

Neutral Citation No. - 2024:AHC:140797-DB

A.F.R.

Reserved on 22.08.2024

Delivered on 31.08.2024

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 5280 of 2023

Petitioner :- Ravi Mohan And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Himadari Batra, Sr. Advocate

Counsel for Respondent :- G.A., Subir Lal, Swetashwa Agarwal

And

Case :- CRIMINAL MISC. WRIT PETITION No. - 2140 of 2023

Petitioner :- Puninder Bhatia And 3 Others

Respondent :- State Of Uttar Pradesh And 3 Others

Counsel for Petitioner :- Pranshu Gupta, Rajrshi Gupta, Sr.

Advocate, Vinayak Mithal

Counsel for Respondent :- G.A., Subir Lal, Swetashwa Agarwal

Hon'ble Arvind Singh Sangwan, J.

Hon'ble Mohd. Azhar Husain Idrisi, J.

(Per Hon'ble Arvind Singh Sangwan, J.)

1. By this judgment, Criminal Misc. 5280 of 2023 as well as Criminal Misc. Writ Petition No. 2140 of 2023 are decided as both the petitions arise out of same impugned First Information Report dated 21.11.2022 registered as Case Crime No. 486 of 2022 at Police Station – Sector 113, Commissionerate, Gautam Buddha Nagar, Uttar Pradesh under Sections 406, 409, 420, 467, 468, 471, 504 and 506 of IPC as well as the impugned order passed by the Chief Judicial Magistrate, Gautam Buddha Nagar dated 17.12.2022 directing to register the F.I.R.

2. It is worth noticing that these petitions are pending since 2023 and a coordinate Bench of this Court reserved the judgment on 25.7.2023. However, subsequently on 25.9.2023, the case was again relisted for arguments. Thereafter, the case was listed before another Bench and vide

order dated 8.4.2024, the arrest of the petitioners was stayed. On 27.7.2024, again the case was listed before another Bench which passed an order of rescuel and as per the order of Hon'ble the Chief Justice dated 29.7.2024, this case is directed to be listed before this Bench.

3. Arguments were heard and judgment was reserved on 22.08.2024.

4. It is also worth noticing that though detailed petitions as well as detailed replies have been filed relying upon the number of documents and arguments were heard at length from both the sides, however, in view of the settled principle of law that a petition for quashing of F.I.R. is to be decided on the contents of the F.I.R., this judgment is based upon the documents relied upon by the informant as noticed in the impugned order dated 17.12.2022 passed by the Chief Judicial Magistrate, Gautam Buddh Nagar directing the police to register the F.I.R. as well as the contents of the F.I.R. and the affidavit filed by the informant in response to the quashing petitions.

5. Brief facts of the case are that the informant-M/s Abhi Compusoft Private Limited (hereinafter referred to as "informant company") filed a complaint under Section 156 (3) Cr.P.C. before the Chief Judicial Magistrate, Gautam Buddh Nagar. In the complaint, eight persons were nominated as accused who are referred to as A-1 to A-8 as per the memo of the parties in the complaint as well as name of the accused in the F.I.R. in the same sequence.

6. The complaint which forms basis of registration of the impugned F.I.R. reads as under :

"न्यायालय श्रीमान अपर मुख्य न्यायिक मजिस्ट्रेट प्रथम, गौतमबुद्धनगर

प्रार्थना-पत्र संख्या- 586/22 सन्-2022

हर्षित सिंह पुत्र स्व० श्री अजीत सिंह, निवासी- फ्लैट संख्या-1101, आनन्द टावर, गृह प्रवेश सोसायटी, सेक्टर-77, नोएडा, जनपद गौतमबुद्धनगर (उ०प्र०)

... प्रार्थी

बनाम

1. रवि मोहन सेठी, चेयरमैन ओमेगा इन्फोविजन प्रा०लि० स्टेलर ग्रुप, निवासी-ए-44, सेक्टर-17, नोएडा, गौतमबुद्धनगर (उ०प्र०)।
2. अक्षय मोहन सेठी पुत्र रवि मोहन सेठी, निवासी- ए-44, सेक्टर-17, नोएडा, गौतमबुद्धनगर (उ०प्र०)।
3. हिमांशु माथुर, पुत्र जसवन्त कुमार माथुर, पता गोल्फ लिंक्स, वी-33, पाकेट-ए, महारौली, गाजियाबाद (उ०प्र०)।
4. अरविन्द कुमार सिंह, पुत्र सरजू प्रसाद सिंह, पता एच-402, प्लाट संख्या-जीएच-02, स्टेलरजीवन, सेक्टर-1, हबीबपुर, ग्रेटर नोएडा-वेस्ट, गौतमबुद्धनगर (उ०प्र०)।
5. शिवाशीष चटर्जी, पुत्र नामालूम, प्रतिनिधि डी०एम०आई० फाइनेन्स कम्पनी प्रा०लि० एक्सप्रेसवे, बिल्डिंग फ्लोर 9 व 10 बहादुर शाह जफर, मार्ग नई दिल्ली-110002
6. युवराज चाणक्य सिंह पुत्र नामालूम, प्रतिनिधि डी०एम०आई० फाइनेन्स कम्पनी प्रा०लि०, एक्सप्रेसवे, बिल्डिंग फ्लोर 9 व 10 बहादुर शाह जफर, मार्ग नई दिल्ली-110002
7. विवेक गुप्ता, प्रतिनिधि डी०एम०आई० फाइनेन्स कम्पनी प्रा०लि०, एक्सप्रेसवे, बिल्डिंग फ्लोर 9 व 10 बहादुर शाह जफर, मार्ग नई दिल्ली 110002
8. पुनिन्दर भाटिया, प्रतिनिधि डी०एम०आई० फाइनेन्स कम्पनी प्रा०लि०, एक्सप्रेसवे, बिल्डिंग फ्लोर 9 व 10 बहादुर शाह जफर, मार्ग नई दिल्ली-110002

... अभियुक्तगण

अं० धारा-406, 409, 420, 467,

468, 471, 504, 506 आईपी०सी०

थाना- सेक्टर-113, नोएडा।

प्रार्थना-पत्र अन्तर्गत धारा- 156(3) सीआरपी०सी०:-

श्रीमान जी,

निवेदन है कि मैं प्रार्थी हर्षित सिंह, पुत्र स्व० श्री अजीत सिंह, मैसर्स अभी कम्प्यूसाफ्ट प्रा०लि० का डायरेक्टर हूँ तथा फ्लैट संख्या-1001, आनन्द टावर, गृह प्रवेश सोसायटी, सेक्टर-77, नोएडा, जिला गौतमबुद्धनगर का निवासी हूँ। प्रार्थी की कम्पनी को मार्च-2017 में स्ववायर इन्फ्रास्ट्रक्चर प्रा०लि० कम्पनी ने 85 प्रतिशत शेयर आवंटित किये तथा तथा 10 प्रतिशत शेयर प्रार्थी की कम्पनी के डायरेक्टर श्री अभिषेक यश त्यागी के परिचित स्टेलर ग्रुप के चेयरमैन श्री रवि. मोहन सेठी पुत्र नामालूम व अक्षय मोहन सेठी पुत्र रवि मोहन सेठी निवासी - ए-44, सेक्टर-17, नोएडा को भई आवंटित किये तथा 05 प्रतिशत शेयर कम्पनी के पूर्व निदेशक श्री विजय कुमार जैन एवं श्री अरिहन्त जैन के पास रहे। स्ववायर इन्फ्रास्ट्रक्चर प्रा०लि० कम्पनी भू-खण्ड संख्या-11 व 12 क्षेत्रफल 10002.50 वर्ग मीटर, सेक्टर-127, नोएडा की आवंटी थी। स्ववायर इन्फ्रास्ट्रक्चर प्रा०लि० कम्पनी के 85 प्रतिशत शेयर आवंटित होने के बाद उक्त वर्णित भू-खण्ड संख्या-11 व 12 क्षेत्रफल 10002.50 वर्ग मीटर, सेक्टर-127, नोएडा पर भी प्रार्थी की कम्पनी ने कब्जा ले लिया, तभी उक्त भू-खण्डों पर आफिस बिल्डिंग प्रोजेक्ट बनाने हेतु रवि मोहन सेठी व अक्षय मोहन सेठी द्वारा जाइन्ट वेन्चर के प्रस्ताव के साथ श्री अभिषेक यश त्यागी से मुलाकात की गयी। उन्होंने बताया कि उनके ग्रुप को इस कार्य में महारत हासिल है और उनके पार्टनर डी०एम०आई० फाइनेन्स प्रा०लि० एक्सप्रेस बिल्डिंग, थर्ड फ्लोर, 9-10, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, से लोन भी मिल सकता है यदि उनकी कुछ शर्तें मान ली जायें। तभी डी०एम०आई० फाइनेन्स प्रा०लि० कम्पनी के अधिकृत प्रतिनिधि शिवाशीष चटर्जी

