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HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Crl.P.No.9794 of 2022

Between:

Argus Cosmetics Limited, and Others ...**PETITIONER/ACCUSED(S)**

AND

The State Of Andhra Pradesh and ...**RESPONDENT/COMPLAINANT(S)**
Others

DATE OF JUDGMENT PRONOUNCED: 25.10.2024

SUBMITTED FOR APPROVAL:

HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

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HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

+ CrI.P.No.9794 of 2022

%25.10.2024

Argus Cosmetics Limited, and Others

.. Petitioners

Vs.

\$ The State Of Andhra Pradesh and Others.

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner: Sri T V P SAI VIHARI.

Counsel for respondents: 1) Sri ANCHA PANDURANGA RAO
2) PUBLIC PROSECUTOR (AP)

? CASES REFERRED:

1. LL 2021 SC 211
2. 1992 Supp (1) SCC 335
3. (1988) 1 SCC 692.
4. (2021) 2 SCC 427
5. 2023 (1) INSC 683
6. 2023 SCC OnLine SC 603
7. 2009 (8) SCC 751
8. 2024 SCC Online SC 2248
9. (2007) 14 SCC 768
10. 1986 AIR 2045

APHC010667652022

IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3396]



FRIDAY ,THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION NO: 9794/2022

Between:

Argus Cosmetics Limited, and Others ...PETITIONER/ACCUSED(S)

AND

The State Of Andhra Pradesh and ...RESPONDENT/COMPLAINANT(S)
Others

Counsel for the Petitioner/accused(S):

1.T V P SAI VIHARI

Counsel for the Respondent/complainant(S):

1.ANCHA PANDURANGA RAO

2.PUBLIC PROSECUTOR (AP)

The Court made the following

ORDER:

1. The instant Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973¹ has been filed by Petitioners/Accused Nos.1, 2, 3 & 5, seeking to quash the C.C.No.1555/2022 on the file of I

¹ for short 'Cr.P.C'

Additional Metropolitan Magistrate at Vijayawada, Krishna District registered for the offences Under Sections 409, 384, 506, 420 r/w 120A and 34 of IPC.

2. Heard Sri K.S. Murthy, learned Senior Counsel representing Sri T.V. Sai Vihari, learned counsel for the Petitioners, Sri T. Ramesh Babu, learned counsel representing Sri A. Pandu Ranga Rao, learned counsel for the Respondent No.2 and Ms. Lakshmi Priyanka, learned Assistant Public Prosecutor, representing the State.

3. The brief contents of the complaint which was filed by Respondent No.2, are thus:

a. It is stated that Respondent No.2 is doing business in cosmetics since 2004 and is a stockist/distributor of various cosmetic brands. A1 is a manufacturing company. On 01.12.2016, Respondent No.2 deposited Rs.1.25 crores with A1 for business of mega stockist on assurance of 3% margin/discount per month irrespective of sales as per the agreement.

b. Just after few months of such agreement with the Company they did not pay the monthly interest/margin and it is accumulated to a huge value. Respondent No.2 is raising monthly debit notes and communicating to the Company by e-mails regularly. The Company failed to supply stocks from August, 2017 to December, 2017. In December, 2017 they have asked for extra finance to manufacture stocks with assurance of 25% to 30% of extra supply to clear the accumulated amount slowly, else

they threatened that they will supply stocks to others who come with cash and that Respondent No.2 yielded to their blackmailing demand and it was carried on till August, 2020 by falling and rising.

c. Accused sent accounts statements dated 09.08.2017 and 19.02.2018 admitting the arrears of Rs.14 lakhs and Rs.44 lakhs respectively. Thereafter, in spite of several requests made by Respondent No.2 through mails Accused is not sending account statements. In August, 2020 again they stopped supplies and Respondent No.2 sent an e-mail requesting to restore the supply or return the deposit altogether Rs.1.64 crores but there is no response from the Company.

