

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF NOVEMBER, 2022

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.2778 OF 2020

BETWEEN:

1. SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.,
CIN U35999KA2011FTC056984,
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA HOBLI,
KOLAR, KARNATAKA – 563 130,
REPRESENTED BY PETR NOVOTNY.
2. PETR NOVOTNY
S/O IVAN NOVOTNY,
AGED ABOUT 47 YEARS,
MANAGING DIRECTOR OF
SCANIA COMMERCIAL VEHICLES
INDIA PVT. LTD.,
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA HOBLI,
KOLAR, KARNATAKA – 563 130.
3. SRINIVASA RAGHAVAN RAMASWAMY
S/O NARASHIMAN RAMASWAMY,
AGED ABOUT 52 YEARS,
SALES DIRECTOR OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.
PLOT NO.63, 64-66, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,

KOLAR, KARNATAKA – 563 130.

4. RAFAEL DE SOUSA ALVARENGA
S/O JOSE HUMBERTO ALVARENGA,
AGED ABOUT 38 YEARS,
SERVICE DIRECTOR OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.,
PLOT NO.63, 64-65, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.
5. PRATHAP SUBRAMANI
S/O SUBRAMANI,
AGED ABOUT 37 YEARS
SENIOR MANAGER OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.
PLOT NO.63, 64-65, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.
6. JAHIR USSAIN M.,
S/O MOHAMMED ABDUL KADER,
AGED ABOUT 51 YEARS
RETAIL DIRECTOR OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.
PLOT NO.63, 64-65, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,
ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.
7. GIRIJA HARSHA
D/O B.A.S. KOTRESI,
AGED ABOUT 36 YEARS,
DEPUTY SALES MANAGER OF
SCANIA COMMERCIAL VEHICLES INDIA PVT. LTD.,
PLOT NO.63, 64-65, 88-97,
NARASAPURA, KIADB INDUSTRIAL AREA,

ACHHATANAHALLI, NARASAPURA,
KOLAR, KARNATAKA – 563 130.

... PETITIONERS

(BY SRI C.V.NAGESH, SR.ADVOCATE A/W
SMT.SHWETHA RAVISHANKAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH KALASIPALYA POLICE STATION,
REPRESENTED BY
PUBLIC PROSECUTOR OF STATE,
HIGH COURT BUILDING,
BENGALURU – 560 001.
2. SRI K.T.RAJASHEKAR
PROPRIETOR OF SRS TRAVELS,
AGED ABOUT 76 YEARS,
NO.321, TSP ROAD,
KALASILPALYAM,
BENGALURU – 560 002.
SINCE RESPONDENT NO.2 IS DEAD,
IS REPRESENTED BY HIS ONLY DAUGHTER

2(a). MRS.MEGHA B.R.
D/O K.T.RAJASHEKAR
AGED ABOUT 45 YEARS
NO.321, TSP ROAD
KALASIPALYAM
BENGALURU.

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;
SRI SANDESH J.CHOUTA, SR.ADVOCATE FOR
SRI ISMAIL M.MUSBA, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.35/2020 REGISTERED AGAINST THE PETITIONER VIDE FIR DATED 06.04.2020 AT KALASIPALYA P.S., BANGALORE AND THE SAME IS PENDING ON THE FILE OF IV A.C.M.M., BANGALORE FOR THE OFFENCE P/U/S 406, 420, 120B, 34 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners/accused 1, 2, 4, 5, 7, 8 and 9 are before this Court calling in question registration of a crime in Crime No.35 of 2020 for offences punishable under Sections 406, 420, 120B and 34 of the IPC.

2. Brief facts that lead the petitioners to this Court in the subject petition, as borne out from the pleadings, are as follows:-

The 2nd respondent is the complainant and proprietor of SRS Travels. The 1st petitioner is Scania Commercial Vehicles India Private Limited ('Company' for short) and other petitioners are either Managing Director, Director or office bearers of the 1st petitioner/Company. The 2nd respondent is a transport operator operating fleet of buses. The 1st petitioner deals with sales of buses.

In the year 2013 the 1st petitioner and the complainant entered into certain transaction with regard to sale and purchase of buses. The purchase of buses was financed by Volkswagen Finance Private Limited (hereinafter referred to as 'the Financier' for short). The complainant purchased buses from the 1st petitioner throughout the period between 2013 and 2018. The complainant appears to have defaulted in payment of installments to the Financier. This led the Financier to initiate proceedings before the Arbitrator and then seeks possession of vehicles before the competent Court at Delhi. These orders come about on 02-11-2019.

3. After the Financier seized all the vehicles which were financed, a complaint comes to be registered before the jurisdictional Police by the complainant on 05-04-2020 alleging that due to acts of the 1st petitioner/Company in supplying vehicles that were defective, the complainant has suffered losses, due to which, the complainant was unable to clear dues to the Financier and, therefore, the petitioners were all guilty of criminal breach of trust and cheating. The complaint results in registration of a crime

in Crime No.35 of 2020. On registration of the crime, the petitioners knocked the doors of this Court in the subject petition.