पुत्र नामालूम, युवराज चाणक्य सिंह पुत्र नामालूम, विवेक गुप्ता पुत्र नामालूम व पुनिन्दर भाटिया पुत्र नामालूम ने साजिश करके रवि मोहन सेठी, अक्षय मोहन सेठी, हिमांशी माथुर के साथ मिली-भगत करके रवि मोहन सेठी एवं अक्षय मोहन सेठी के माध्यम से श्री अभिषेक यश त्यागी को यह विश्वास दिलाया कि यदि बैंकिंग के अधिकृत हस्ताक्षरी व मैसर्स स्क्वायर प्रा०लि० कम्पनी के बोर्ड मैनेजमेन्ट के समस्त अधिकार स्टेलर ग्रुप की मैसर्स ओमेगा इन्फोविजन को दे दिये जायें, तो डी०एम०आई फाइनेन्स कम्पनी 55 करोड़ रुपये का लोन दे देगी, जिसकी वापसी का प्रबन्ध भी स्टेलर ग्रुप द्वारा किया जायेगा, प्रोजेक्ट के पहली फेज का निर्माण 18 माह में पूर्ण किया जायेगा, निर्माण के दौरान ही बड़ी-बड़ी कम्पनियों को चढ़वाने के एग्रीमेंट करवाने का बिजनेस प्लान दिया गया तथा इस फेज की बिलडिंग से ही 2 करोड़ रुपये प्रति माह की आमदनी का प्रलोभन भी दिया गया। श्री अभिषेक यश त्यागी ने इन लोगों की बात पर विश्वास कर लिया और स्टेलर ग्रुप की कम्पनी ओमेगा इन्फोविजन प्रा०लि० व स्क्वायर इन्फ्रास्ट्रक्चर प्रा०लि० के साथ दिनांक 23.05.2018 को शेयर होल्डर्स एग्रीमेन्ट निष्पादित किया, जिसमें प्रार्थी की कम्पनी ने स्टेलर ग्रुप की कम्पनी ओमेगा इन्फोविजन प्रा०लि० को उक्त भू-खण्ड पर बिलडिंग बनाने हेतु डी०एम०आई फाइनेन्स प्रा०लि० से लोन लेने की बातचीत प्रारम्भ करने एवं आगे की कार्यवाही करने हेतु अधिकृत किया, कम्पनी का मैनेजमेंट दिया तथा निर्माण के लिए कान्ट्रैक्टर तय करने का अधिकार दिया। इसी क्रम में रवि मोहन सेठी, अक्षय मोहन सेठी, हिमांशु, माथुर, अरविन्द कुमार सिंह व डी०एम०आई फाइनेन्स प्रा०लि० के अधिकृत प्रतिनिधियों शिवाशीष चटर्जी, युवराज चाणक्य सिंह, विवेक गुप्ता व पुनिन्दर भाटिया के आश्वासनों पर श्री अभिषेक यश त्यागी ने अपनी अभी कम्प्यूसाफ्ट प्रा०लि० कम्पनी के 85 प्रतिशत शेयर होल्डर होने के बावजूद भी 10 प्रतिशत शेयर होल्डर स्टेलर ग्रुप की कम्पनी ओमेगा इन्फोविजन प्रा०लि० के चेयरमैन रवि मोहन सेठी व निदेशक अक्षय मोहन सेठी के कहने पर हिमांशु माथुर व अरविन्द कुमार सिंह को स्क्वायर इन्फ्रास्ट्रक्चर प्रा०लि० के समस्त अधिकार दे दिये, तभी रवि मोहन सेठी, अक्षय मोहन सेठी, हिमांशु माथुर, अरविन्द कुमार सिंह व डी०एम०आई फाइनेन्स प्रा०लि० के अधिकृत प्रतिनिधियों शिवाशीष चटर्जी, युवराज चाणक्य सिंह, विवेक गुप्ता व पुनिन्दर भाटिया ने एक फर्जी एवं कूटरचित दस्तावेज डी०एम०आई फाइनेन्स प्रा०लि० कम्पनी का फाइनल सेंक्शन लेटर दिनांकित 02.05.2018 तैयार किया तथा एक फर्जी एवं कूटरचित वर्क आर्डर दिनांक 02.04.2018 की तिथि में तैयार करके मैसर्स की -स्टोन डवलपर्स प्रा०लि० को 53,55,70,000/- रुपये में बिलडिंग बनाने का कान्ट्रैक्ट तय करके एक फर्जी एवं कूटरचित पत्र जारी कर दिया, जिसकी जानकारी प्रार्थी को तब हुई जब इन लोगो ने एग्रीमेन्ट के अनुसार कार्य नहीं किया। स्टेलर ग्रुप के निदेशक रवि मोहन सेठी, अक्षय मोहन सेठी, हिमांशु माथुर व अरविन्द कुमार सिंह ने वर्ष 2018 में ही कोटेक महिन्द्रा बैंक, सेक्टर-16, नोएडा में खाता खोला तथा डी०एम०आई फाइनेन्स प्रा०लि० कम्पनी से मार्च-2020 तक 58 करोड़ रुपये उक्त खाते में विभिन्न किस्तों में ट्रांसफर कराया तथा सितम्बर, अक्टूबर 2021 में भारत सरकार द्वारा कोविड-19 महामारी के दौरान शुरु की गयी ई०सी०एल०जी०एस० स्कीम (इमरजेन्सी क्रेडिट लाइन गारण्टी स्कीम) के तहत 09 करोड़ 80 लाख रुपये अतिरिक्त उक्त कोटेक महिन्द्रा बैंक खाते में डी०एम०आई फाइनेन्स प्रा०लि० कम्पनी से ट्रांसफर करा लिये। उक्त मोहन सेठी, अक्षय मोहन सेठी, हिमांशु माथुर व अरविन्द कुमार सिंह ने बिलडिंग बनाने का कार्य पूरा नहीं किया, जो कि उनको 18 महीने में पूरा करना था तथा फर्जी कागजात तैयार करके नोएडा प्राधिकरण से कम्पलीशन प्रमाण - पत्र भी ले लिया तथा 67 करोड़ 80 लाख रुपये डी०एम०आई फाइनेन्स प्रा०लि० से प्राप्त कर लिया। प्रार्थी को ज्ञात हुआ कि मैसर्स की-स्टोन डवलपर्स प्रा०लि० के एम०डी० रवि मोहन सेठी