d. Respondent No.2 gave a complaint to the Commissioner of Police on 12.08.2020 which was forwarded to Suryaraopeta Police Station and that after few calls to the accused Company by police they have restored the supplies on 29.08.2020 that an e-mail with clear assurance to review the system within three months by then. The business ran-up to December, 2020. In December, 2020 while Respondent No.2 asked the accused Company to review the system, they totally stopped the supplies from 01.01.2021. As there is no other go, Respondent No.2 approached the police. A6 and A7 came to the police station along with their counsel on 28.01.2021 and the counsel by name M. Vasu Venkat, who came from Chennai accepted that stoppage of supply by the accused is wrong. Accused Company requested the police for negotiations. On their

request, Respondent No.2 has sent statement of account through e-mail for reconciliation. The Advocate for accused Company replied showing his inability to settle the issue. The accused are supplying the stocks directly to the super stockist in utter violation of the terms of the agreement highhandedly. The Respondent No.2 received a notice from Telangana Sales Tax Department on 22.01.2021 asking to pay Rs.11.72 crores which was fallen due from M/s Argus Cosmetics Limited since 2006-07 to 2017-18 financial years. Respondent No.2 also received similar notice from Chennai GST office for Rs.3.72 Crores in June, 2018 by registered post.

e. The financial statements of accused Company reveal remarks of their auditors that all the directors took interest free loans violating the Section 185 of Companies Act and are increasing year by year. It is mentioned in the financial statement of 2018-19 that a director filed a complaint against the Company and other three directors before National Company Law Tribunal², Chennai for oppression of minority interest. As per the terms of the agreement, accused Company have to keep the stocks worth deposit in Complainant's premises which never took place since the inception. The accused Company never disbursed the monthly margin either by stock or by cash. Respondent No.2 has taken loan from DCB Bank to the tune of Rs.1.98 crores by mortgaging her property and facing hardship to pay EMIs besides meeting other expenses comes to

² for short "NCLT"

Rs. 4 lakhs per month. Respondent No.2 was forced to withdraw the amount invested in other banks to meet the EMIs to the bank and family expenses.

f. Respondent No.2 was forced to yield to the highhanded demand of advance amounts to each and every invoice of supply for the blackmailing of accused Company that she will forego not only supply but also offer of 25% to 30% extra stock to reduce the accumulated amounts. Violation of terms of agreement by the accused company attracts the offences U/s 409 of IPC. Demanding advance payments by threatening to sell the stocks to others attracts the provisions of Section 384 and 506 of IPC. Failure to pay monthly margin and return account dues after stoppage of supplies in spite of demands by e-mails attract the offences U/s 420 IPC. All the actions of the accused are with the connivance of one another. Hence the provision of Sections 120 A and 34 IPC applied to the accused.

4. Grounds Sought for Quashment:

a. Respondent No.2 filed petition u/s 9 of Insolvency and Bankruptcy Code, 2016³ before NCLT, Chennai *vide* C.P./IP/90 (CHE)/2021 and the same was dismissed and on which an appeal was preferred by the Respondent No.2 before NCLAT *vide* Appeal (AT)(Ch)(Ins) No.317 of 2022 was dismissed by confirming the judgment of NCLT, Chennai. The Respondent No.2 suppressed the same in the complaint.

³ for short "IBC"

b. The allegations made against the accused if are taken to be true, they constitute, at best a breach of agreement. There are no allegations in the complaint that from the inception of super stockist agreement itself the elements of *mensrea* of cheating etc., were there.

c. The transactions between the accused and the complainant are purely business oriented and they cannot be dubbed into the offence of cheating since there was neither any promise nor any kind of inducement. If at all if there is any grievance to recover the alleged dues, the remedy is only to approach the competent civil Court but not filing a complaint by invoking the criminal provisions and it is filed only with an intention to arm twist the accused. It is purely abuse of process of law. Even assuming that the allegations in the complaint are tested, no cognizable offences is made out against the accused. It is purely a legitimate business operation and no criminal offence has been committed. The Complainant is attempting to cause prejudice to the accused by making them to go through their rigor of a criminal trial that too at a distant place from their ordinary place of business for no fault of theirs.

