

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1241 of 2016

1. Asit C. Mehta Investment Intermediates Ltd.,
represent through its Director
Deena Asit Mehta @ Deena A Mehta
 2. Deena Asit Mehta @ Deena A. Mehta
 3. Kirit Himatlal Vora, Kriti H. Vora
 4. Mangalam Securities
(Sub Broker and Business Associate of petitioner No. 1)
represent through its proprietor Hari Shankar Modi.
 5. Hari Shankar Modi
- Petitioners
- Versus
1. The State of Jharkhand.
 2. Rajendra Prasad
- Opposite Parties

with

Cr.M.P. No. 669 of 2008

1. Asit C. Mehta Investment Intermediates Ltd.,
through Managing Director.
 2. Mr. Asit C. Mehta
 3. Smt. Deena A. Mehta
- Petitioners
- Versus
1. The State of Jharkhand.
 2. Rajendra Prasad (Advocate)
@ Rajendra Prasad Basaiwala
- Opposite Parties

with

Cr.M.P. No. 889 of 2008

- Hari Shankar Modi
- Petitioner
- Versus
1. The State of Jharkhand.
 2. Rajendra Prasad (Advocate)
@ Rajendra Prasad Basaiwala
- Opposite Parties

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

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|---------------------|---|--|
| For the Petitioners | : | Mr. Jitendra S. Singh, Advocate. |
| | : | Mr. Onkar Nath Tewari, Advocate. |
| | | [in Cr.M.P. Nos. 1241 of 2016 & 669 of 2008] |
| | : | None [in Cr.M.P. No. 889 of 2008] |
| For the State | : | Ms. Nehala Sharmin, Spl.P.P. |
| | : | Mr. Navin Kumar Singh, A.P.P. |
| | : | Mr. Jitendra Pandey, A.P.P. |
| For the O.P. No. 2 | : | Mr. R.S. Mazumdar, Sr. Advocate. |
| | : | Mr. Rishav Kumar, Advocate. |
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21/ 22.02.2024 Heard Mr. Jitendra S. Singh along with Mr. Onkar Nath Tewari, learned counsel appearing for the petitioners in Cr.M.P. Nos. 1241 of 2016 and Cr.M.P. No. 669 of 2008, Ms. Nehala Sharmin, Mr. Navin Kumar Singh and Mr. Jitendra Pandey, learned A.P.Ps. for the State in respective cases and Mr. R.S. Mazumdar, learned senior

***Cr.M.P. No. 1241 of 2016 and
its analogous cases***

counsel along with Mr. Rishav Kumar, learned counsel appearing for the O.P. No. 2.

2. Nobody has responded on behalf of the petitioner in Cr.M.P. No. 889 of 2008, that's why, this petition is being heard on merits in absence of the petitioner.

Cr.M.P. No. 1241 of 2016

3. In this petition prayer is made for quashing of the entire criminal proceeding including the order taking cognizance dated 21.01.2016, by which cognizance for the offence under Section 409 of the Indian Penal Code has been taken against the petitioner Nos. 1 to 3 and Section 120-B of the Indian Penal Code against the petitioner Nos. 4 and 5, in connection with P.C.R. Case No. 192 of 2010 (T.R. No. 387 of 2016), pending in the court of learned Chief Judicial Magistrate, Dumka.

4. The complaint case was lodged by the O.P. No. 2, alleging therein that the accused No.1 is a Stock Broker and also a Depository Participant and the accused No.4 is stock sub broker and associate of accused No.1 and both of them are engaged in the business of stock broking of shares with National stock exchange as well as Bombay stock exchange and they are providing stock broking services through on line computers system at Dumka through the computer terminals installed at the office of the accused No.4 at Zila School Road, Dumka to the clients who are registered with them for the purpose of availing stock broking services.

It is further stated that accused No.2 is the Managing Director and accused No.3 is the whole time Director of accused No.1 and they are in charge of and responsible for the conduct and day to day affairs of the business of the company accused No.1 and the accused No.5 is the proprietor and person in charge and responsible for the conduct and day to day affairs of the business of the accused No.4.

It is further stated that for providing the said stock broking service to the complainant, the accused persons entered into the Tripartite agreement with the complainant at Dumka for dealing in

the shares with National stock exchange and Bombay Stock Exchange for which they obtained the signatures of the complainant on to many printed papers contained in a booklet including the power of attorney at Dumka which the accused No.5 got it executed by the complainant in favour of accused No.1 and accordingly the complaint was registered as a client under group code of the accused No.4 and client I.D. Code No. 116525 and 116526 were allotted to the complainant for cash segment and derivative segment.

The said tripartite agreement in original is lying either with the stock broker accused No.1 or stock sub broker accused No.4. The accused No.5 has provided the specimen copy of the said tripartite agreement, duly certified by him, to the complainant.

It is further stated that the agreed terms and conditions of the said tripartite agreement, the complainant placed orders of purchase of shares and the said order was carried out by accused persons at Dumka and the remittance was made at Dumka and accordingly shares of different company were purchased by the accused persons for the complainant's code No. 116525 and the purchased shares were kept in the demat account No. 1201320000495114 of the complainant.

