections 419 and 420 IPC. As observed and held by this Court in R.K. Vijayasarathy [R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:*

*(i) a person must commit the offence of cheating under Section 415; and*

*(ii) the person cheated must be dishonestly induced to*

*(a) deliver property to any person; or*

*(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*

*Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.*

*8. “Cheating” is defined under Section 415 IPC. The ingredients to constitute an offence of cheating are as follows:*

*(i) there should be fraudulent or dishonest inducement of a person by deceiving him:*

*The person who was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or the person who was induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived.*

*Thus, a fraudulent or dishonest inducement is an essential ingredient of the offence under Section 415 IPC. A person who*

*dishonestly induced any person to deliver any property is liable for the offence of cheating.”*

36. As per the FIR, it has been stated that the complainant/respondent No.2 paid the amounts as required under the SPA and the petitioners despite receiving the amounts did not transfer the ownership of accused companies to the respondent No.2. The petitioners, on the other hand, have taken steps towards performance of their obligation under the SPA by transferring the physical possession of the project of the accused companies which shows that even they were ready and willing to meet their commitments.

37. In the case of “**Anil Mahajan v. Bhor Industries Ltd**” [ (2005) 10 SCC 228], the Apex Court laid down a distinction between a mere breach of contract and the offence of cheating. It reads as-

*“6...A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.”*

38. The Supreme Court in “**Hira Lal Hari Lal Bhagwati v. CBI**” [(2003) 5 SCC 257] has also outlined that-

*“40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was*

*made cannot be presumed.”*

39. Hence, in the present case, it would be inaccurate to allege that the petitioners had a motive to unlawfully misappropriate the funds of respondent No.2 at the inception of the SPA.
40. The Arbitral Tribunal has rightfully observed that there is only acrimony and lack of trust between the parties. According to me, this acrimony and lack of trust has prompted the filing of the current FIR.
41. In my opinion, the matter under consideration is a civil dispute, and the only distinction lies in the interpretation of the terms of the SPA and the timeline of their commitments and obligations.
42. The allegation that the petitioners have misappropriated the funds of Rs 9.33 crores out of Rs.11.58 crores (approx.) payable to specific creditors which were kept in an Escrow account by filing a forged Board Resolution also do not make out the offence of breach of trust or cheating. The Status Report filed by the respondent No.1 on 17.08.2022 categorically states that the petitioners have already made payment of Rs 12.09 crores to buyers instead of Rs. 9.33 crores. Hence, there is no siphoning off of Rs 9.33 crores by the petitioners, as alleged.
43. The allegations of breach of trust are also not made out as there is no dishonest misappropriation of property by the petitioners. At best, the allegations can only be of “lack of trust” but not “breach of trust”.
44. In this view of the discussion above, the FIR read as a whole does not disclose the ingredients of Sections 406/420/120B. Therefore, FIR No. 147/2020, dated 05.10.2020 under sections 406/420/120B IPC, registered at P.S. Economic Offences Wing is hereby quashed.

45. The petitions are accordingly disposed of.

**JASMEET SINGH, J**

**MARCH 06, 2023 / (st)/(MS)**

*Click here to check corrigendum, if any*