5. The key averments made by the Respondent No.2 in counter of the vacate stay petition:

a. On the complaint filed by Respondent No.2, the Court took cognizance for the offence punishable U/s 409, 384, 506, 420 r/w 120-A and 34 IPC in CC No.1555/2022.

b. The question of suppression of material facts does not arise in this case, since the private complaint has been filed prior to filing of a Company petition before NCLT and appeal thereafter before NCLAT. Non-return of deposit, non-payment of interest and deposit and arrears, stoppage of supply to Respondent No.2 and subsequent supplies to other super stockists of Andhra Pradesh in violation of agreement concretely prove the existence of elements of *mens rea* and cheating.

c. The complaint is not filed for recovery of money. Therefore, the Complainant is at liberty and legally entitled to redress her grievance under the provisions of IPC and there is no prohibition in that regard. Mere pendency of Company Petition No.26/2023 before NCLT, Chennai for recovery of the due amount does not dissolve or relieve the accused from their criminal liability. *Malafide* intention of the accused is the visible by their acts, deeds, omissions and commissions.

d. The Complainant's case was not dismissed on merits by NCLT and NCLAT. The statements of Respondent No.2 are supported by concerned e-mails. Accused are aware of pendency of Company Petition No.26/2023 before NCLT, Chennai since notice served on them which was suppressed in the criminal petition. The Complainant has also made a report to the Registrar of Companies, Chennai against the accused through mail on 01.03.2021, in turn, initiated enquiry which is pending for

consideration. But the accused suppressed and concealed this fact which reveals malafides on their part.

e. The Complainant has also made a complaint to CBI through mail on 27.02.2021 and also to Ministry of Corporate Affairs against accused, who suggested the Complainant to approach the appropriate police authority, judicial forum for her grievance since the matter relates to breach of trust, *mens rea* and cheating.

f. The accused herein are the habitual offenders and indebted to a supplier of cartons i.e., M/s Manipal Technologies Limited in the year 2014 itself, who filed a liquidation petition in the year 2014 and the status of accused Company was converted by Registrar of Companies, Chennai as "Under Liquidation".

6. The brief contents of the rejoinder filed by the accused in brief:

a. The parties are in a business contractual relationship. If amounts are due under the contract the same cannot be worked out in a criminal complaint. Respondent No.2 himself is admitting that certain credit notes were issued and certain supplies were made and admittedly the accounts between the parties are to be reconciled and without reconciliation of the accounts the Complainant cannot claim any amounts.

b. The Complainant has failed to demonstrate the culpability of the Petitioners/accused. Certain payments made by the accused were not

properly deducted. Complainant without approaching the civil Court filed the present complaint which demonstrates the intention to harass the petitioners/accused. Complainant has not entrusted any property to the Petitioners/accused and accused never dishonestly appropriated the property of the complainant. Supply of stocks to others, even if it is true, would constitute a breach of agreement and does not attract Section 409 IPC.

c. The entire transaction between the parties were in the course of legitimate business dealings. There is no threat of injury and there are no averments in the complaint that the Petitioners/accused intimidated the Complainant with criminal intention to do what is illegal or to avoid doing what is legal. Hence no offences U/s 384, 506 IPC are made out.

d. No specific overt act against each of the petitioners/accused have been mentioned to make out criminal conspiracy or common intention.

e. Initially, the husband of the Respondent No.2 filed the complaint on 06.04.2021 and after several returns by the Court finally neat copy of the complaint has been filed by changing the cause title and also carried out many corrections on 28.05.2022, whereas the application Under Section 9 of IPC was filed before NCLT on 06.04.2021.

f. Even in the sworn statement the Complainant did not choose to reveal the fact of filing a Company Petition before NCLT, Chennai. The alleged non-return of deposit, non-payment of interest, stoppage of

supplies, and alleged supplies to other super stockiest in violation of agreement are all civil in nature without any *mens rea* at the time of inception of the contract.

g. The averments of the private complaint fully speak about the recovery of money. It is an arm-twisting exercise by the Complainant to recover moneys that are not due to her under the threat of criminal prosecution.