It is further stated that on 22.01.2008, the accused persons, fraudulently and dishonestly violated the terms and conditions of the tripartite agreement and behaved abnormally and caused immense loss to the complainant against which apart from the other notices to the accused, the complainant vide his office Notice dated 28.01.2008 strictly warned the accused No. 1 and 4 not to make any further transaction (either of buying or selling) in the account code No. 116525 of the complainant without the written request of the complainant. The said notice had already been received by the accused persons.

It is further stated that apprehending the drastic fraudulent activities of the accused persons, the complainant vide his notice 19.09.2009 revoked the power as dated given earlier to accused

***Cr.M.P. No. 1241 of 2016 and
its analogous cases***

No.1 and the same was sent to accused No.1 through fax on 19.09.2009 which was received in the office of the accused No.1 through fax on 19.09.2009 at about 1.09 P.M. The copy of the said notice dated 19.09.2009 was also sent to accused No. 4 & 5 through courier and it was delivered to the accused No.4 on 22.09.2009.

It is further stated that the accused No.1, by suppressing so many important facts, filed an arbitration application before the National Stock Exchange of India Limited who on its turn without applying its mind, mechanically started the arbitration proceeding bearing Arbitration Matter No. FO/K-0146/2008 and illegally appointed the arbitrator.

It is further stated that the complainant challenged the power and jurisdiction of the arbitrator as the appointment of the arbitrator by National Stock Exchange of India Ltd. was patently illegal, void ab-initio, perverse and contrary to the provision of the law but the arbitrator illegally made an award of Rs. 1,56,017-64 paisa and signed it on 17.06.2009 and National Stock Exchange of India Ltd. vide its letter dated 18.06.2009 sent the award to the complainant with an assertion that if either of the party is not satisfied with the award, the aggrieved party may approach the appropriate court with an application for setting aside the award U/S 34 of the Arbitration & Conciliation Act, 1996 within a period of three months from the date of receipt of the award.

It is further stated that on one hand the accused persons have intimated the complainant at Dumka, that they in pursuance of the Arbitration Matter A.M. No. FO/K-0146/2008 for realization of the awarded amount worth Rs. 1,56,017.64, have sold the stock of the complainant to the tune of Rs. 1,56,967.19 on 29th, 30th of September & 1st of October, 2009 but on other hand the accused No.1 & 4 jointly submitted their written statement duly supported with affidavit on 05.11.2009 before the court of the learned Sub ordinate Judge, Dumka in Title Arbitration Suit No. 44/2009, in which, they have admitted about non-realization of the

awarded amount.

Cr.M.P. No. 669 of 2008

5. In this petition prayer is made for quashing of the entire criminal proceeding including the order taking cognizance dated 11.03.2008, by which cognizance for the offence under Sections 409, 420 and 120-B of the Indian Penal Code has been taken against the petitioners, in connection with P.C.R. Case No. 83 of 2008 (T.R. No. 854 of 2008), pending in the court of learned Judicial Magistrate, 1st Class, Dumka.

6. The complaint case was filed by the O.P. No. 2 alleging therein that the accused No.1 is the registered Stock Broker of stock exchange with S.E.B.I. and accused Nos. 2 and 3 are the Chairman and Managing Director of accused No.1 respectively and they are in-charge and responsible for the conduct and day to day affairs of the accused No.1.

The accused No.4 is the sub-broker registered with SEBI and is the associate and franchisee of accused No.1 and accused No.5 is the proprietor and in-charge and responsible for the conduct and day to day business affairs of the accused No.4.

Considering the genuineness and financial soundness of the complainant, the accused No.5 in collusion and connivance with accused No.2 and 3 assured the complainant that the accused No.1 is the registered member of stock exchange and depository participant.

The accused persons entered into a tripartite agreement at Dumka with the complainant to provide stockbroking services to the complainant for transaction of shares with stock exchange and accordingly the complainant was registered with accused No.4 at Dumka. Thereafter, client I.D. Code No.116525 was allotted to the complainant for cash segment and, client I.D. Code No. 116526 was allotted for future segment and a demat account was opened in favour of the complainant.

In order to promote their broking business, the accused persons induced the complainant to invest money in the future

***Cr.M.P. No. 1241 of 2016 and
its analogous cases***

segment. The accused No.5 induced the complainant to entrust some shares of cash segment with accused No.1 as security and assure the complainant that the security, if deposit by the complainant shall be kept in a separate account and shall not be used by the accused persons and reposing faith upon the accused persons, the complainant entrusted following shares of cash segment to the accused No.1:

Reliance Communication - 100 pcs

Reliance Capital - 50 pcs

Infosys - 30 pcs

On the basis of instruction slip dated 14.12.2007, the above mentioned shares were transferred from the demat account of the complainant to the account of accused No.1 on 22.12.2007.