व डायरेक्टर हिमांशु माथुर ही हैं तथा हिमांशु माथुर व अक्षय मोहन सेठी सागर टेक्नोसिटी प्रा०लि० कम्पनी के डायरेक्टर हैं तथा सागर टेक्नोसिटी प्रा०लि० में स्टेलर ग्रुप व डी०एम०आई ग्रुप आपस में पार्टनर हैं। लोन की शर्तों के अनुसार मैसर्स की-स्टोन प्रा०लि० अथवा डी०एम०आई फाईनेन्स प्रा०लि० को लोन से प्राप्त धनराशि से कोई भी भुगतान नहीं किया जा सकता था परन्तु डी०एम०आई फाईनेन्स प्रा०लि० एवं स्टेलर ग्रुप के इन लोगों की मिलीभगत से यह घपला होता रहा। डी०एम०आई फाईनेन्स प्रा०लि० के प्रतिनिधि शिवाशीष चटर्जी, युवराज चाणक्य सिंह, विवेक गुप्ता, पुनिन्दर भाटिया, रवि मोहन सेठी, अक्षय मोहन सेठी, हिमांशु माथुर व अरविन्द कुमार सिंह ने साजिश करके फर्जी एवं कूटरचित दस्तावेज तैयार करके 67 करोड़ 80 लाख रुपये स्वचायर इन्फ्रास्ट्रक्चर प्रा०लि० कम्पनी के खाते में ट्रांसफर करके गबन कर लिया है तथा एग्रीमेंटके अनुसार बिल्डिंग का कार्य पूरा नहीं किया है। इन लोगों की शुरु से ही बुरी नियत प्रार्थी की कम्पनी की जमीन हड़पने की थी और इनकी मिलीभगत के तहत रवि मोहन सेठी ने बिना लोन के डिफाल्ट हुये जमीन हड़पने के लिए अपनी ओर से ही अपने पार्टनर डी०एम०आई प्रा०लि० को पत्र लिख दिया जिससे इनकी मंशा साफ दिखाई पड़ती है। जब प्रार्थी ने दिनांक 05.11.2022 को इनसे कहा कि आपने 67 करोड़ 80 लाख रुपये कहां खर्च किये हैं, क्योंकि बिल्डिंग अभी अधूरी है, तो इन्होंने प्रार्थी को जाने से मारने व बुरा अंजाम भुगतने की धमकी दी, जिसकी सूचना प्रार्थी ने तुरन्त थाना हाजा पर दी, किन्तु उन्होंने कोई कार्यवाही नहीं की, जिससे प्रार्थी व उसके परिवार को जान माल का खतरा उत्पन्न हो गया है। प्रार्थी द्वारा श्रीमान पुलिस आयुक्त गौतमबुद्धनगर को भी एक प्रार्थना-पत्र रजिस्टर्ड डाक के माध्यम से प्रेषित किया गया, किन्तु उस पर भी कोई कार्यवाही नहीं की गई है। विवश होकर प्रार्थी माननीय न्यायालय के समक्ष प्रार्थना-पत्र प्रस्तुत कर रहा है।

अतः श्रीमान जी से विनम्र निवेदन है कि स्टेलर ग्रुप की कम्पनी ओमेगा इन्फोविजन प्रा०लि० के चेयरमैन रवि मोहन सेठी, अक्षय मोहन सेठी, हिमांशु माथुर, अरविन्द कुमार सिंह व डी०एम०आई फाईनेन्स कम्पनी के शिवाशीष चटर्जी, युवराज चाणक्य सिंह, विवेक गुप्ता व पुनिन्दर भाटिया के विरुद्ध फर्जी एवं कूटरचित दस्तावेज तैयार करके 67 करोड़ 80 लाख रुपये हड़पने व प्रार्थी को जान से मारने की धमकी देने के जुर्म में प्रार्थी की रिपोर्ट दर्ज कर कानूनी कार्यवाही करने की कृपा करें।

दिनांक:- 13/12/2022

प्रार्थी

हर्षित सिंह "

7. The Court of Chief Judicial Magistrate, Gautam Buddh Nagar on 17.12.2022 passed the following order :

"दिनांक: 17-12-2022

पत्रावली पेश हुई। प्रार्थना पत्र अन्तर्गत धारा-156(3) दं०प्रसं० पर आवेदक के विद्वान अधिवक्ता को पूर्व नियत तिथि सुना गया। पत्रावली का सम्यक अवलोकन किया।

आवेदक हर्षित सिंह द्वारा प्रार्थना पत्र मय शपथ-पत्र अन्तर्गत धारा-156(3) दं०प्र०सं० में संक्षेपतयह कथन किया गया है कि प्रार्थी हर्षित सिंह मैसर्स अभी कम्प्यूसाफ्ट प्रा०लि० का डायरेक्टर हूँ। प्रार्थी की कम्पनी को मार्च-2017 में स्वचायर इन्फ्रास्ट्रक्चर प्रा०लि० कम्पनी ने 85 प्रतिशत शेयर आवंटित किये तथा 10 प्रतिशत

शेयर प्रार्थी की कम्पनी के डायरेक्टर श्री अभिषेक यश त्यागी के परिचित स्टेलर ग्रुप के चेयरमैन श्री रवि मोहन सेठी पुत्र नामूलम व अक्षय मोहन सेठी पुत्र रवि मोहन सेठी निवासी-ए-44, सैक्टर 17, नोएडा को भी आवंटित किये तथा 05 प्रतिशत शेयर कम्पनी के पूर्व निदेशक श्री विजय कुमार जैन एवं श्री अरिहन्त जैन के पास रहे। प्रार्थी की कम्पनी ने कब्जा ले लिया, तभी उक्त भू-खण्डों पर आफिस बिल्डिंग प्रोजेक्ट बनाने हेतु रवि मोहन सेठी व अक्षय मोहन सेठी द्वारा जाइन्ट वेन्चर के प्रस्ताव के साथ श्री अभिषेक यश त्यागी से मुलाकात की गयी व मैसर्स स्ववायर प्रा०लि० कम्पनी के बोर्ड मैनेजमेन्ट के समस्त अधिकार स्टेलर ग्रुप की मैसर्स ओमेगा इन्फोविजन को दे दिये। स्टेलर ग्रुप की कम्पनी ओमेगा इन्फोविजन प्रा०लि० व स्ववायर इन्फ्रास्ट्रक्चर प्रा०लि० कम्पनी के साथ दिनांक 25.05.2018 को शेयर होल्डर्स एग्रीमेन्ट निष्पादित किया, जिसमें प्रार्थी की कम्पनी ने स्टेलर ग्रुप की कम्पनी ओमेगा इन्फोविजन प्रा०लि० को उक्त भू-खण्ड पर बिल्डिंग बनाने हेतु डी०एम०आई फाईनेन्स प्रा०लि० से लोन लेने की बातचीत प्रारम्भ करने एवं आगे की कार्यवाही करने हेतु अधिकृत किया। कम्पनी का फाइनल सेक्शन लेटर दिनांकित 02.05.2018 तैयार किया तथा एक फर्जी एवं कूटरचित वर्क आर्डर दिनांक 02.04.2018 की तिथि में तैयार करके मैसर्स की-स्टोन डवलपर्स प्राधिकरण को 53, 55, 70, 000/रूपये में बिल्डिंग बनाने का कान्ट्रैक्ट तय करके एक फर्जी एवं कूटरचित पत्र जारी कर दिया। एवं साजिश करके फर्जी एवं कूटरचित दस्तावेज तैयार करके 67 करोड़ 80 लाख रूपये इन्फ्रास्ट्रक्चर प्रा०लि० कम्पनी के खाते में ट्रांसफर करके गबन कर लिया है तथा एग्रीमेंट के अनुसार बिल्डिंग का कार्य पूरा नहीं किया है।