h. The observations made by NCLAT and the Hon'ble Supreme Court in the nature of giving liberty for recovery of money before a competent civil forum. When such is the position stating that criminal Court and Civil Court will have coordinate jurisdiction is baseless. Owing an operational debt which defined under Chapter-V of the Companies Act, 2013 would not fasten any criminal liability on the petitioners.

i. It is the consistent case of accused that in the course of business they have supplied goods more than the money received by them from the Complainant. It is for the Complainant to plead the contrary by approaching a competent civil forum to settle accounts. Dragging the Petitioners/Accused to a criminal court could amount to pressurizing them to settle the alleged dues without any adjudication.

j. Respondent No.2 failed to raise a plea of malafide and that which is not pleaded cannot be proved. The order of the Hon'ble Supreme Court in Civil Appeal No.31/2022, dated 11.11.2022 would show there exists

mere civil disputes between the parties. It does not disclose unethical and dishonest intention on the part of the accused as alleged. Accused filed present petition in December, 2022, whereas the company petition No.26/2023 was filed by the Respondent No.2 on 17.03.2023. Hence the question of suppression of such fact in the criminal petition does not arise.

k. The reply which was given by the Ministry of Corporate Affairs Secretary Mrs. S. Padma Roy does not vest the Respondent No.2 with any right to move the criminal Court, on the set of averments set out for the private complaint. No criminal complaint is maintainable.

Arguments Advanced at the Bar

7. Learned Senior counsel for the Petitioners/ accused would submit that Respondent No.2 entered an agreement with accused company on 01.12.2016 and the stocks were supplied till January, 2021 before filing the present private complaint. Respondent No.2 has approached NCLT, Chennai and the said petition was dismissed. Assailing its order, Respondent No.2 filed an appeal before NCLAT which was dismissed. Being aggrieved by such order, has also preferred a civil appeal before the Hon'ble Supreme Court of India, which was dismissed. It is stated by the learned Senior Counsel that the Complainant did not choose to mention the history of this litigation in the private complaint. Learned Senior Counsel further would submit that though the private complaint

has been filed in the name of the husband of the Respondent No.2 which was returned and several times adjourned for hearing. At last, the complaint was again re-submitted by changing the cause title and by adding the further information but deliberately they have suppressed the litigation between the parties and the orders passed therein. Learned Senior Counsel further would submit that as per the terms of the agreement it is alleged that the accused failed to pay monthly margin/discount as was offered and failed to supply stocks. Learned Senior Counsel further would submit that the accused has stopped sending supplies as on 01.01.2021.

8. Learned Senior Counsel further would submit that even if all the allegations made against the accused in the complaint are taken into consideration on their face value as true, they do not attract any offence under the provisions of 409, 420, 384 and 506 IPC. Learned Senior Counsel further would submit that the utmost it is a matter of breach of terms of the contract which would amount to cheating only in case of any deception played by the accused since the very inception. In the present case, the supplies were made, since 01.01.2021 and the agreement is of the year 2016 which would demonstrate that there was no deception from the inception.

9. Learned Senior Counsel further would submit that the complaint has been filed suppressing the facts of filing of a petition before NCLT

and NCLAT. Learned Senior Counsel further would submit that as of now the company petition No.26/2023 is pending before NCLT, Chennai for recovery of amount apart from the enquiry before Registrar of Companies, Chennai. Learned Senior Counsel finally submits that unless there is a rendition of account statements of both parties, the due amount, if any, cannot be ascertained. In the present case the Complainant wanted to punish the accused even without adjudication of such due amount, if any. Learned Senior Counsel further submits that even if operational debt is payable to the Complainant, it does not attract any criminal offences. In that view, continuing the criminal proceedings against the Petitioners/accused is mere abuse of process of law.

10. *Per contra*, learned counsel for Respondent No.2 would submit that the private complaint has been filed on 06.04.2021. Hence filing a petition before NCLT and appeal before NCLAT are subsequent events, then the question on suppression of such facts in the complaint does not arise. Learned counsel further would submit that the accused put the de-facto complainant in fear and blackmail her to pay the amounts in advance in each and every invoice though the deposit amount is lying with them and without returning the margin amount and arrears the complainant was put in fear of injury to her business by supplying stocks to super stockiest in violation of the terms of the agreement. Learned counsel further would submit that the cases preferred before NCLT and NCLAT were not

dismissed on merits. The complaint is very clear about the deception played by the accused since the inception. Learned counsel in support of their arguments placed reliance on **Neeharika Infrastructure Pvt Ltd. V. State of Maharashtra**⁴.