On 22.01.2008, the accused persons in criminal conspiracy with each other, intentionally, dishonest and fraudulently sold all the future segments lying in the Code of the complainant which were under the custody and control of the accused persons.

On 25.01.2008, the complainant vide notice protested the fraudulent act of the accused persons but to no avail. The complainant vide notice dated 28.01.2008 requested the accused persons to keep the security shares intact but accused persons sold the entire security shares on 13.02.2008, and misappropriated the entire amount.

The accused No.5 in criminal conspiracy with accused No. 2 and 3 deceived the complainant and fraudulently and dishonestly induced the complainant to deliver the shares of cash segment as security to the accused No.1 and the complainant acted on such inducement.

Cr.M.P. No. 889 of 2008

7. In this petition prayer is made for quashing of the entire criminal proceeding including the order taking cognizance dated 11.03.2008, by which cognizance for the offence under Sections 409, 420 and 120-B of the Indian Penal Code has been taken against the petitioner, in connection with P.C.R. Case No. 83 of 2008 (T.R. No. 854

of 2008), pending in the court of learned Judicial Magistrate, 1st Class, Dumka.

8. The facts of the present case are similar to the facts of the case of Cr.M.P. No. 669 of 2008, as the same complaint is under challenge in the present case also.

9. Mr. Jitendra S. Singh, learned counsel appearing for the petitioners in Cr.M.P. No. 1241 of 2016 submits that the petitioner No. 1 is a company registered under the Companies Act, 1956, which deals in shares and stocks. He submits that the said company is a SEBI (Securities and Exchange Board of India) registered stock broker and depository participant. He further submits that the petitioner No. 2 is the Managing Director of the petitioner company and petitioner No. 3 is whole time Director of the said company. He submits that the petitioner No. 4 is a sub-broker registered with SEBI. He further submits that the petitioner No. 4, who runs its business under the name and style of *M/s Mangalam Securities*, situated at Dumka town. Mr. Singh submits that in Cr.M.P. No. 669 of 2008, the petitioner No. 1 is a trader company in share and securities and the petitioner Nos. 2 and 3 are the Managing Director and Whole Time Director of the petitioner company. He submits that O.P. No. 2 has demat account with the petitioner company having Client code No. 116525 to deal in cash segment and also deal in derivative segment. He submits that the O.P. No. 2 became the client of the petitioner company to trade in shares and stocks at the stock exchanges by entering into an agreement. Mr. Singh submits that the allegations are made in respect of share transaction and for that the petitioner company has invoked the arbitration clause to resolve the dispute under the Arbitration and Conciliation Act (as amended). He submits that the arbitration matter was conducted under the supervision of National Stock Exchange of India (NSE) and the award dated 18.06.2009 was in favour of the petitioner-company and O.P. No. 2 was directed to pay a sum of Rs. 1,56,017.64 within a period of one month from the date of award. He submits that the dispute is already decided in the arbitration in view of that the case is arising out of a civil dispute, which cannot be a subject matter of criminal case. Mr. Singh elaborates

his argument and submits that on 15.09.2009, the petitioner company dispatched a letter dated 14.09.2009 to the O.P. No. 2 informing the O.P. No. 2 to fulfill the aforesaid award. He further submits that the O.P. No. 2 issued a letter dated 19.09.2009 to the petitioner company whereby he has revoked the power of attorney. He submits that the said power was existing for 15 days in view of the agreement after revocation. He submits that on the instruction of the O.P. No. 2, the petitioner company stopped transaction with immediate effect from 03.10.2009 as agreed in the agreement. According to him prior to realization of the alleged award amount by the petitioner company, no stay or any interim order granted by the learned court nor filing of Arbitration Suit No. 44 of 2009 was intimated by the O.P. No. 2 to the petitioners. He further submits that thereafter the O.P. No. 2 filed PCR Case No. 192 of 2010 before the learned Chief Judicial Magistrate, Dumka on the alleged Section of Section 409 of the Indian Penal Code.

10. Mr. Singh, learned counsel appearing for the petitioners by way of referring Clause-1.7.5 of the agreement, submits that arbitration clause is there and the liquidation is also provided there. By way of referring Clause-2.1, he submits that the effect of damages or bearing is describes and he further refers to Sub-Clause-A of Clause-2.1 and submits that Future trading involved daily settlement of all positions are there. He refers to Sub-Clause-B of Clause-2.1 and submits that if the O.P. No. 2 failed to deposit the additional margin by the deadline or if an outstanding debt occurs in the account, the broker/member may liquidate a part of or the whole position or substitute securities and the O.P. No. 2 is liable for any losses incurred due to such close-outs. He further submits that the O.P. No. 2 has filed a consumer case before the District Consumer Forum at Dumka, which was dismissed on 28.06.2016. He refers to arbitration award dated 18.06.2009 and submits that a sum of Rs. 1,56,017.64 was awarded in favour of the petitioner's company, against which, the petitioner has moved to Bombay High Court, which is still pending. On these grounds he submits that for a civil wrong, maliciously the criminal prosecution has been launched by the O.P. No. 2 against the petitioners.