संबंधित थाने की आख्या के अनुसार प्रार्थना पत्र अन्तर्गत धारा-156(3) दं०प्र०सं० में कथित तथ्यों के सन्दर्भ में कोई अभियोग पंजीकृत नहीं है।

कथन के समर्थन में वादी के आधार कार्ड की छाया प्रति व पुलिस आयुक्त को दिये गये प्रार्थनापत्र की छाया प्रति व रजिस्टर्ड डाक की रसीद, शेयर होल्डर्स एग्रीमेन्ट दिनांक 23.05.18 की प्रतिलिपि फाईनेन्स सेक्शन लेटर्स दिनांक 2.05.2018 की प्रतिलिपि की स्टोन डवलपर्स प्रा०लि० को जारी वर्क आर्डर दिनांक 2.04.18 की प्रतिलिपि, बैंक स्टेटमेन्ट व इत्यादि दस्तावेज प्रस्तुत किये गये हैं।

प्रस्तुत प्रकरण में प्रार्थी द्वारा प्रार्थना -पत्र में किए गए अभिकथनों से प्रस्तुत प्रकरण में प्रथम दृष्टया संज्ञेय अपराध के तत्व उद्धटित होता है। मामले में प्रथम सूचना रिपोर्ट पंजीकृत कराकर विवेचना कराया जाना न्यायोचित एवं विधिसम्मत प्रतीत हो रहा है। तदुसार प्रार्थी द्वारा प्रार्थनापत्र अन्तर्गत धारा 156(3) दण्ड प्रक्रिया संहिता स्वीकार किए जाने योग्य है।

आदेश

आवेदक द्वारा प्रस्तुत प्रार्थनापत्र अन्तर्गत धारा-156(3) दण्ड प्रक्रिया संहिता स्वीकार किया जाता सम्बन्धित थानाध्यक्ष, थाना-सैक्टर-113, नोएडा को आदेशित किया जाता है कि वह प्रस्तुत प्रकरण में सुसंगत धाराओं में अभियोग पंजीकृत कर विधिनुसार अन्वेषण कराना सुनिश्चित करे। आदेश के अनुपालन की सूचना अन्दर सात दिवस न्यायालय में प्रस्तुत करे"

8. Two sets of petitioners i.e. A-1 to A-4 have filed Criminal Misc. Writ Petition No. 5280 of 2023 and A-5 to A-8 have filed Criminal Misc. Writ Petition No. 2140 of 2023. Counter affidavits on behalf of

informant company are also filed. Both the parties have also submitted their written submissions.

9. Heard Sri Gopal Swaroop Chaturvedi learned Senior Advocate, Sri Dileep Kumar, learned Senior Advocate assisted by Mr. Vipul Ganda and Mr. Vinayak Mittal, learned counsel for the petitioners in Criminal Misc. Writ Petition No. 2140 of 2023 and Sri Manish Tiwari assisted by Ms. Himadri Batra, learned counsel for the petitioners in Criminal Misc. Writ Petition No. 5280 of 2023. We have also heard Mr. Swetashwa Agarwal and Sri Subir Lal, learned counsel for the informant and learned A.G.A. for the State.

10. Learned Senior counsel for the petitioners in Criminal Misc. Writ Petition No. 2140 of 2023 has argued that petitioner (A-5) is the Vice President of DMI Finance Private Limited (herein after referred to as 'DMI/lender company'). Petitioners (A-6 to A-8) are the Joint Managing Directors, Head of real estate of the lender company.

11. Learned Counsel for the petitioners in Criminal Misc. Writ Petition No. 5280 of 2023 has submitted that petitioner (A-1) is the Director of Omega Infovision Private Limited and Chairman of Stellar Group. Whereas petitioners (A-2 to A-4) are the are the former Directors of Square Infrastructure Private Limited (Borrower Company).

12. The undisputed facts as emerged from the F.I.R. are as under :

A. The informant company took over 85% shareholding of M/s Square Infrastructure Private Limited in the name of M/s Abhi Compusoft Private Limited. 10% shares were allotted to (A-1) who was Director, Omega Infovision Private Limited and Chairman of Stellar Group and remaining 5% shares remained with the former Directors of M/s Square Infrastructure Company Limited i.e. Arihant Jain and Vijay Kumar Jain. The Company- Square Infrastructure Private Limited was allotted plot No. 11 & 12 having area of 10002.50 sq. metres in Sector 127, NOIDA, Uttar Pradesh.

B. Informant company and the accused in their capacity of office bearers of their respective company came with a proposal of joint venture of construction for which, the DMI/lender company agreed to provide finance.

C. A work order dated 2.4.2018 was executed and M/s Keystone Developers Private Limited (Contractor Company) was allotted the work order and amount of Rs.53,55,70,000/- for construction of the building on the name of Square Infrastructure Private Limited (Borrower Company).

D. On 23.5.2018, a share holders agreement as relied upon by informant in the impugned order and F.I.R. was entered into between the parties for construction of building.

A sanction letter dated 2.5.2018 of DMI Finance was also executed between informant company and (A-1 to A-8) who also signed a formal agreement on 23.5.2018 and the aforesaid amount was transferred in favour of the borrower company. The work order was to be executed by the contractor company.

E. It is also an admitted case that during construction period, due to Covid 19, the government floated an Emergency Credit Line Guarantee Scheme (hereinafter referred to as 'ECLGS') and additional amount of Rs.9,80,00,000/- was transferred by DMI Finance in the account of the creditor company as per a subsequent loan agreement dated 28.06.2021 executed between the parties.

13. The F.I.R. has been registered on the following grounds :

(i) In premeditated conspiracy hatched by DMI/ Lender Company and the Contractor Company, the work order was awarded to their subsidiary company even before the formal loan agreement was signed with the informant company and undue benefit has been given to the creditor company.

- (ii) Sanction letter dated 2.4.2018 is also a forged document as the work order has been allotted prior to the sanctioning of the loan.
- (iii) The amount of loan under the agreement dated 23.5.2018 was transferred to Omega Infovision Private Limited which is a subsidiary of Stellar Group and the same is in violation of the clause in the loan agreement "End Use Restriction" which mandated that funds are to be used for the project construction and development only.
- (iv) Despite transfer of additional funds by DMI Finance, no actual construction was performed at the project site and the additional amount was misappropriated by the lender company.
- (v) Threats were extended to Directors of the informant company.

14. In view of the facts as noticed from the F.I.R. itself, the learned senior counsel for the petitioners (A-5 to A-8) has argued that the accused persons are in fact Managing Director/Directors of DMI Finance which has parted away huge amount of money to the creditor company and with a mala fide intention not to repay the loan, the present F.I.R. has been registered by the informant company though the construction has been completed and the completion certificate has been issued by NOIDA Development Authority and it is admitted case of the informant company that the possession of the plot was handed over to the informant company at the time of transfer of 85% shares as stated in the F.I.R. itself.

15. Reliance is placed upon the photograph of the projects wherein specific stand is taken by the petitioner that informant company itself is having its office on the entire seventh floor of the building which stands completed.

16. It is thus argued that the allegation in the F.I.R. that the amount financed by DMI Finance which belong to (A-5 to A-8) was never used for construction of the building which was still lying incomplete, is palpably wrong as the informant company has adopted a novel method

not to repay the loan amount by invoking the criminal proceedings against the petitioners.