4. This Court, having entertained the petition, grants an interim order of stay and admits the matter to be heard finally. During the pendency of the petition, the original complainant dies. The daughter of the complainant seeks to come on record, which was objected to by the petitioners contending that the cause has died as it was a case where even before the Police could file a charge sheet, the complainant had died. This Court by its order dated 03-09-2022 declined to accept such submission and permitted the daughter of the complainant to come on record and step into the shoes of the original complainant. It is then the daughter of the complainant is representing the original complainant as his legal representative.

5. Heard Sri C.V.Nagesh, learned senior counsel appearing for the petitioners, Smt. K.P. Yashodha, learned High Court Government Pleader appearing for respondent No.1 and Sri

Sandesh J. Chouta, learned senior counsel appearing for respondent No.2.

6. The learned senior counsel representing the petitioners would vehemently contend that a purely commercial transaction between the original complainant and the 1st petitioner/Company is sought to be given a colour of crime; The reason for registering the crime is that the original complainant became a chronic defaulter for not paying any amount to the Financier and buses that were sent for repair had to be kept in the workshop as the complainant failed to pay event charges for repairs; After becoming such chronic defaulter, becoming disgruntled he seeks to register a crime on 05-04-2020 alleging that the 1st petitioner had delivered buses which were defective and could not be used, notwithstanding the fact that every bus delivered, after using them for close to one lakh to two lakh kms., the complainant has come up with the allegation that they were defective; it was a case of pure wear and tear and rough use of buses that led to certain repairs; having failed to make good payment for repairs, the complainant takes recourse to criminal proceedings and registers the crime. He would further

contend that this Court while entertaining the petition has clearly observed *albeit, prima facie*, that it is purely a commercial transaction that is given a colour of crime. He would seek to place reliance on plethora of judgments of the Apex Court on the issue.

7. On the other hand, the learned senior counsel Sri Sandesh J. Chouta appearing for the 2nd respondent would refute the submissions to contend that every commercial transaction cannot result only in a civil proceeding; shades of crime can always be present even in a civil dispute and would contend that it is because of the act of the 1st petitioner/Company in supplying defective buses, the complainant had to suffer and the 1st petitioner had shut shop without any guarantee of repair or spare parts being available for those buses which the complainant had to purchase. He would, therefore, contend that the complainant was induced into purchasing the buses and the 1st petitioner having kept the buses when they were sent for repair had committed criminal breach of trust and as such, the offences are made out. He would submit that the matter is still at the stage of investigation and therefore, the

petition ought to be dismissed permitting further investigation at the hands of the police.

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record. In furtherance of the said submissions, the issue that falls for consideration is:

"Whether in the teeth of the afore-mentioned facts, permitting further investigation would become an abuse of the process of law or otherwise?"

9. Before embarking upon the consideration of the respective submissions made *qua* the facts obtaining in the case at hand, I deem it appropriate to notice the law laid down by the Apex Court from time to time interpreting Section 406 of the IPC which deals with criminal breach of trust and Section 420 of the IPC which deals with cheating. Section 406 which makes criminal breach of trust punishable, has its ingredients in Section 405 of the IPC. Sections 405 and 406 of the IPC read 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 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 willfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.—A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 420 of the IPC which directs punishment for cheating has its ingredients in Section 415 of the IPC . Sections 415 and 420 read as follows:-

"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".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

...

...

...

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."

10. The necessary ingredients and interpretation of Sections 406 and 420 of the IPC need not detain this Court for long or delve deep into the matter, as the Apex Court right from the year 2000 till date has interpreted both Sections 406 and 420 of the IPC to contain certain ingredients *qua* the facts obtaining in each of the cases. Since both the offences are alleged in the case at hand, I deem it appropriate to notice the interpretation of both Sections 406 and 420 of the IPC as laid by the Apex Court. The Apex Court

right from the year 2000 in the case of **HRIDAYA RANJAN**

PRASAD VERMA v. STATE OF BIHAR¹ has held as follows:-

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

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

(Emphasis supplied)

Later, in the case of **UMA SHANKAR GOPALIKA v. STATE OF BIHAR**² the Apex Court has held as follows:

¹ (2000) 4 SCC 168

² (2005) 10 SCC 336

"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. 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. Apart from that there is no other allegation in the petition of complaint. 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 there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.**"

(Emphasis supplied)

In the case of **V.Y.JOSE v. STATE OF GUJARAT**³ the Apex Court holds as follows:

"14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

³ (2009) 3 SCC 78

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 can be said to have been made out.**

28. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being not a short cut of executing a decree which is non-existent. The superior courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial courts."

(Emphasis supplied)

In **VESA HOLDINGS (P) LIMITED v. STATE OF KERALA**⁴ the

Apex Court has held as follows:

"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,**

⁴ (2015) 8 SCC 293

no offence under Section 420 of the Penal Code, 1860 can be said to have been made out."