11. Learned counsel appearing for the petitioners has relied in the case of **Vijay Kumar Ghai & Ors. Versus State of West Bengal & Ors.**, reported in **(2022) 7 SCC 124**, wherein the Hon'ble Apex Court in paras-27 to 41.3, it has been held as under:-

“27. Section 405IPC defines “criminal breach of trust” which reads as under:

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.”

The essential ingredients of the offence of criminal breach of trust are:

(1) The accused must be entrusted with the property or with dominion over it,

(2) The person so entrusted must use that property, or;

(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.

28. *“Entrustment” of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, “in any manner entrusted with property”. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of “trust”. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section*

406 of the Penal Code.

29. *The definition in the section does not restrict the property to movables or immovables alone. This Court in R.K. Dalmia v. Delhi Admn. [R.K. Dalmia v. Delhi Admn., (1963) 1 SCR 253 : AIR 1962 SC 1821] held that the word “property” is used in the Code in a much wider sense than the expression “movable property”. There is no good reason to restrict the meaning of the word “property” to movable property only when it is used without any qualification in Section 405.*

30. *In Sudhir Shantilal Mehta v. CBI [Sudhir Shantilal Mehta v. CBI, (2009) 8 SCC 1 : (2009) 3 SCC (Cri) 646] it was observed that the act of criminal breach of trust would, inter alia mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.*

31. *Section 415IPC defines “cheating” which reads as under:*

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

The essential ingredients of the offence of cheating are:

- 1. Deception of any person*
- 2. (a) Fraudulently or dishonestly inducing that person—*
 - (i) to deliver any property to any person;*
 - or*
 - (ii) to consent that any person shall retain*

any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

33. Section 420IPC defines “cheating and dishonestly inducing delivery of property” which reads as under:

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

34. Section 420IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false

representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. *As observed and held by this Court in R.K. Vijayasathya v. Sudha Seetharam [R.K. Vijayasathya 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 420IPC.

7. *The following observation made by this Court in Uma Shankar Gopalika v. State of Bihar [Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp. 338-39, paras 6-7)*

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-BIPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. ... It was pointed out on behalf of the complainant that the accused fraudulently persuaded the

complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. 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 that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-BIPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482CrPC which it has erroneously refused.”

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

of the appellants.

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

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

40. Having gone through the complaint/FIR and even the charge-sheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Sections 405 and 420 IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420IPC can be said to have been made out. In the instant case, there is no material to indicate that the

appellants had any mala fide intention against the respondent which is clearly deductible from the MoU dated 20-8-2009 arrived at between the parties.

41. The entire origin of the dispute emanates from an investment made by Respondent 2, amounting to Rs 2.5 crores in lieu of which 2,50,000 equity shares were issued in the year 25-3-2008, finally culminating into the MoU dated 20-8-2009. That based on this MoU Respondent 2 filed three complaints, two at Delhi and one at Kolkata. Thus, two simultaneous proceedings, arising from the same cause of action i.e. MoU dated 20-8-2009 were initiated by Respondent 2 amounting to an abuse of the process of the law which is barred. The details of the complaints are as under:

41.1. On 6-6-2012, Respondent 2 filed a private complaint under Section 156(3)CrPC with CJM, Tis Hazari Court, Delhi for registration of FIR against the appellants; which was withdrawn on 19-9-2016.

41.2. Complaint under Section 68 of the Companies Act r/w Section 200CrPC filed before the CMM, Tis Hazari Courts at Delhi; which is pending.

41.3. On 28-3-2013, a complaint was made to PS Bowbazar, Central Division, Kolkata which was eventually registered as FIR No. 168 under Sections 406, 420, 120-B of the Penal Code, 1860."

12. Relying on the above judgment, he submits that the facts of the above case and the facts of the present case are similar in view of that entire criminal proceeding may kindly be quashed.

13. Learned counsel appearing for the petitioners further relied in the case of **S.K. Goel & Ors. Versus The State of Jharkhand & Anr.**, reported in **(2023) 3 JCR 569 (Jhr)**. Paras-14 and 15 of the said judgment is quoted hereibelow:-

"14. Learned senior counsel submits that the entire case is arising out of a civil dispute and for the civil dispute, criminality has been put into by way of filing the FIR and if the civil dispute is there, criminal proceeding will not

proceed, as has been held by the Hon'ble Supreme Court in the case of **GHCL Employees Stock Option Trust Versus India Infoline Ltd.**, reported in (2003) 4 SCC 505. Paras-12 and 13 are quoted hereinbelow:-

“12. From a bare perusal of the complaint and the allegations made therein, we do not find in any of the paragraphs that the complainant has made specific allegations against Respondents 2 to 7. In Para 2 of the complaint, it is alleged that Respondents 2 to 6 are looking after the day-to-day affairs of the Company. With whom the complainant or its authorised representative interacted has also not been specified. Although in Para 11 of the complaint it is alleged that the complainant on numerous occasions met Accused 2 to 7 and requested to refund the amount, but again the complainant has not made specific allegation about the date of meeting and whether it was an individual meeting or collective meeting. Similarly, in Para 17 of the complaint, there is no allegation that a particular Director or Managing Director fabricated the debit note. In the entire complaint there are bald and vague allegations against Respondents 2 to 7.