17. It is next argued that the second ground taken in the F.I.R. that the work order was issued prior to the sanctioning of the loan, do not disclose commission of any offence as present F.I.R. has been registered only after completion of the construction. It is submitted that it is only after the work order was allotted, the cost of construction was estimated, and thereafter the loan got sanctioned with the consent of the informant company.

18. Learned counsel has referred to the sanction letter dated 2.4.2018 and agreement dated 23.5.2018 relied upon by the informant itself in the F.I.R. to submit that the same has been signed by the authorized representative of informant company as well. It is argued that once this agreement was acted upon between the parties and the construction was raised with the consent of the informant, the registration of the F.I.R. with the allegation that this agreement is an outcome of fraud, is patently wrong.

19. It is next argued that allegation that DMI Finance has sanctioned the loan on higher rate of interest i.e. 16% also does not constitute any offence as rate of interest was agreed on between the parties. It is submitted that the DMI Finance is a non banking finance company and the rate of interest was agreed between the parties under a written agreement for which, the informant has civil rights.

20. It is next argued that from the bare perusal of the F.I.R., no offence under Section 420 of IPC is made out as DMI Finance has only advanced loan which has to be repaid by the informant company, once the same has been utilized by the informant company and construction is completed. No offence under Sections 406 & 409 of IPC is made out.

21. It is also argued that even no offence under Sections 467, 468 & 471 of IPC is made out as allegation that the work order dated 2.4.2018

was issued by Square Infrastructure Private Limited to its subsidiary Stellar Group called M/s Keystone Developer as a contractor whereas shareholder agreement was executed on 23.5.2018 also do not constitute any such offence. The work order dated 2.4.2018 was within the knowledge of the informant company which executed the shareholder agreement on 23.5.2018.

22. It is submitted that after the construction has been completed, the informant company cannot raise an argument that work order dated 2.4.2018 is a forged document as completion certificate is admittedly issued by the Authority.

23. The Counsel further submits that offence under Section 504 & 506 of IPC are also not made out as there are general allegations of passing derogatory or insulting comments or extending threat to the informant and these allegations do not relate to (A-5 to A-8).

24. It is next argued that there is arbitration clause 11.1 in the loan agreement which is executed by the borrower company, guarantors, promoters as well as the DMI Finance. Clause 11.1 clearly provides that any dispute arising out of the agreement will be referred to sole arbitrator to be appointed by the lender company.

25. It is submitted that a purely commercial transaction is converted into criminal litigation just to put pressure on the petitioners.

26. Learned counsel has referred to the judgment of the Supreme Court in **M.N.G. Bharateesh Reddy vs. Ramesh Rangnathan and another, (2022) 16 SCC 210** wherein the Supreme Court has held as under :

“12. 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.”

13. 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.

14. 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 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.”

15. 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 4 (2000) 4 SCC 168 4 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)

16. 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)

17. 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.

18. 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.

19. 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 made⁵ (2009) 14 SCC 696 5 touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”. 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.

20. *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.”

21. *In Vijay Kumar Ghai v. State of West Bengal*⁷ 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.”

22. *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.”*

27. Reliance has also been placed on the decision in **Lalit Chaturvedi and Others Vs. State of Uttar Pradesh and another, 2024 SCC OnLine SC 171**, wherein, the Supreme Court has held as under :

5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections [420](#) and [406](#) of the [IPC](#). Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section [482](#) of the [Cr. P.C.](#) on the ground of delay/laches and also the factum that the

chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.

6. In “Mohammed Ibrahim v. State of Bihar”⁴, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:—

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”⁵, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr. P.C. Section 482 of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”⁶, “Indian Oil Corporation v. NEPC India Ltd.”⁷, “Vir Prakash Sharma v. Anil Kumar Agarwal”⁸ and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”⁹.

8. Having gone through the complaint, which was registered as an FIR and the assertions made therein, it is quite clear that respondent no. 2/complainant - Sanjay Garg's grievance is regarding failure of the appellants to pay the outstanding amount, in spite of the respondent no. 2/complainant - Sanjay Garg's repeated demands. The respondent no. 2/complainant - Sanjay Garg states that the supplies were made between the period 01.12.2015 and 06.08.2017. The appellants had made the payments from time to time of Rs. 3,76,40,553/- leaving a balance of Rs. 1,92,91,358/-.

9. We will assume that the assertions made in the complaint are correct, but even then, a criminal offence under Section [420](#) read with Section [415](#) of the [IPC](#) is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money.

10. The chargesheet also refers to Section [406](#) of the [IPC](#), but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. ¹⁰ For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The chargesheet does refer to Section [506](#) of the [IPC](#) relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money.

11. It is for the respondent no. 2/complainant - Sanjay Garg to file a civil suit. Initiation of the criminal process for oblique purposes, is bad in law and amounts to abuse of process of law.

28. Counsel for petitioner has further relied upon the decision in **Maksud Saiyed Vs. State of Gujarat and others, (2008) 5 SCC 668** wherein, the Supreme Court has held as under :

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to

pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

14. It will bear repetition to state that throughout the complaint petition, no allegation had been made as against any of the respondents herein that they had anything to deal with personally either in discharge of their statutory or official duty. As indicated hereinbefore, in the prospectus, a bona fide mistake had been committed. The fact that such a mistake had been committed stands accepted. In any event, the statement that the matter was pending before DRT instead and place of the City Civil Court, Ahmedabad, per se, cannot be said to be defamatory as the fact that a suit was pending for recovery of the huge amount is neither denied nor disputed. Whether such a suit was maintainable and/or is ultimately to be decreed or disposed of is a question which has to be gone into in the suit itself. A criminal court cannot even take that factor into consideration. The High Court considered the matter at some great details. Having analysed the materials placed before it, it was held:

“... It was, therefore, stated that there was no suppression or concealment of any facts and it did not amount to criminal breach of trust and cheating on the part of the Bank as alleged by the complainant. The said export bills under L/C were negotiated by the Bank under the provisions of UCPDC 500 1995 Revision. The Bank has also informed vide its letter dated 8-2-2005 to M/s SBI Capital Markets Ltd. It was stated therein that the Bank has not concealed or suppressed any material fact against the interest of the public at large and investors in particular. The bona fide misdescription in setting out the nature of claim was unintentional. It was further stated that the material particulars like the amount of claim, date of filing and name of the Company was correctly mentioned. The misdescription did not materially influence/affect the decision of the investors/public....”

It was furthermore opined:

“It appears to the Court that the learned Chief Judicial Magistrate has not applied his mind while passing the order under Section 156(3) of the Criminal Procedure Code directing the police to investigate in the matter. The impugned order, on the face of it, reveals that he has not gone through the complaint. He has stated in the order that Accused 1 to 10 are Manager and Branch Manager of Dena Bank. As a matter of fact, Accused 1 was the Ex-Chairman and Managing Director of Dena Bank, and Accused 2 was the Executive Director. Accused 3 to 10 are Directors of Dena Bank. None of these persons are Managers or Branch Manager. Despite this, the learned Chief Judicial Magistrate has mentioned in his order that they are Managers or Branch Managers. With regard to the prospectus he has simply stated that the Bank has issued prospectus for its public issue and at p. 87 false informations were given so as to cause damage to the Company and to

jeopardise the reputation of the Company. Despite the fact that the litigations are pending before the civil court he has mentioned about non-returning of export bills, etc. On these facts he has passed order under Section 156(3) of the Criminal Procedure Code, directing PSI, Sayajiganj Police Station to make inquiry in the matter.”

The approach of the High Court, with respect, is entirely correct.