(Emphasis supplied)

In the case of **SATISCHANDRA RATANLAL SHAH v. STATE OF GUJARAT**⁵ the Apex Court has held as follows:

"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognises a difference between simple payment/ investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

12. In this context, we may note that there is nothing either in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 punishable under Section 406 IPC. Hence the learned Magistrate committed a serious error in issuing process against the appellant for the said offence. Unfortunately, the High Court also failed to correct this manifest error.

13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786].) In the case before us, admittedly the appellant was trapped in

⁵ **(2019) 9 SCC 148**

economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

14. Moreover, this Court in a number of cases has usually cautioned against criminalising civil disputes, such as breach of contractual obligations (refer to *Gian Singh v. State of Punjab* [*Gian Singh v. State of Punjab*, (2012) 10 SCC 303: (2012) 4 SCC (Civ) 1188: (2013) 1 SCC (Cri) 160: (2012) 2 SCC (L&S) 988]). The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC.

15. However, the High Court appears to have been carried away by the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the accused. This clearly reflected a loaded dice situation against the appellant herein."

11. Considering the entire spectrum of law earlier laid down, the Apex Court in the case of **R.K. VIJAYASARATHY v. SUDHA SEETHARAM**⁶ holds as follows:

"11. The first respondent has alleged in the complaint that the appellants have committed offences under Sections 405, 406, 415 and 420 read with Section 34 of the Penal Code. It would thus

⁶ (2019) 16 SCC 739

be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

12. Section 405 of the Penal Code reads thus:

"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 willfully suffers any other person so to do, commits "criminal breach of trust"."

13. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

13.1. A person should have been entrusted with property, or entrusted with dominion over property;

13.2. That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

13.3. That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

14. Entrustment is an essential ingredient of the offence. 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. [**406. Punishment for criminal breach of trust.**—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.]

15. Section 415 of the Penal Code reads thus:

"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"."

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

16.1.2. The person so 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; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. 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.

18. Section 420 of the Penal Code reads thus:

"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."

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. 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.

20. Cheating is an essential ingredient for an act to constitute an offence under Section 420.

28. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court."

(Emphasis supplied)

The afore-quoted judgments of the Apex Court were interpreting offences punishable for criminal breach of trust as obtaining in Section 406, cheating as obtaining in Section 420 of the IPC.

12. Taking it a little further, the Apex Court, at a later point in time, in **RANDHEER SINGH v. STATE OF U.P. AND OTHERS**⁷ has held as follows:

"33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above."

Again, the Apex Court in the case of **MITESH KUMAR J.SHA v. STATE OF KARNATAKA AND OTHERS**⁸ while answering the question whether the dispute was entirely civil and, therefore, proceedings were liable to be quashed, answers as follows:

"Whether the dispute is one of entirely civil nature and therefore liable to be quashed?"

⁷ 2021 SCC OnLine SC 942

⁸ 2021 SCC OnLine SC 976

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of *Indian Oil Corporation v. NEPC India Ltd.*, as under:—

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law."

42. It was also observed:—

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

43. On an earlier occasion, in case of *G. Sagar Suri v. State of UP*, this Court has also observed:—

"8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of 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 High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

44. Furthermore, in the landmark judgment of *State of Haryana v. Ch. Bhajan Lal* regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:—

"(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

45. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.

46. Recently, this Court in case of *Randheer Singh v. The State of U.P.*, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:—

"33.There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in *Paramjeet Batra* (supra) extracted above."

47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety."

Yet again, the Apex Court in the case of **VIJAY KUMAR GHAI v. STATE OF WEST BENGAL**⁹ reiterated the entire spectrum of law with regard to criminal breach of trust and cheating and has held as follows:

"46. This Court in *G. Sagar Suri v. State of UP* observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

47. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in *Indian Oil Corporation (Supra)* noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that:—

"13. ...any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

48. At the outset, Respondent No. 2/Complainant alleged that the Appellants were responsible for the offence punishable under Section 420, 405, 406, 120B IPC. Therefore, it is also imperative to examine the ingredients of the said offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

⁹ (2022) SCC Online SC 344

49. Section 405 of IPC 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".

50. The essential ingredients of the offense 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.

51. "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.

52. The definition in the section does not restrict the property to movables or immoveable alone. This Court in *R K Dalmia v. Delhi Administration* held that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the meaning of the

word 'property' to moveable property only when it is used without any qualification in Section 405.

53. In *Sudhir Shantilal Mehta v. CBI* 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.

54. Section 415 of IPC 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"."

55. The essential ingredients of the offense 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.

56. 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.

57. Section 420 IPC 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."

58. Section 420 IPC 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.

59. To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:—

1. The representation made by the person was false
2. The accused had prior knowledge that the representation he made was false.
3. The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
4. 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.

60. As observed and held by this Court in the case of Prof. R.K. Vijayasathya v. Sudha Seetharam, 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.