13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence.”

15. He submits that for the similar facts and circumstances in the case of **Angel Broking Ltd. Versus State of Gujarat**, reported in (2018) SCC Online Guj 3772, it was found that there is not criminality held and the penal Sections i.e. 406 and 420 of the Indian Penal Code were not attracted. Paras-2.1, 14 and 15 of the said judgment are quoted hereinbelow:-

“2.1 Complainant No. 2 filed private complaint with the Chief Judicial Magistrate Court at Jamnagar, alleging that, respondent No. 2 was having share trading and demat

account with the applicant company. It is alleged that on account of the recession in the market, without prior permission of the respondent No. 2, the complainant company sold off the shares of complainant at a very low price, thereby causing loss to the complainant and to recover such loss, the applicant company issued false bills for recovery of an amount of Rs. 2,96,000/-. It is also alleged in the complaint that the complainant has mentioned transactions from 08.05.2006 to 22.05.2006, wherein, according to the complainant, shares were purchased at high price and were disposed off at a very low price that too from the account of the complainant and behind the back of the complainant.

14. Having examined the relevant documents on record, the Court comes to the conclusion that the transfer of shares which took place on National Stock Exchange by the applicant company on behalf of the respondent No. 2 is in response to the due course of its business and inconformity with the agreement between the parties. The Criminal case therefore, registered subsequently appears to be an afterthought with a view to overcome the liability of the respondent No. 2, which has arisen out of the transactions. It is also found that though under the agreement clause, the remedy to resolve the dispute is made, including filing a complaint with the SEBI, the respondent No. 2 has not resorted to such remedy and has thought it fit criminal proceedings, which in the opinion of the Court, is clear abuse of process of law.

15. The perusal of the criminal complaint, suggest that on the very same day, learned Magistrate has passed order under Section 156(3) of Cr.P.C. directing registration of the F.I.R. Contents of the complaint do not reveal any specific role of any of the applicants No. 2 to 5 so as to attract provisions of Sections 406, 408 and 420 of the I.P.C. There is no allegations to suggest that any of the applicants had misrepresented before the

complainant so as to influence her decision to enter into the transaction. In fact, there is no allegation that the complainant had ever met the applicants in connection with any of the share transactions. The principles of vicarious liability cannot be invoked in the facts of the present case.”

14. Relying on the above judgment, he submits that the said case is also arising out of the mechanism of selling with regard to such dispute and in view of that the FIR itself was quashed by this court.

15. On the above grounds, learned counsel appearing for the petitioners submits that the entire criminal proceedings may kindly be quashed.

16. Per contra, Mr. R.S. Mazumdar, learned senior counsel appearing for the O.P. No. 2 draws the attention of the court to paras-5, 21, 27, 28 and 29 of Cr.M.P. No. 669 of 2008 and submits that the facts mentioned therein are wrong and by suppressing the material facts, the present Cr.M.P. has been filed. By way of referring the document brought on record by way of filing the additional counter affidavit contained in Annexure-A, he submits that the Arbitration Case No. ARBA No. 166 of 2008 was already disposed of by the Bombay High Court on 23.04.2008, wherein the present Cr.M.P. was filed on 13.05.2008 and there is averment in paras-5, 21, 27, 28 and 29 of Cr.M.P. No. 669 of 2008 that the said arbitration proceeding is pending before the Bombay High Court. He further submits that on this ground itself, the Cr.M.P. is fit to be rejected.

17. To buttress his argument, he relied in the case of **Amar Singh Versus Union of India & Ors.**, reported in (2011) 7 SCC 69, where in paras-60 to 62, the Hon’ble Supreme Court has held as follows:-

“60. In the last noted case of Dalip Singh [(2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324 : JT (2009) 15 SC 201] , this Court has given this concept a new dimension which has a far-reaching effect. We, therefore, repeat those principles here again: (SCC pp. 116-17, paras 1-2)

“1. For many centuries Indian society cherished two basic values of life i.e. ‘satya’ (truth) and ‘ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

However, this Court is constrained to observe that those principles are honoured more in breach than in their observance.

61. Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts as pointed out and discussed above. In view of such incorrect presentation of facts, this Court had issued notice and also subsequently passed the injunction order which is still continuing.

62. This Court, therefore, dismisses the writ petition and vacates the interim order

and is not called upon to decide the merits, if any, of the petitioner's case. No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case which is going on and especially in view of the petitioner's stand that he is satisfied with the investigation in that case."

18. On the same line, he further relied in the case of **Umesh Kumar Yadav Versus State of U.P.**, reported in **2022 SCC OnLine All**

655. Paras-15, 16 and 18 to 22 is quoted hereinbelow:-

15. Since, the applicants have not approached this Court with clean hands and filed false affidavit before this Court that the matter has been compromised, therefore, he does not deserve any indulgence by this Court.