15. *This Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] held as under: (SCC p. 760, para 28)*

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

The learned Magistrate, in our opinion, shall have kept the said principle in mind.”

29. Counsel has lastly relied upon the decision in **Thermax Limited and Others vs. K.M. Johny and others, (2011) 13 SCC 412** wherein the Supreme Court has held as under :

“49. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable and contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the appellants. For these reasons, the order passed by the Judicial Magistrate, First Class, Pimpri in CC No. 12 of 2002 on 20-8-2007 and the judgment of the High Court dated 11-1-2008 [WP (Cri) No. 1622 of 2007 order dated 11-1-2008 (Bom)] in Criminal Writ Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent 1 herein is quashed.”

30. Learned counsel has also relied upon the decision in **Priyanka Shrivastava and Another Vs. State of U.P. and Others, (2015) 6 SCC 287** wherein the Supreme Court has held as under :

“27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating “as per the application” to lodge an FIR creates a very unhealthy situation in the society and also reflects the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert

litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.

.....xx.....xxx.....xx

32. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

33. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows :

“32. Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act.”

In the present case, we are obligated to say that learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) Cr.P.C. It is because the Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needles to emphasize, the legislative mandate, has to be kept in mind.”

31. It is argued that the accused A-5 to A-8 who are the office bearers of DMI Finance have been falsely roped in the F.I.R. just to put pressure on them and the Magistrate has passed the impugned order without application of judicial mind.

32. Learned counsel has also relied upon the decision in **Babu Venkatesh and Others vs. State of Karnataka and others, (2022) 5 SCC 639** where in the Supreme Court while relying upon its earlier judgment in **State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 355** has held as under :

18. It could thus be clearly seen that, the said complaint dated 10th September 2019, was filed almost after a period of two years from the date of institution of suits by the appellant Nos. 2 and 3, and almost after a period of one and a half year from the date on which written statement was filed by respondent No. 2.

19. It will be relevant to refer to the following observations of this court in the case of State of Haryana and Others v. Bhajan Lal and Others, which read thus.

“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 channelised 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 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

20. It could thus be seen that, though this court has cautioned that, power to quash criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it has specified certain category of cases wherein such power can be exercised for quashing proceedings.

21. We find that in the present case, though civil suits have been filed with regard to the same transactions and though they are contested by the respondent No. 2 by filing written statement, he has chosen to file complaint under Section 156 (3) of the Cr.P.C. after a period of one and half years from the date of filing of written statement with an ulterior motive of harassing the appellants. We find that, the present case fits in the category of No. 7, as mentioned in the case of State of Haryana v. Bhajan Lal.”

33. The Counsel has thus argued that the accused (A-5 to A-8) whose company, DMI Finance, has provided loan to the project has to recover back their loan amount and in fact the DMI Finance has filed a petition before the N.C.L.T., Delhi and on the very next date when the F.I.R. was registered, they withdrew the petition with right to revive the same as the informant company, in order to avoid its liability to repay the loan, has given the civil dispute a colour of criminal litigation.

34. Learned counsel for petitioners in Criminal Misc. Writ Petition No.5280 of 2023 has argued that on 4.4.2017, two directors of the informant company, namely Himanshu Mathur and Arvind Kumar Singh were brought on the board of M/s Square Infrastructure Pvt. Ltd. and on 31.1.2018, Deepak Malhortra was also inducted on the Board of the aforesaid company and, therefore, there were three directors / nominee of the informant company. It is submitted that the work order dated 2.4.2018 prepared in the name of M/s Keystone Developers Pvt. Ltd. company of accused (A-1 to A-4) and DMI Finance Pvt Ltd. was approached which is

a Non Banking Finance Company for loan which was sanctioned on 2.5.2018 for Rs.55 Crores at the rate of 16% interest for construction of Phase-I.

35. Learned counsel laid emphasis upon this sanction letter dated 2.5.2018 was acknowledged by Deepak Malhotra of informant company as per a written declaration and, therefore, it does not lie in the mouth of the informant company that any misrepresentation or fraud is committed.

36. It is further argued that the loan agreement was signed on 23.5.2018 in conformity with sanction letter dated 2.5.2018 and Rs.55 Crore loan was disbursed to M/s Square Infrastructure Pvt. Ltd. by mortgaging the project land and on the personal guarantee of Akshay Sethi (A-2) and corporate guarantee of Stellar Ventures Pvt. Ltd. which is petitioner group's company and M/s Keystone Developers Pvt. Ltd. (contractor company, also a Petitioner's group company).

37. Learned counsel also laid emphasis that the loan agreement dated 23.5.2018 was duly signed by Deepak Malhotra on behalf of informant company as Promoter-2 and Abhishek Tyagi in personal capacity as Promoter-1 who is also director of the informant company and M/s Square Infrastructure Pvt. Ltd. also signed the loan as Promoter-3.

38. It is also argued that the additional loan in Emergency Credit Line Guarantee Scheme (ECLGS) of Government of India, during Covid-19 for Rs.9.80 Crore was taken from DMI Finance Pvt Ltd.and both informant company and borrower company signed the letters dated **28.6.2021** and second loan agreement dated 30th September, 2021 were signed by the informant company through Deepak Malhotra. It is submitted that Phase-I/ Tower-I was completed by M/s Keystone Developers Pvt. Ltd. and occupancy certificate was given by Noida Development Authority on 13.1.2022. The informant company is running its office on the 7th Floor in Tower-A since then and is in possession. It is further argued that the petitioners' company also infused additional funds

of Rs.28.095 Crore to M/s Square Infrastructure Pvt. Ltd. in order to make payment of interest on the loan for the some time, however despite request petitioners' company refused to infuse any fund into M/s Square Infrastructure Pvt. Ltd. despite repeated letters.

39. It is further argued that since the informant company even on completion of Phase-I/ Tower-A did not repay the loan amount, DMI Finance Company issued notice of default and on 23.11.22 DMI Finance Company filed a application under Section 7 of IBC before NCLT, New Delhi for default in payment of Rs.2,91,17,377/- against SIPL and immediately thereafter the FIR was registered by the informant company. It is submitted that the mediation proceedings initiated by DMI Finance Company failed because the director of the informant company did not appear in the proceedings.

40. It is argued that the allegation that the official of DMI Finance (accused A-5 to A-8) have colluded or conspired with accused (A-1 to A-4) in preparing a fake and fraudulent sanction letter dated 2.5.2018, is palpably wrong and is a misleading the statement in the FIR as informant company acted upon this sanction letter and by using the said letter entered into a loan agreement on 23.5.2018 and actual amount of loan Rs.55 Crore was disbursed to SIPL. It is submitted that each and every page of sanction letter dated 2.5.2018 and the loan agreement dated 23.5.2018 is signed by the informant company through its director Deepak Malhotra.

41. It is next argued that the allegation in the FIR that the work order dated 2.4.2018 is fake and fraudulent work order is also a misleading and mischievous statement in the FIR as the informant company in the FIR has admitted that all the rights for constructions were given by the informant company to Omega Infovision Pvt. Ltd. under a shareholder agreement and the construction was executed at the spot and the completion certificate was issued and the informant company is running

its office from Tower-A which is in possession of informant company and, therefore, the allegations in the FIR are apparently false.

42. It is also argued that there is no diversion or siphoning off of the fund as alleged in the FIR as the amount has been utilized for construction and occupancy certificate is already obtained by the informant company.

43. It is submitted that the allegation in the FIR that the account was opened in Kotak Mahendra Company in 2018 is factually incorrect as the account was opened in 2013 in ING Vysya Bank by previous directors and this bank merged with Kotak Mahindra Bank. Since the account was opened prior to March, 2017, the accused (A-1 to A-4) have no role.