61. The following observation made by this Court in the case of *Uma Shankar Gopalika v. State of Bihar* with almost similar facts and circumstances may be relevant to note at this stage:--

"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 Section 420/120-B IPC. The only allegation in the complaint petitioner against the accused person 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 that 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. 4,20,0000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases of 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 person to cheat which is a condition precedent for an offence under 420 IPC.

"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-B IPC 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 482 Cr.P.C which it has erroneously refused."

62. 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*²⁶, 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 the Respondent No. 2 does not disclose dishonest or fraudulent intention of the appellants.

63. In *Vesa Holdings Pvt. Ltd. v. State of Kerala*²⁷, this Court made the following observation:—

"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 inception on behalf of an accused person to cheat which is a condition precedent for an offence u/s 420 IPC. 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 courts. 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 an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."

64. Having gone through the complaint/FIR and even the chargesheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 & 420 Penal Code, 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 420 IPC can be said to have been made out. In the instant case, there is no material to indicate that Appellants had any mala

fide intention against the Respondent which is clearly deductible from the MOU dated 20.08.2009 arrived between the parties."

The Apex Court in the case of **M.N.G.BHARATEESH REDDY v. RAMESH RANGANATHAN AND OTHERS**¹⁰ again interpreting Sections 406 and 420 of the IPC has held as follows:

"13. *The ingredients of the offence of cheating are spelt out in Section 415 of the IPC. Section 415 is extracted below:*

"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".*

Explanation - A dishonest concealment of facts is a deception within the meaning of this section."

14. *The ingredients of the offence under Section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce the person so deceived to (i) deliver any property to any person; or (ii) to consent that any person shall retain any property; or (iii) intentionally induce 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 such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.*

¹⁰ **2022 SCC OnLine SC 1061**

15. Section 420 deals with cheating and dishonestly inducing delivery of property. It reads as follows:

"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 capable of converting 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."

16. In *Hridaya Ranjan Prasad Verma v. State of Bihar*⁴, a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. **Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating**

it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(emphasis supplied)

17. In *Dalip Kaur v. Jagnar Singh*⁵ a two-judge bench of this Court held that a dispute arising out of a breach of contract would not amount to an offence of cheating under section 415 and 420. The relevant extract is as follows:

"9. The ingredients of Section 420 of the Penal Code are:

- "(i) Deception of any persons;
- (ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. **If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code.** (See *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])"

(emphasis supplied)

18. Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent arises from the termination of his

services at the hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the complainant at the hospital. At the most, the allegations allude to a breach of terms of the Consultancy Agreement by the Appellant, which is essentially in the nature of a civil dispute.

19. The allegations in the complaint are conspicuous by the absence of any reference to the practice of any deception or dishonest intention on behalf of the Appellant. Likewise, there is no allegation that the complainant was as a consequence induced to deliver any property or to consent that any person shall retain any property or that he was deceived to do or omit to do anything which he would have not done or omitted to do if he was not so deceived. The conspicuous aspect of the complaint which needs to be emphasized is that the ingredients of the offence of cheating are absent in the averments as they stand.

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 Karnataka*⁶ 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 Bengal*² 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."

24. None of the ingredients of the offence of criminal breach of trust have been demonstrated on the allegations in the complaint as they stand. The first respondent alleges that the Appellant caused breach of trust by issuing grossly irregular bills, which adversely affected his professional fees. However, an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment. No element of entrustment has been prima facie established based on the facts and circumstances of the present matter. Therefore, the ingredients of the offence of criminal breach of trust are ex facie not made out on the basis of the complaint as it stands.

25. In the above view of the matter, there is a patent error on the part of the High Court in setting aside the judgment of the Additional Sessions Judge and by holding that cognizance was correctly taken of the offence punishable under Sections 405, 415, and 420 of the IPC."

13. On a coalesce of the afore-quoted judgments of the Apex Court what would unmistakably emerge is, for an offence punishable under Section 406 of the IPC, the essential ingredients as found in Section 405 of the IPC, which are that the accused must be entrusted with the property or with dominion over it; the person so entrusted must use that property or; the accused must dishonestly use or dispose of that property or willfully make other person suffer by such violation of any direction of law prescribing the mode in which such trust is to be discharged; which should necessarily contain an ingredient of any legal contract made touching the discharge of such trust. The ingredients of cheating would require deception by fraudulently or dishonestly inducing that person i.e., the alleged fact to deliver any property to any person and intentionally inducing that person to do or omit to do anything. Therefore, 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 cheating. These are the contours that would emerge from the law laid down by the Apex

Court in the aforesaid judgments *qua* the offences punishable under Sections 406 and 420 of the IPC.