16. The courts of law are meant for imparting justice between the parties. One, who comes to the court, must come with clean hands and no material facts should be concealed. I am constrained to hold that more often the process of the court is being abused by unscrupulous litigants to achieve their nefarious design. I have no hesitation in saying that a person, whose case is based on falsehood, has no right to approach the court. He/she can be summarily thrown out at any stage of the litigation. The judicial process cannot become an instrument of oppression or abuse or a means in the process of the Court to subvert justice, for the reason that the Court exercises its jurisdiction, only in furtherance of justice.

18. The Courts have, over the centuries, frowned upon litigants, who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts.

19. In Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 21, Apex Court held as under:

"To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt

with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that (truth alone triumphs) is an achievable aim there; or (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts”

20. In *Buddhi Kota Subbarai (Dr.) v. K. Parasaran*, (1996) 5 SCC 530, Apex Court held as under:

The course adopted by the applicant is impermissible and his application is based on misconception of law and facts. No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. After giving our careful consideration to the submissions made at the bar as well as those contained in the memorandum of the application, we are of the opinion that this application is misconceived, untenable and has no merits whatsoever. It is accordingly dismissed.

21. In *Arunima Baruah v. Union of India*, (2007) 6 SCC 120, Supreme Court held that it is trite law that to enable the Court to refuse to exercise its discretionary jurisdiction suppression must of material fact. Material fact would mean material for the purpose of determination of the lis. It was further held that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. In *Prestige Lights Limited v. State Bank of India*, (2007) 8 SCC 449, Apex Court held as under:

“It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power; therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose

full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

22. In K.D. Sharma v. Steel Authority of India Limited, (2008) 12 SCC 481, Supreme Court held that no litigant can play “hide and seek” with the courts or adopt “pick and choose”. To hold a writ of the court one should come with candid facts and clean breast. Suppression or concealment of material facts is forbidden to a litigant or even as a technique of advocacy. In such cases the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of Court for abusing the process of the court.”

19. He further refers to para-15 of the Cr.M.P. No. 669 of 2008 and submits that on 21.01.2008, there was a debit balance of Rs. 35,621.00 in the account of the O.P. No. 2 and after the lunch the debit balance stood in the account of the O.P. No. 2 to the tune of Rs. 3,45,307.88, for that the petitioner-company has already issued a notice to the O.P. No. 2 on 27.01.2008, wherein the arbitration Case No. ARBA No. 166 of 2008 was said to be filed before the Bombay High Court to recover Rs. 3,45,307.88 along with Rs. 25,000/- as legal cost. He further submits that on 14.02.2008, it has been stated that they had sold margin / securities share and appropriated the amount to the tune of Rs. 1,90,611/- and further on 18.02.2008 [Annexure-F to the counter affidavit], a demand letter of Rs. Rs. 3,45,307.88 was issued. He submits that if the amount of Rs. 1,90,611/- has already been recovered, as such, there was no occasion for the petitioner company to made a demand to the tune of Rs. 3,45,307.88, as such, Rs. 1,90,611/- is

misappropriated by the petitioner-company and for that demand, the petitioner company has already filed an arbitration case before the Bombay High Court.

20. In view of that he submits that the entrustment is there and there is violation by the petitioner company as well the others. To buttress his argument, he relied in the case of **MNG Bharateesh Rdddy Versus Ramesh Ranganathan**, reported in **2022 SCC OnLine SC 1061**, where in paras-20 to 23, it has been held as follows:-

20. Section 405 of the IPC deals with criminal breach of trust and reads as follows:

“405. Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.”

21. The offence of criminal breach of trust contains two ingredients : (i) entrusting any person with property, or with any dominion over property; and (ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.

22. In Anwar Chand Sab Nanadikar v. State of Karnataka⁶ a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words:

“7. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad

tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.”

23. In Vijay Kumar Ghai v. State of West Bengal² another two-judge bench held that entrustment of property is pivotal to constitute an offence under section 405 of the IPC. The relevant extract reads as follows:

“28. “Entrustment” of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, “in any manner entrusted with property”. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of “trust”. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.”

21. Relying on the above judgment, he submits that the two of the ingredients with regard to the criminal breach of trust is made out, i.e. entrustment and dishonest misappropriation.

22. With regard to the arbitration, he submits that if the criminality is made out even if the arbitration clause is there, the criminal case can be maintained and he relied in the case of **Priti Saraf Versus State (NCT of Delhi)**, reported in (2021) 16 SCC 142, where in paras-31 to 34, it has been held as follows:-

“31. 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 420IPC 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 482CrPC for quashing such proceedings.

32. We have perused the pleadings of the parties, the complaint/FIR/charge-sheet and orders of the courts below and have taken into consideration the material on record. After hearing the learned counsel for the parties, we are satisfied that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. The High Court was not justified in quashing the criminal proceedings in exercise of its inherent jurisdiction. The High Court has primarily adverted on two circumstances,

(i) that it was a case of termination of agreement to sell on account of an alleged breach of the contract and;

(ii) the fact that the arbitral proceedings have been initiated at the instance of the appellants.