44. Learned counsel argued that the allegation of threat or the intimidation to the informant – Harshit Singh are vague and or mere allegation without specifying any such action. He next argued that the shareholder agreement dated 23.5.2018 which is referred to in the FIR provides Clause 5.1 and 7.1 as under :-

*“**Clause 5.1** of the SHA, it is provided that OIPL through its nominees/ employees etc. shall have the exclusive right to undertake all development, construction, building, sale and leasing of the Project on behalf of SIPL, including appointment of any contractor etc. as it may deem fit.*

***Clause 7.1** it is specifically provided that the parties agree that the Company (SIPL) may avail loan facility from DMI Finance Pvt. Ltd. (DMI) in such terms and conditions including amount of the loan, interest rate, tenure etc. as may be mutually agreed between the Company (SIPL) and DMI for construction and development of the Project and Petitioners’ company OIPL or its nominee/ employee shall have the unconditional right to negotiate the terms thereof on behalf of the Company ”.*

45. It is thus argued that the FIR has been registered in order to avoid repayment of loan by the informant company by adopting a novel method of converting the civil proceedings to the FIR.

46. The informant company has filed counter affidavit in both the petitions.

47. In the counter affidavit to the Criminal Misc. Writ Petition No.2140 of 2023 (Puninder Bhatia and 3 others Vs. State of U.P. and others) the allegation levelled in the FIR are reiterated.

It is submitted that on 31.3.2017, the informant company acquired 85% shareholding of M/s Square Infrastructure Pvt. Ltd. and 10% share was acquired by Omega Infovision Pvt. Ltd. of accused (A-1 to A-4) being a subsidiary of Stellar Group.

48. On 31.1.2018, one Deepak Malhotra was nominated as Director of M/s Square Infrastructure Pvt. Ltd. The allegation in the FIR that on 2.4.2014 a work order was issued in favour of M/s Keystone Developers Pvt. Ltd., though the shareholding agreement was formally signed by the company on 23.5.2018 and, therefore, the work order dated 2.4.2018 show that it was a premeditated plot of the accused persons in collusion with each other.

49. It is also submitted that on 2.5.2018, loan was sanctioned by DMI Finance Pvt Ltd. in favour of M/s Square Infrastructure Pvt. Ltd. and a loan agreement was signed on 23.5.2018 for a loan amount of Rs.55 Crores for construction of Phase-I of the Project. It is also submitted that Stellar Group of companies signed a deed of guarantee. Certain terms and conditions in clause of agreements are also detailed in the counter affidavit.

50. It is also submitted that the accused persons in collusion with the petitioner have siphoned off loan amount received under ECLGS to their subsidiary companies in violation of Clause 2.15 "End Use Restriction".

51. In the counter affidavit to the Criminal Misc. Writ Petition No.5280 of 2023 (Ravi Mohan and 3 Others Vs. State of U.P. and 3 Others), similar stand is taken. In written submissions, it is submitted on behalf of informant company that offence under Section 420 IPC is made out as (A-1 to A-4) has fraudulently misrepresented and induce the informant

company having 85% of the shareholding to enter into a joint venture of construction of Phase I.

52. On such misrepresentation, informant company transferred the rights of management and banking etc. to the company of minority shareholders i.e. accused (A-1 to A-4) who came in possession of the land of the informant company.

53 It is next submitted that the offence under Section 406 & 409 IPC is made out as till October, 2020 the loan of Rs.55 Crores was disbursed out of which major amount was transferred to M/s Keystone Developers Pvt Ltd. against “end use restriction” of agreement.

54. The project was partly completed up to 30.6.2021. Thereafter, under ECLGS scheme of Government, accused (A-1 to A-4) acquired additional loan of Rs.9.8 crores in October, 2021 from DMI Finance Pvt Ltd. (accused A-5 to A-8). However, accused (A-1 to A-4) transferred the money to their subsidiary company in violation of loan conditions thereby committing breach of trust and misappropriation of public money.

55. It is submitted that the offence under Sections 467, 468 and 471 IPC is made out as the work order dated 2.4.2018 was executed by M/s Square Infrastructure Pvt. Ltd. issuing the work to its subsidiary company of Stellar Group called M/s Keystone Developers Pvt Ltd. as contractor though there was no agreement between informant company and Omega Infovision Pvt. Ltd. till 23.5.2018 when a formal agreement was signed and thus the accused has forged the sanction letter of DMI Finance Pvt Ltd.

56. It is also argued that offence under Sections 504 and 506 IPC are made out as on 5.11.2022, the representative of Omega Infovision Pvt. Ltd. threatened and abused the director of informant company. It is also argued that the matter involves disputed facts which cannot be adjudicated in the writ jurisdiction regarding the plea of civil dispute.

57. It is submitted that since the fraud is committed by the accused, they cannot seek protection under the garb of a plea that it is a civil or commercial dispute.

58. Reliance is placed on the decision of Supreme Court in ***Priti Saraf Vs. State (NCT of Delhi) (2021) 16 SCC 142***, the Supreme Court has observed as under :-

“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 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under [Section 482](#) CrPC for quashing such proceedings.

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 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 420 IPC”.

59. Reliance is placed on the decision of Supreme Court in ***Court in Trisuns Chemical Industry Vs. Rajesh Agarwal and Others, (1999) 8 SCC 686***, the Supreme Court has observed as under :-

“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 [1992 Supp (1) SCC 335]”.

60. Reliance is also placed on the decision of Supreme Court in ***Court in Shri Krishna Agencies Vs. State of A.P., (2009) 1 SCC 69***, wherein the Supreme Court has observed that criminal proceedings cannot be quashed solely because the dispute was referred to Arbitration and that Arbitration proceedings had taken place thereafter.

61. Learned A.G.A. has also addressed the arguments on similar line as raised by the counsel for the informant.

62. After hearing the counsel for the parties, as observed earlier, in view of the settled principle of law that while deciding a petition either under Section 482 of Cr.P.C. or under Section 226/227 of Constitution of India, the High Court cannot look into the defence documents set up by the accused persons and has to decide whether any offence are made out or not from the contents of the F.I.R., this Court has only relied upon contents of F.I.R., the four documents relied in the F.I.R. and the counter affidavit of the informant.

Criminal Misc. Writ Petition No. 2140 of 2023

There is merit so far as Criminal Misc. Writ Petition No. 2140 of 2023 is concerned for the following reasons :

A. From the bare perusal of the F.I.R., the case of the informant is that in March, 2017, the informant company i.e. M/s Abhi CompuSoft Private Limited acquired 85% shares of Square Infrastructure Private Limited. The Square Infrastructure Private Limited was the owner of a plot in

Sector 127, NOIDA, Uttar Pradesh and the possession was handed over to the informant company. Later on 2.4.2018, M/s Keystone Developers Private Limited was given the work to construct Phase-I of the project and in this regard, on 2.5.2018, DMI Finance (A-5 to A-8) made an offer of providing loan. On 23.5.2018, a share holder's agreement was entered into between the accused side as well as the informant side. It is also admitted in the F.I.R. that as per the agreement, the DMI Finance (A-5 to A-8) transferred a loan of Rs.55 Crores and construction was started. Later on, during Covid-19 period, under ECLGS Scheme of the Government, another amount of Rs.9.80 Crores was provided by DMI Finance in the company of the accused (A-1 to A-4). At the end of the F.I.R., it is stated that the construction is not completed and all the accused persons have committed the offence of misappropriation of the loan amount.