14. Therefore, the case at hand would be required to be considered on the touchstone of the principles laid down by the Apex Court in the aforesaid judgments. The transaction between the Company and the Complainant was purchase of buses. It is not in dispute that purchase of buses did span between 2013 and 2018. It is also not in dispute that the complainant purchased buses from the finance availed through the Financier. The number of buses purchased was 77 in number. It is a matter on record that the complainant defaulted in payment of installments to the Financier, due to which, the Financier seized all the vehicles that were financed by it. The vehicles were in possession of the Company as they were sent for repairs and the amount due to be paid even for repairs was not paid. The purchase of buses was through a commercial contract between the Company and the complainant. One such contract for purchase of buses was drawn up on 15-10-2013 which contained the condition of warranty and repair. The same is quoted herein for the purpose of quick reference:

" "

Please refer to the annexure for other terms & conditions of order.

We thank you for your offer and look forward to your best support for a cohesive and prosperous business relationship between our two organisations.

Annexure

Warranty	Two years warranty will be extended by Scania CV India without any limitation on the total kilometres operated excluding wear and tear components. Additional one year drive line warranty will be extended in the third year for manufacturing defects excluding wear and tear components.
Free services	Twenty seven months preventive maintenance services at the rate of one service per month (if the stipulated kilometres interval is less than the schedules of service intervals accordingly 27 free services) will be extended free of cost for each bus as per Scania's maintenance schedule. The free preventive maintenance shall include consumables and labour to be extended at any one of the locations to be indicated by us. The free preventive maintenance services will not include any wear and tear components or repairs.
Service Support	Adequate parts and service support with dedicated technician at our workshop in Bangalore at your cost has to be extended.
Driver Training	Adequate driver training and refresher training will be extendable free of cost.

Payment

We will release a total advance payment of Rs.10,00,000/- (Rupees Ten Lakhs only) and the balance payment will be released by us or by our bankers in stages upon receipt of your demand letter with proforma invoice."

(Emphasis added)

In terms of what is depicted hereinabove, the warranty would be for three years excluding wear and tear of components, after which, payment had to be made for any repair that would come about. It is not in dispute that buses entered wear and tear zone and had to be sent for repairs to the Company. After repair, bill for such repair was sent to the complainant totaling to Rs. 92,64,615/-. All these were sent from time to time. All those invoices are appended to the petition. Therefore, it is a matter of record that the bills for repair work had not been paid. Outstanding amount, as observed hereinabove was Rs.91 to Rs.92 lakhs. This was concerning few buses. Other few buses were seized by the Financier by taking recourse to legal proceedings before the competent Court of law. One such order that is passed for taking re-possession of the vehicle reads as follows:

"....

After hearing arguments of Counsel for petitioner and perusing the records, I find that a prima facie case for passing of an order for appointment of a Receiver to take possession of vehicle in question is made out.

Accordingly, Sh. Sunil BN, the representative of the petitioner company is appointed as a Receiver with the direction to re-possess the vehicle i.e., METROLINK 13.7 METRES bearing registration no. KA01AF5827, engine no. 6875817 and chassis no. YS2K6X2SOF1894473 which is found in possession of whosoever or at whatsoever place till further orders. Following directions are issued to the Receiver for compliance :-

- 1. Receiver is directed to note down the condition of the vehicle and to take the photographs of the vehicle from all sides and shall ensure that vehicle is kept in the same condition as it was repossessed.*
- 2. Receiver to prepare inventory of the goods/accessories attached with the vehicle and copy of same shall be delivered to the person from whom the vehicle is repossessed.*
- 3. An appropriate receipt shall be given to the person from whose custody the vehicle is repossessed and the vehicle in question shall not be sold or disposed off or parted with without due permission of the Court.*
- 4. If the respondent makes the payment of the outstanding installments as on date of possession, the Receiver shall release the vehicle in question to the respondent on superdari subject to an undertaking by the respondent to the Receiver for regular repayment of the future monthly installments till the expiry of the tenure and a declaration not to part with the vehicle or create third party interest in the vehicle until the entire amount is paid.*
- 5. If the respondent is not in a position to clear the entire outstanding installments, the Receiver shall give him another opportunity to pay the outstanding installments within 30 days of taking over the possession of the vehicle and in case the respondent makes the payment of the outstanding installments within the said period, the*

Receiver shall release the vehicle to the respondent subject to an undertaking as aforementioned.

- 6. If the respondent does not make the payment of the outstanding amount to the petitioner within 60 days, the Receiver, with the prior permission of the Arbitrator, would be authorized to sell the vehicle in question in a public auction with prior written notice (to be sent by speed post AD) of the date of auction to the respondent at the address(es) mentioned in the loan agreement or the address from where the vehicle is taken into possession so that the respondent may also be able to participate in the auction to enable the petitioner to fetch maximum amount from the sale of the vehicle. The Receiver shall carry out video recording of the auction proceedings and shall submit the same before the Arbitrator along with his final report.*
- 7. The Receiver shall inform the respondent the option of resolving the dispute amicably by settlement in Mediation Centre, Rohini Courts, Delhi, and shall also give a copy of this order to the respondent or to the person at the time of repossessing the vehicle.*
- 8. The petitioner shall refer the dispute to arbitration in terms of Arbitration Clause XVII of Loan Agreement for appointment of an Arbitrator within 2 weeks from today and to inform the Court about the same on the next date of hearing.*
- 9. The Receiver shall be at liberty to take the assistance of the local police, if required, for taking over the possession of the impugned vehicle. The concerned SHO shall provide assistance to the Receiver as and when request. However, the Receiver shall not stop a running vehicle on the road to forcibly take out the driver to take the possession of the vehicle. The Receiver shall also not make any attempt to block the passage of a car to bring it to a halt to take its possession.*
- 10. The Receiver shall avoid taking the possession of the vehicle if the vehicle is occupied by a woman who is not accompanied by a male member or an elderly, infirm or*