Both the alleged circumstances noticed by the High Court, in our view, are unsustainable in law. The facts narrated in the present complaint/FIR/charge-sheet indeed reveal the commercial transaction but that is hardly a reason for holding that the offence of cheating would elude from such transaction. In fact, many a times, offence of cheating is committed in the course of commercial transactions and the illustrations have been set out under Sections 415, 418 and 420IPC.

33. Similar observations have been made by this Court in Trisuns Chemical Industry v. Rajesh Agarwal [Trisuns Chemical Industry v. Rajesh Agarwal, (1999) 8 SCC 686 : 2000 SCC (Cri) 47] : (SCC p.

690, para 9)

“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426].”

34. So far as initiation of arbitral proceedings is concerned, there is no correlation with the criminal proceedings. That apart, the High Court has not even looked into the charge-sheet filed against the second respondent which was on record to reach at the conclusion that any criminal offence as stated is prima facie being made out and veracity of it indeed be examined in the course of criminal trial.”

23. So far as the facts of Cr.M.P. No. 1241 of 2016 is concerned, he opposed the quashing on the ground that on 28.01.2008, the petitioner company stopped any further transaction in the account of O.P. No. 2 and by letter dated 14.02.2008, the margin / security share was sold to the tune of Rs. 1,90,611/- and on 01.07.2009, the sole arbitrator passed an award and directed the O.P. No. 2 to pay a sum of Rs. 1,56,017.64 within a period of one month from the date of award, against that the O.P. No. 2 has filed a suit, the petitioner company has filed the reply stating that the O.P. No. 2 is liable to pay a sum of Rs. 1,56,017.64, however, the said amount has already been recovered by

the petitioner company, which has been substantiated by the letter dated 08.10.2009, which is contained in Annexure-G to the counter affidavit filed on behalf of the O.P. No. 2 in Cr.M.P. No. 669 of 2008. He submits that in spite of that a further demand was made to the tune of Rs. 3,45,307.88. He further submits that in light of Section 36 of the Arbitration and Conciliation Act, if the award is not enforced, the person in favour of whom the award is there, may move before the competent civil court, however, the petitioner company has not invoked the said clause. He further submits that the O.P. No. 2 has filed a suit before the learned court at Dumka, wherein prayer is made for payment of the said amount. On these grounds, learned senior counsel appearing for the O.P. No. 2 submits that the criminality is made out and if the criminality is made out, both the civil and criminal cases can be maintained.

24. Learned A.P.Ps. appearing for the State in respective cases jointly submit that it appears from the record that the allegations are there and if the criminality is made out, the civil as well as criminal case both can be maintained.

25. In reply to the argument of learned counsel appearing for the O.P. No. 2, Mr. Onkar Nath Tewari, learned counsel appearing for the petitioners submits that the case is arising out of an agreement and he took the court to the several clauses of the said agreement, which is contained in Annexure-3 of Cr.M.P. No. 1241 of 2016 and by way of referring clause 1.6 submits that the steps of the member shall be governed by the Rules and Regulations of the SEBI. By way of referring Clause-1.7.2.1 he submits that O.P. No. 2 has read the entire agreement. By way of referring Clause-1.7.2.2 he submits that the O.P. No. 2 is responsible. By way of referring Clause-1.7.2.4 he submits that the said clause speaks of client is liable to pay the initial margins, withholding margins, special margins or such other margins. By way of referring Clause-1.7.5 he further submits that the company is authorized to liquidate or close out. He further refers to Clause-1.7.13 and submits that the arbitration clause is there. He further refers to Clause-1.7.23 and 1.7.25 of the agreement and submits that these are in favour of the

petitioners and the case is arising out of a civil nature in that view of the matter, the entire criminal proceeding may kindly be quashed.

26. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials on record in all the cases. It is an admitted position that the petitioner company and the petitioners are dealing with the shares and also registered with the SEBI. The O.P. No. 2 joined the hand as client of investment in the year 2006 and thereafter his account was being regularly operated by the said company in view of the demat account for that code was provided to the O.P. No. 2. Admittedly second amount quoted in the argument of learned counsel appearing for the petitioners as well as O.P. No. 2 was liquidated by the company for that the dispute arose.

27. In paras-5, 21, 27, 28 and 29 of Cr.M.P. No. 669 of 2008, it has been disclosed that the arbitration case number ARBA No. 166 of 2008 is pending before the Bombay High Court, wherein the present case is filed before this court on 13.05.2008. The document brought on record, as contained in Annexure-A, in the additional counter affidavit filed by the O.P. No. 2 clearly suggests that the said arbitration case was disposed of on 23.04.2008 itself, thus it is crystal clear that suppressing that fact, the present case has been filed.