Point for Determination

11. Having heard submissions on both sides, now the point that would emerge for determination is

Whether there are any justifiable grounds for quashment of the case against the petitioners for the offences punishable u/s 409, 506, 384, 420, r/w 34 and 120B of IPC?

Determination by the Court

12. Before going to discuss the point in issue the undisputed facts of the case are that;

a. There is no dispute of the existence of Mega Stockiest Agreement between the petitioners and Respondent No.2 on 01.12.2016.

b. It is also admitted fact that there is stoppage of supply of stock to Respondent No.2 since January, 2021.

c. It is also not in dispute that the Respondent No.2 made a deposit of Rs.1.25 Crores with accused Company, which is initial deposit.

⁴ LL 2021 SC 211

d. Complainant has approached NCLT by filing a petition u/s 9 IBC, which was dismissed, thereafter preferred an appeal before NCLAT which was also dismissed by confirming the order of the Tribunal.

e. Aggrieved by the order, the Complainant preferred civil appeal seeking special leave in Civil Appeal No.31 of 2022 before Hon'ble Supreme Court of India which was dismissed.

f. As of now, Company Petition No.26/2023 is pending before the NCLT, Chennai for recovery of the due amount

g. Enquiry is pending before the Registrar of Companies, Chennai on the complaint made by the Respondent No.2

h. There was exchange of mails between the parties, subject to proof of its contents.

13. A perusal of Section 482 makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; *(i) to give effect to any order under the Code or, (ii) to prevent abuse of the process of any Court or, otherwise (iii) to secure ends of justice.* A court while sitting in Section 482Cr.P.C. jurisdiction is not functioning as a trial court, court of appeal or a court of revision. It must exercise its powers to do real and substantial justice, depending on the facts and circumstances of the case. These powers must be invoked for compelling reasons of abuse of

process of law or glaring injustice, which are against sound principles of criminal jurisprudence.

14. Specific circumstances warranting the invocation of the provision must be present. To identify these specific circumstances, it is essential to discuss some precedents. The decision rendered by the Hon'ble Apex Court in ***State of Haryana v. Bhajanlal***⁵ is considered as the guiding torch in the application of Section 482. At paras 102 and 103, the circumstances are spelt out 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 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

⁵1992 Supp (1) SCC 335

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”

(emphasis supplied)

15. A three-Judge Bench of the Hon'ble Supreme Court in **MadhavraoJiwajiraoScindia v. SambhajiraoChandrojiraoAngre**⁶ held as follows;

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

(emphasis supplied)

16. In **Arnab Goswami v. State of Maharashtra**⁷, the Supreme Court opined that while adjudicating a quash petition, the High Court is duty-bound to undertake a *prima facie* evaluation of whether the ingredients of the alleged offence have been established in the FIR.

⁶ (1988) 1 SCC 692.

⁷(2021) 2 SCC 427

17. A three-Judge Bench of the Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt.Ltd.v. State of Maharashtra***,(referred supra) summarized the law for invocation on inherent powers in the following terms;

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr. P.C.
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters

laid down by this Court in the cases of R.P. Ka-pur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

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

(emphasis supplied)

18. In *Mohammad Wajid v. State of U.P.*⁸, the Hon'ble Apex Court while reiterating the position held in *Bhajanlal* (supra), made a comprehensive analysis on the application of the Section. The Apex Court stressed on the necessity to arrive at a balance between the law enforcement power of the State and the protection of citizens from unjust criminal proceedings. It was observed that the right not to be disturbed without sufficient grounds is one of the mandates under Art 21 of the Constitution of India. It was held in the following terms;

“34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a

⁸2023 (1) INSC 683

duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. **Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.** The Court while exercising its jurisdiction under Section 482 of the Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

(emphasis supplied)

19. In *Gulam Mustafa v. State of Karnataka*⁹ the Hon'ble Supreme Court having expounded the law on the jurisdiction under Section 482, held thus;

⁹ 2023 SCC OnLine SC 603

“36. What is evincible from the extant case-law is that this Court has been consistent in interfering in such matters where purely civil disputes, more often than not, relating to land and/or money are given the colour of criminality, only for the purposes of exerting extra-judicial pressure on the party concerned, which, we reiterate, is nothing but abuse of the process of the court....”