physically/mentally challenged person. In such cases, the Receiver shall take the possession of the vehicle from the borrower's residence.

- 11. The Receiver shall also ensure that the repossession of the vehicle does not result in any breach of peace. In the event of any breach of peace, the Receiver shall not proceed without assistance of police.*

The Receiver is further directed to submit his report before this Court within 10 days of taking the custody of the impugned vehicle along with photographs and inventory mentioned above.

Next date of hearing fixed in the present case is 03.02.2020. Also issue notice of petition to the respondent on filing of PF/RC for date fixed i.e. 03.02.2020."

The aforesaid orders passed by the competent Court at Delhi have become final. Therefore, two circumstances emerge, that for the buses sent for repair to the Company, the complainant was due in a sum of Rs.91 lakhs for repairs and therefore, until payment was received, the Company did not release the vehicles. In another circumstance buses were seized by the Financier. Thus, for these two circumstances, the complainant suffered. What the complainant would do, after the bills are communicated from time to time and a caution was made that the Company would take recourse to legal proceedings for recovery of amount, is registration of a complaint on 05-04-2020. Since the complaint is the fulcrum

of this petition, it is germane to notice certain paragraphs of the complaint and they read as follows:

"....

- c) *On thus assured, in the year 2014, the Complainant Initially ordered "SCANIA" for two buses for operating on Mumbai-Bengaluru route, which was financed by "Corporation Bank" Bangalore. Till one year, after sales service was very satisfactory and the Complainant had no grievance at all.*
- d) *In the year, 2015, the officials/representatives of the accused company again approached the Complainant with an offer of sale of 24 more vehicles and they further induced the Complainant to buy its buses by offering "SCVPL" as guarantor in the proposed Hire-Purchase Agreement with "Volkswagen Finance Private Ltd.", hereinafter known as "VFPL", the Parent Company of "SCVPL. Thus induced by the convenient loan offer in which the seller company itself was ready to stand as "guarantor", the Complainant agreed to purchase 12 "SCANIA" buses. A "Credit Facility Agreement" for the period of 24 months was executed between Accused no.1 and complainant for the remaining 12 buses, which has now come to an end. A true copy of the Credit Facility agreement is annexed herewith as **(ANNEXURE-1)**.*
- e) *That in the same manner, in 2016, the Complainant was induced to purchase 31 more buses on similar terms and conditions as in earlier Hire-Purchase agreements in 2015. Till mid, 2016, already 57 buses were sold to the Complainant, however later on it was realized that the buses so sold were having substantial issues with them, which was affecting the operations frequently. The substantial issues include: a) Oil Consumption, b) Periodic Maintenance c) Engine Failure d) Diesel Tank Issues, e) higher Value for Spare Parts and routing unavailability of the Spare Parts. A mail dated 02.05.2016 was sent out to the accused no.1 company revealing that some defects*

were found in the vehicles, warning was also given that if the delivery of the vehicles, does not happen within stipulated time then the order will be canceled due to mounting losses as a result of heavy taxation. **(ANNEXURE-2)**. On 03.05.2016 accused no.1 company sent a reply through mail assuring that they are on the process of addressing the quality issues raised by the complainant. A true copy of the mails have been annexed herewith as **(ANNEXURE – 3)**.

- f) That the Complainant immediately, on being pointed out about the issues in the purchased buses, contacted the concerned officers of the Accused No.1 Company. In this regard, even a meeting took place on 31.05.2016 between the Complainant assisted by workshop team and Mr.Micheal Benje, MD and Mr.Jahir Ussain, Service Head, wherein it was assured to the Complainant that all the issues, pointed out by the Complainant and his workshop team will be sorted out shortly.

....

- o) It is also pertinent, to mention herein that between 2014 to 2016, due to manufacturing defects, several mechanical parts of the fleet buses ceased to work properly, since they cannot be repaired and only replaced, the fleet buses having mechanical defects were standing in the work shop, causing huge losses to the Complainant, therefore the Complainant was left with no other option but to get the parts replaced from the Accused No.1 Company only at exemplary costs.

....