28. In para-15 of the Cr.M.P. No. 669 of 2008, it has been stated that Rs. 35,621.00 was the debit balance in the account of the O.P. No. 2, whereas on 22.01.2008, it was stated that post lunch debit balance in the account of the O.P. No. 2 is shown to the tune of Rs. 3,45,307.88, for that the petitioner-company has already issued a notice to the O.P. No. 2 on 27.01.2008 and for that amount itself, arbitration Case No. ARBA No. 166 of 2008 was filed for recovery of the said amount before the Bombay High Court. On 28.01.2008 contained in Annexure-D, the O.P. No. 2 issued a letter to stop any further transaction in the account of O.P. No. 2. The document available on record in Annexure-E dated 14.02.2008 speaks that the margin/security shares to the tune of Rs. 1,90,611/- was already sold by the petitioner company. However, by letter dated 18.02.2008 contained in Annexure-F, the demand was made

to the tune of Rs. Rs. 3,45,307.88. In view of that, it is crystal clear that the amount of Rs. 1,90,611/- was misappropriated by the petitioner-company and the petitioners are the Managing Director and the whole time Director of the said company.

29. Further in P.C.R. Case No. 192 of 2010 (T.R. No. 387 of 2016), which is the subject matter of Cr.M.P. No. 1241 of 2016, the O.P. No. 2 has already filed a suit before the learned competent court at Dumka, in which, the reply was filed by the petitioners, contained in Annexure-H by the petitioners stating therein that the petitioner is entitled to recover Rs. 1,56,017.64, whereas by Annexure-G, the share of the O.P. No. 2 has already been sold to the tune of Rs. 1,56,017.64, as such, the same was already realized in terms of the sole arbitration award and in reply in the said suit, it was stated by the petitioner company that Rs. 1,56,017.64 is liable to be recovered by the company.

30. Thus, it is crystal clear that the intention of the petitioner company was not up to the mark and clearly a case of entrustment and cheating is made out, however, that can only be decided by the learned court in the trial, where the matter is still pending.

31. Quashment of cognizance / proceeding, commercial transaction and imitation of arbitral proceedings are not material. Simply because there is remedy provided for the breach of contract for arbitral proceeding initiated at the instance of the petitioner, that does not by itself clothe the court to come to the conclusion that the civil remedy is only the remedy and the initiation of a criminal proceeding is an abuse of the process of the court for exercising inherent powers for quashing such proceedings. This aspect has been clearly dealt with by the Hon'ble Supreme court recently in the case of ***Priti Saraf & Anr. (Supra)***. There is no doubt that there is an arbitration clause in the agreement as how the petitioner company and the petitioners have suppressed the things and even deducting the amount of Rs. 1,90,611/- as has been dealt (Supra). Thus if such a disputed question of fact is there, the High court is not required to rove into and come to a conclusion that this is a case of civil nature.

32. So far as the judgment relied by Mr. Singh, learned counsel

appearing for the petitioners in Cr.M.P. Nos. 1241 of 2016 and 669 of 2008, in the case of ***Vijay Kumar Ghai (supra)*** and also in the case of ***S.K. Goel & Ors. (supra)***, the court is in agreement that if civil nature of proceeding is there, the High Court is required to interfere. Rather the High Court is having the larger responsibility on the shoulder to took the things in between the lines if a case is maliciously filed, however, the facts of the present case clearly suggests that this is not a case to exercise power under Section 482 Cr.P.C. In view of that those judgments relied by Mr. Singh, learned counsel appearing for the petitioners are not helping the petitioners.

33. The way, in which, the suppression is made in filing the Cr.M.Ps. further restrained this court considering that the truth constituted an integral part of the judicial delivery system which was invoked in the pre-independence era and the people used to keep brought the said truth in the courts irrespective of the consequence and this aspect has been dealt elaborately by the Hon'ble Supreme Court in the case of ***Amar Singh (Supra)*** as well as Allahabad High Court in the case of ***Umesh Kumar Yadav (Supra)***.

34. The offence of criminal breach of trust consists of two ingredients entrusting any person in a property or with any domain of the property and the person entrusted dishonestly misappropriates or converts it to its own use that property to the adjustment of person who entrusted into.

35. In the facts of the present case in spite of the adjustment of the amount, the said was claimed in the arbitration proceeding and in spite of the disposal of the arbitration proceeding, it has been stated in the petition that the said arbitration proceeding is pending. Further in the reply filed by the petitioners in reply to the suit filed by the O.P. No. 2 before the learned court, it has stated that Rs. 1,56,017.64 is required to be recovered, wherein the said amount has already been recovered by way of selling the shares, contained in Annexure-G of the counter affidavit filed by the O.P. No. 2 in Cr.M.P. No. 1241 of 2016.

36. In view of the above facts, reasons and analysis, the court finds that these are not the case to exercise the power under Section 482

Cr.P.C. to quash the entire criminal proceedings.

37. Accordingly, all these petitions are dismissed. Pending I.A., if any, stands dismissed.

38. It is made clear that the trial court shall proceed in the matter in accordance with law without being prejudiced by this order, as this order has been passed considering the parameters of Section 482 Cr.P.C.

(Sanjay Kumar Dwivedi, J.)

Amitesh/-

[A.F.R.]