(emphasis supplied)

20. In **Mohammad Ibrahim and others v. State of Bihar and another**¹⁰, the Hon'ble Apex Court has held as under:

“This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes.....”

(emphasis supplied)

21. To sum up, when a prosecution is sought to be intervened by quashment, the test to be applied by the Court is to see whether the uncontroverted allegations as made in the FIR/complaint *prima facie* establish the offence alleged or not. An FIR/complaint may not be quashed, merely because the allegations of criminality have a civil element. But when the civil dispute is the overwhelming flavour of criminal accusation, the Courts can intervene to quash the same.

¹⁰2009 (8) SCC 751

22. In the context of the present case, it is apt to mention the settled legal position that a mere breach of contract does not give rise to criminal prosecution for cheating, unless it is shown that the accused acted with fraudulent or dishonest intention, from the inception of the transaction. The intention of the accused at the time of inducement, plays a vital role in determining if any offence has been committed. The intention in certain cases, can be culled-out from the subsequent conduct. Moreover, mere failure to keep up a promise is not sufficient to initiate criminal proceedings for cheating.

23. In **Delhi Race Club (1940) Ltd v. State of Uttar Pradesh**¹¹ the Hon'ble Supreme Court distinguished the offences of criminal breach of trust as contained in Section 406 IPC and cheating as provided under Section 420 as follows;

- “25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients. In order to constitute a criminal breach of trust (Section 406 IPC): -
- 1) There must be entrustment with person for property or dominion over the property, and
 - 2) The person entrusted: -
 - a) dishonestly misappropriated or converted property to his own use, or
 - b) dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:
 - i. any direction of law prescribing the method in which the trust is discharged; or
 - ii. legal contract touching the discharge of trust.

¹¹ 2024 SCC Online SC 2248

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

- 1) deception of any person, either by making a false or misleading representation or by other action or by omission;
- 2) fraudulently or dishonestly inducing any person to deliver any property, or
- 3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))”

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

(emphasis supplied)

24. The Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd** (supra 11) further elaborated stating that every act of breach of trust would not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. It was also observed by the Court that there is a thin line of distinction between a mere breach of contract and the offences of criminal breach of trust and cheating. It was also noted by the Court that the offences of criminal breach of trust and cheating, though involve dishonest intention as an element, are mutually exclusive and cannot co-exist simultaneously. In case of criminal breach of trust, the offender must be lawfully entrusted with a property, and he must have dishonestly misappropriated the same. On the other hand, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property.

Further, the Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd.**

(Supra 11) opined as follows;

36. “From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : *Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another* : 2024 SCC OnLine SC 171 & *Mideast Integrated Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another* : 2023 SCC OnLineJhar 301]”

(emphasis supplied)

25. It is imperative to extract the following observation made by the Hon'ble Apex Court in the light of the offences under Section 409 and 420 of IPC, at para 42 and 43;

42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the

informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43.It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating *viz-a-viz* criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.

(emphasis supplied)

26. Coming to the facts of the present case, the learned Magistrate took cognizance for the offences punishable under Sections 420 IPC as well as 409 IPC, which stands quite contra to the judgment in **Delhi Race Club (1940) Ltd.** referred supra.