- r) On 27.01.2018, Mr. Balakrishna Rai wrote to the Accused No.1 Company intimating therein that due to non-availability of service support from dealer and. non availability of appointment in the workshop, the Complainant is facing problem in vehicles running with overdue service schedules, there are many issues in operations regarding low pick up, poor KMPL, High Oil consumption and frequent breakdowns and held the

*"SCANIA" management sole responsible for the complete mess. A true copy of the mail is annexed herewith as **(ANNEXURE-10)**.*

- s) *In the year 2018, major shift took place at the helm of the Accused No.1 Company, many directors were replaced. On 04.05.2018, the Accused No.1 Company organized Award Ceremony to appreciate their technicians and the Complainant was invited as a chief guest. In the ceremony, the Complainant handed over a letter regarding his issues with respect to "SCANIA" fleet buses with an oral mild warning that if the situation goes onto continue like this, the Complainant might resort to legal remedies available to him.*

....

- ff) *On 18.10.2010, The Complainant after having failed in all its attempts to get the issues resolved sent a hat with all enclosures to Managing Director of the Accused No.1 Company, pointing out that since the purchase of 77 vehicles of "SCANIA" brand, the Complainant is saddled with numerous problems in the operation and maintenance of the vehicles, which led to huge financial and goodwill loss to the Complainant. A letter along with enclosures was sent out through courier to the Managing Director of the accused no. 1. The letter had mentioned in detail all the problems that were being faced by the complainant. No reply to the said letter has been received till today by the complainant. A true typed copy of the letter is being annexed herewith as **(ANNEXURE-23)**.*

- gg) *In the month of October- December, 2019, mails were exchanged between the complainant and accused no. 1. Despite so many trail mails the issue remains unresolved. The Accused no. 1 Company has four (4) vehicles of the complainant which were sent for repair but were never returned to the complainant. Few vehicles are in the possession of the accused no.1 since more than six months. It is pertinent to mention herein that due to non-*

delivery of one particular vehicle bearing registration no. KA 01 AF 5541, the Complainant sustained a huge loss of Rs.82,96,678 apxly. (Rupees Eighty Two Lakhs Ninety Six Thousand Six Hundred and Seventy Eight Rupees only which is same for remaining three vehicles. A true copy of the relevant mails is marked and annexed herewith as **(ANNEXURE-24)**).

- hh) **That running through all the events since 2015, it is very much clear that the actions of the accused no. 1 company were carried out fraudulently and with intention to commit breach of trust. Total 77 vehicles were purchased by the complainant from accused no. 1. It becomes obvious that accused no.1I never had honest intentions since the very inception as all the 77 vehicles sold to the Complainant were defective. Further, the Accused No.1 Company entered into a PMC (Periodical Maintenance Contract) contract with the Complainant but it never provided proper services to the Complainant, it never had intentions to act in accordance with the terms of PMC. Not only this, the Accused No.1 Company closed dealerships in the country, which further made it impossible for the Complainant to get the spare parts. It is pertinent to mention herein that Rs.1.10Pc +tax/per kilometer has been charged from the Complainant towards Periodic Maintenance, which is part of the price of the vehicles at the time of purchase, thus the Accused No.1 Company received a wrongful gain of huge amount towards PMC charges and by not providing proper services has caused huge wrongful loss to the Complainant to the tune of 8,07,12,000/-(Rupees Eight Crores Seven Lakh and Twelve Thousand Only) for 57 vehicles purchased between 2014 to 2016, and a wrongful loss of Rs.2,65,59,000(Two Crores Sixty Five Lakhs and Fifty Nine Thousand Rupees Only) for 15 vehicles.**
- ii) **Further, the dishonest intention of the Accused No. 1 Company is also apparent from the fact that to sell the defective buses, it stood as a guarantor to**

the loan agreement with the Finance Company, which happened to be the sister company of the Accused No.1 Company, knowing fully well that as the sold vehicles are defective ones. The Accused No.1 Company has also benefitted the finance company Volkswagen Finance Pvt. Limited by introducing the same to the Complainant and induced the Complainant to avail credit facilities from it by offering it as a guarantor to the loan.

- jj) *The complete chain of facts and events enumerated herein above goes onto show that the Accused No.1 Company and its employees in their individual capacity it has committed the offences as defined under section 406 and 420 Indian Penal Code."*

(Emphasis added)

The afore-quoted paragraphs are all that become germane for a consideration of the issue in the *lis*. The entire crux of the complaint lies in paragraphs (ff), (gg) and (hh) of the complaint. Purchase of 77 buses was not in dispute. The complaint narrates that four vehicles of the complainant were sent for repairs but never returned to the complainant. Few vehicles are in possession of the petitioner/Company for more than 6 months. With regard to one particular vehicle bearing registration No.KA 01 AF 5541 due to the act of the Company, the complainant has suffered huge loss of Rs.82,96,678/-. These are the ingredients of the complaint.

Rs.82,96,000/- is what is exactly due by the complainant to the Company for release of the vehicle.