B. From the bare perusal of the F.I.R. and the documents relied upon by the informant in the F.I.R. itself, there is no allegation that DMI Finance (A-5 to A-8) was part of any conspiracy as alleged by the informant. The case of DMI Finance is clear that on 2.5.2018 a loan sanction letter was issued which was acted upon by the informant company as a shareholder's formal agreement was executed on 23.5.2018 under the signatures of the informant company as well as the other accused and DMI Finance (A-5 to A-8), according to which, the DMI Finance transferred Rs.55 Crores in favour of companies of co-accused (A1 to A4) from 2018 onwards and additional amount of Rs.9.80 Crores as per the subsequent agreement in the year 2021. Thus, the DMI Finance has no role in the inter se dispute between the informant company and the companies of accused (A-1 to A-4) even from the bare perusal of the F.I.R.

C. It is a candid case of DMI Finance (A-5 to A-8) that when the informant company failed to repay the instalments of loan, various

recovery notices were given and a petition was filed before the N.C.L.T., Delhi and immediately thereafter, the present F.I.R. has been registered and thus, the said petition was withdrawn with liberty to revive. Thus, DMI Finance is taking its legal recourse for recovery of the loan amount.

D. The case set up by the other co-accused (A-1 to A4) is that their company has paid an amount of Rs. 28.09 crores for making payment of interest but despite request, the informant company has refused to infuse any fund towards M/s Square Infrastructure Private Limited (borrower company) which has to repay the loan to DMI Finance.

On specific Court query whether the informant company has repaid any amount towards loan to DMI Finance, learned counsel for the informant could not rebut the allegation of the petitioner. It is worth noticing that neither in the F.I.R. it is stated that the informant company is repaying the instalments of loan nor any such document is relied upon in the F.I.R. Even in the counter affidavit filed by the informant to the writ petitions filed by the accused (A-5 to A-8), there is no whisper about the repayment of loan by the informant company. Therefore, in view of the judgment in **Priyanka Srivastava's Case (Supra)**, it is apparent that the informant company has roped in the officer bearers of DMI Finance (A-5 to A-8) as a ploy and a novel method not to make repayments of loan, thereby, converting their civil liability into a criminal prosecution which is apparently mala fide.

It is admitted case of the informant company that in F.I.R. itself that DMI Finance has transferred loan amount of Rs.55 Crores with effect from 2018 onward and additional loan amounting Rs.9.80 Crores from 2021 onwards.

E. The case set up by accused (A-1 to A-4) is that the entire construction of Phase-I is completed and Tower-A is erected and completion certificate was issued by NOIDA Development Authority on 13.1.2022 and informant company is running its office from 7th Floor and

is in possession of the property. Therefore, the registration of the F.I.R. in the year 2022 and prosecution of the accused (A-5 to A-8), after the completion of the project and taking over the possession, is nothing but misuse of process of law as the informant company wants to avoid repayment of loan.

F. It is worth noticing that when this petition was filed, on the request of both the parties, the matter was referred for mediation and admittedly, from the informant side, one of the directors initially attended the mediation proceedings but as he failed to appear subsequently, the mediation proceedings failed. This also reflect bent of mind of the informant company not to repay the loan amount.

G. From the bare perusal of the F.I.R., the ingredients of offence under Section 405 and 420 of IPC are not made out against the DMI Finance (A-5 to A-8). The allegations of extending threat relates to the office bearers of Omega Infovision Private Limited and not against the office bearers of DMI Finance (A-5 to A-8) as per F.I.R. itself and, therefore, no offence under Section 504 and 506 of IPC is made out.

H. The two letters, the first sanction letter of DMI Finance dated 2.5.2018 and second, the shareholders' agreement dated 23.5.2018 can not be held to be forged document as informant itself has acted upon these documents after understanding contents and signing the same and have actually taken benefit, in terms of these two documents as loan amount of Rs. 55 Crores and Rs. 9.80 Crores was disbursed to the informant and the companies of accused (A-1 to A-4). Once the informant company itself has signed these documents and after acting upon the same has taken the huge amount of loan from DMI Finance (A-5 to A-8), the lodging of F.I.R. on the ground that these are forged documents is misuse of process of law and is a novel way to avoid repayment of loan by the informant company and, therefore, offence under Sections 467, 468 and 471 is not made out against the petitioners (A-5 to A-8) in view

of the decisions in **M.N.G. Bharateesh Reddy Case** and **Lalit Chaturvedi and Others' Case (Supra)**.

I. There is yet another aspect which the Chief Judicial Magistrate while passing the impugned order did not notice that the dispute is of civil nature and from 2018 to 2022 when the F.I.R. was registered, the informant itself was acting upon the same and taking loan installments from the DMI Finance and after four years, the present F.I.R. has been registered against the DMI Finance (A-5 to A-8) as well as the other co-accused and, therefore, the impugned order passed by the Chief Judicial Magistrate directing registration of the F.I.R. against accused (A-5 to A-8) is not sustainable in the eyes of law in view of the judgment of Supreme Court in **Thermax Limited and Others' Case (Supra)**.

J. In view of the **Priyanka Shrivastava's Case (Supra)**, once the DMI Finance has resorted its remedy before the NCLT, New Delhi for recovery of the loan and even mediation proceedings have been initiated, converting those proceedings into criminal litigation at the instance of the informant who is the beneficiary of the loan agreement and has not repaid any amount of loan to DMI Finance, their prosecution is mala fide and not maintainable.

K. In view of the guidelines laid down by the Supreme Court in **Bhajan Lal's Case (Supra)**, it is a fit case to quash the impugned F.I.R. and consequential proceedings against the petitioners (A-5 to A-8) as from the allegations made in the F.I.R., even taken on the face value and accepted in its entirety, no prima facie offence is made out. Even as per the uncontroverted allegations in the F.I.R., it is the informant company which is the defaulter of the loan amount provided by the DMI Finance vide the two agreements which has been relied upon by the informant in the F.I.R. itself. Therefore, the prosecution of the petitioners (A-5 to A-8) is apparently mala fide.

Criminal Misc. Writ Petition No. 5280 of 2023

63. So far as petitioners (A-1 to A-4) in Criminal Misc. Writ Petition No. 5280 of 2023 are concerned, no case is made out for quashing qua them. As noticed above, the informant company and the companies of accused (A-1 to A-4), in a joint venture, have taken loan from DMI Finance and raised the construction. There are serious allegations of siphoning off of the funds by the accused (A-1 to A-4) in their subsidiary companies and extending threat to the Directors of the informant company and also forging some documents. Therefore, in view of the **Bhajan Lal's Case (Supra)**, this Court finds that the F.I.R. qua accused A-1 to A-4 cannot be quashed at this stage as there are allegation which are disputed by accused (A-1 to A-4) on basis of defence documents which cannot be taken in consideration at this stage.

64. Accordingly, Criminal Misc. Writ Petition No. 2140 of 2023 is allowed. The impugned order dated 17.12.2022 passed by the Chief Judicial Magistrate, Gautam Buddh Nagar directing to register the F.I.R. against the officer bearers of DMI Finance (A-5 to A-8) as well as the impugned F.I.R. i.e. Case Crime No. 486 of 2022 at Police Station – Sector 113, Commissionerate, Gautam Buddha Nagar, Uttar Pradesh under Sections 406, 409, 420, 467, 468, 471, 504 and 506 of IPC and all consequential proceedings qua accused (A-5 to A-8) namely Puninder Bhatia, Yuvraj Chankakya Singh, Vivek Gupta and Shivashish Chatterjee are hereby quashed.

65. The Criminal Misc. Writ Petition No. 5280 of 2023 stands dismissed.

Order Date :- 31.08.2024

DKS/Mukesh