27. The record shows that the Petitioner No.1 is a limited company. It is the case of Respondent No.2 that there is an outstanding due amount which is payable by the Petitioner Company. The case of the Complainant is that they have deposited Rs.1.25 crores with the Petitioner No.1 for the business of Mega Stockist in 2016. The Petitioner No.1 assured a discount of 3% per month as per the agreement irrespective of sales shown by Complainant. After a few months of Mega Stockist Agreement, it is alleged that the Petitioner No.1 stopped giving monthly discounts. Thereafter, the Company approached the Complainant

for additional financial assurance of giving 25% to 30% extra supply to compensate for the earlier default. It was done in December 2017. It is further alleged that, in August 2020, the Company again stopped the supply of the material to Complainant and not responded to the request made by the Complainant through e-mails. The complainant then approached local police station. Due to intervention of the police, they have supplied the stock for 3 months and then completely stopped supply from 01.01.2021. On the other hand, the company states that the Complainant suppressed the supply of value of goods during the period from the date of the agreement till December 2020 and the company disputed the due amount saying that they have supplied stock more than the worth of amount received from the Complainant. Admittedly petition has been filed before the NCLT under Section 9 of IBC 2016 and it was dismissed by observing as follows:

“12. Thus, for a person to qualify as an Operational Creditor he must have supplied the goods or rendered service to the Corporate Debtor, which is not the proposition in the present case and on the other, as per the agreement dated 01.12.2016 in page 20 of the typed set filed by the Applicant, it is the Corporate Debtor who is required to supply the goods to the Applicant, claiming to be Operational Creditor. Further, the default in the present case has arisen since the Corporate Debtor had failed to repay the deposit which is made by the Applicant. Thus, the failure to repay the deposit amount would not fall within the meaning of “operational debt” as stipulated under Section 5(21) of IBC, 2016 and as a consequent thereto, the Petitioner does not qualify to be an Operational Creditor as defined under Section 5(20) of IBC, 2016 in respect of the Corporate Debtor.

13.Thus, in view of the discussions made supra, the instant Application filed by the Applicant under Section 9 of IBC, 2016 is not maintainable and accordingly stands **dismissed**. No costs.”

28. It is also not in dispute that Complainant preferred appeal impugning the order before NCLAT which was also dismissed, wherein the learned Authority extracted the terms of Clauses 1 to 8 in Mega Stockist Agreement as follows:

“ It is not out of place for this Tribunal to make a pertinent mention that the ‘Mega Stockists Agreement’, entered into between the ‘Respondent’/ Argus Cosmetics Limited’, Chennai – 600018 (‘Company’) and the ‘Appellant’ M/s. Sri Durga Department Store, Vijayawada – 520002 (‘Mega Stockists’), the covenants of Clause Nos.1 to 8, reads as under:

1. “An amount of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs Only) has been paid by M/s Sri Durga Department Store by RTGS on 01.12.2016.
2. This investment of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs Only) is eligible for a return of 3% per month as trade discount.
3. This 3% per month on the Investment of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs Only) will be paid by way of “Trade Margin” on the supply of company’s products of ‘Z’ Talcum Powder, ‘Z’ Deodorant and ‘Z’ Soap and other products launched by Argus Cosmetics Limited.
4. The supplies will be made for the amount equivalent to the Investment of Rs. Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs Only).
5. The Super Stockist will give their orders and advance payment to the Mega Stockist M/s Sri Durga Department Store.
6. The Mega Stockist will pass on the orders of the Super Stockist and the amount IMMEDIATELY to ARGUS by RTGS. In case the amount is not transferred immediately, then it will be treated as violation of this agreement.

7. ARGUS will supply stocks to the Mega Stockist on the basis of orders and payments received.
8. If the billing exceeds Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs Only) in a particular month, the Mega Stockist will be given an option of investing additional amount, as required by ACL. In case the Mega Stockist is unable to invest additional amount as required, the supplies will be made DIRECTLY to anyone or more Super Stockist/s”

29. Para 19 of the order indicates that is some amounts which were paid were not deducted by the appellant. As can be seen from the clause in the Mega Stockist Agreement, dated 01.12.2016, the Complainant will pass on orders of the Super Stockist and the amount immediately to the company. Then, the company supplies stocks to the Complainant on the basis of Orders and payments received. The recitals of the agreement would clearly demonstrate that by virtue of the agreement dated 01.12.2016, the Petitioner No.1 is required to supply the goods to the Complainant. In the present case there were some disputes between the company and the complainant regarding the payment of the amount and supply of the stocks. It is not out of place to mention that the appeal was dismissed by NCLAT by observing as under:

“In fine, the instant Comp. App (AT) (CH) (Ins) No.317/2022 is dismissed. No costs. The connected I.A.No.675/2022 is closed.