15. The complaint itself narrates that purchase of buses was between 2014 and 2018 and 77 buses were purchased, they were plied on roads and later generated defects which cannot but be held to be wear and tear and the manner in which they were driven. Be that it may, the offence of criminal breach of trust or cheating cannot even remotely be found in the complaint which alleges that a commercial transaction has gone wrong between the Company and the complainant. The transaction has gone wrong not because of the acts of the Company, but due to the complainant failing to pay the amount either to the Company or to the Financier. Having defaulted in payment and losing possession of buses, the complainant becomes disgruntled and takes to arm twisting the Company for settlement of dues.

16. The submission of the learned senior counsel representing the complainant as also in the complaint is that the complainant has suffered huge loss and, therefore, it should be made good. It is

thus clear that the complaint is registered only for the purpose of recovery of money or to settle scores with the Company, which had not released the buses as no payment was made by the complainant which forced the Financier taking possession of the vehicles.

17. In the teeth of the aforesaid complaint and the facts narrated hereinabove permitting further proceedings would run foul of the judgment rendered by the Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**¹¹ wherein the Apex Court at paragraph 102 has held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima

¹¹ 1992 Supp (1) SCC 335

facie constitute any offence or make out a case against the accused.

- (2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) ***Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.***
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

(Emphasis supplied)

Out of the seven postulates that the Apex Court discerned two of the postulates would become applicable to the case at hand. The first being even if the ingredients of the complaint are noticed it would not make out an offence against the petitioners herein and the second a complaint is being registered with *mala fide* intention.

18. In the light of the preceding analysis, it cannot but be said that the complainant had failed to repay the amount for the repair of buses which was close to Rs.91/- lakhs and had failed to pay the installments to the Financier which was close to Rs.40/- crores, the Financier taking possession of the vehicles and the Company cautioning the complainant for payment of its dues led the complainant to register the complaint. Therefore, the complaint is a product of a commercial transaction going wrong, the complainant getting disgruntled with the seizure of vehicles seeks to dress the aforesaid facts with the colour of crime. Since essential ingredients of any of the offences are lacking in the case at hand, permitting further proceedings would run foul of what is held by the Apex court in judgments cited *supra*.

19. The learned senior counsel for the 2nd respondent has relied on following judgments in support of his contentions viz., **SAU. KAMAL SHIVAJI POKARNEKAR v. STATE OF MAHARASHTRA AND OTHERS – Criminal Appeal No.255 of 2019** decided on **12-02-2019**; **RAJEEV KOURAV v. BAISAHAB AND OTHERS – Criminal Appeal No.232 of 2020** decided on **11-02-2020**; **PRITI SARAF AND ANOTHER v. STATE OF NCT OF DELHI AND ANOTHER – 2021 SCC OnLine SC 206**; **YOGESH AGARWAL AND OTHERS v. STATE OF KARNATAKA AND ANOTHER – (2020)8 Kar.L.J.327**; **NANJAMMANI AND OTHERS v. STATE OF KARNATAKA AND OTHERS –Criminal Petition No.5301 of 2018** decided on **25-01-2022**; and **BRIGADE ENTERPRISES LIMITED AND OTHERS v. STATE OF KARNATAKA AND OTHERS – W.P.No.14761 of 2021** decided on **17-10-2022**. All the aforementioned judgments so relied on by the learned senior counsel would become inapplicable to the facts of the case at hand, as the law laid down therein was that a particular fact or transaction may give rise to both civil and criminal liabilities. In the teeth of those facts the criminal proceedings should not be quashed is what the Apex Court holds. There can be no qualm

about the principles laid down by the Apex Court in the aforesaid judgments. Their applicability is what is required to be noticed.

20. In the light of the facts obtaining in the case at hand, none of the judgments that are relied on by the learned senior counsel for the 2nd respondent would become applicable to the facts of the case and merit consideration. Therefore, notwithstanding the fact that the proceeding is still at the stage of registration of crime, I deem it appropriate to obliterate the same as ingredients of both Sections 406 and 420 of the IPC are conspicuously absent in the case at hand, even on a deeper scrutiny of the complaint. Therefore, it becomes a fit case where this Court has to exercise its jurisdiction under Section 482 of the CrPC to take off the Damocles sword hanging on the head of the petitioners and annihilate the very crime registered against them, failing which, it would be putting a premium on the litigative tactics of the complainant and would degenerate into harassment against the petitioners, becoming an abuse of the process of law and eventually resulting in miscarriage of justice.

21. For the aforesaid reasons, I make the following:

ORDER

- (i) The Criminal Petition is allowed and the FIR registered in Crime No.35 of 2020 by the Kalasipalya Police Station is quashed.
- (ii) The observations made in the course of this order are only for the purpose of consideration of the case of the petitioners under Section 482 of the CrPC. The same would not bind any pending proceedings or any proceeding that the parties would seek to initiate against each other except the aforesaid crime.

Consequently, pending applications also stand disposed.

**Sd/-
JUDGE**

bkp
CT:MJ