Before parting with this case, it is abundantly made quite clear, by this ‘Tribunal’, that the dismissal of the instant Comp. App (AT) (CH) (Ins) No.317/2022, will not preclude the ‘Appellant’ / ‘Petitioner’ / ‘Operational Creditor’ to approach the ‘Competent Civil Forum’, for redressal of its

grievances, of course, in the manner known to 'Law' and in accordance with 'Law', if it so desires / advised."

30. It is pertinent to mention that the Complainant preferred a Civil appeal impugning the order of NCLAT before Hon'ble Supreme Court. It is beneficial to extract the judgment of Hon'ble Supreme Court in Civil Appeal No.7631 of 2022:

"We see no reason to entertain this appeal considering that both the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) have examined the matter in detail.

The Appeal is, accordingly, dismissed.

However, the appellant would avail the other remedies available to them in law, to recover the amount."

31. Coming to Section 383 of IPC, it deals with the offence of extortion and the following are the essential ingredients necessary to make a case as held in various judgments including **Dhananjay v. State of Bihar**¹², are;

- a.** The accused must put any person in fear of any injury to that person, or to any other person;
- b.** The putting of such a person in such fear must be intentional;
- c.** The accused must thereby induce the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security

¹²(2007) 14 SCC 768

d. Such inducement must be done dishonestly.

32. At this stage, in the context of the present case, it is apt to refer to the decision rendered in **R.S. Nayak v. A.R. Antulay**¹³ where it has been held by Hon'ble Supreme Court as under:

“Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in *Habibul Razak v. King Emperor*, A.I.R. 1924 All 197. There is no evidence at all in this case that the managements of the sugar co- operatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co- operatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion. We see, therefore, no justification in the claim of Mr. Jethmalani that a charge for the offence of extortion should have been framed.”

(emphasis supplied)

33. Coming to the facts of the present case, as can be seen from the contents of the complaint, it is the case of the complainant that the accused company threatened to supply the stock directly to the super stockist, unless they advance the money for supply of stock and it

¹³ 1986 AIR 2045

amountsto extortion. In the backdrop of the legal position referred supra, that cannotfall under the purview of the offences of extortion.

34. Admittedly,this is a case arising out of failure on the part of the Company to honour the terms of the agreement. The company as well as the complainant entered Mega stockist agreement on01.12.2016. The complaint would show that initially for few months company honoured the terms of the contract. After that, they started committing default of the terms of the agreement. It is also on record that the complainant has obeyed the proposal for investing additional amount for giving 25% to 30% extra supply and then again, the default committed in supplying the stock in the 2018 for 3 months. Thereafter it was restored after some time. In August, 2020 again there was a discussion and dispute and it was reviewed due to intervention of police till December, 2020. The record finally shows that since 01.01.2021 the company stopped the supply finally. The series of events as described in the complaint would show that from 01.12.2016 till 01.01.2021, there was a supply of the stock and payments made by the Complainant. Admittedly, the matter is pending before the Tribunal, since company petition for the recovery of due amount is pending. It is the case of the company that theyhave supplied the stock for the worth more than the amount received from the complainant. That adjudication on this disputed question of fact is pending before the proper authority.

35. As referred supra, in Civil Appeal preferred, the Hon'ble Supreme Court made it clear that the complainant can approach a competent civil Court for recovery of the due amount. Such being the case initially a complaint was filed by the husband of Respondent No.2 in his name and later after several objections were taken, the complaint was filed in the name of the firm representing by Respondent No.2 through GPA, who is her husband. In the light of the aforesaid mentioned premises, it does not appear to be a case of cheating. There is no dishonest or fraudulent intention to cheat the Complainant as per the averments. As such, it is not tenable to continue proceedings for the offences under Section 420 and 406 IPC, when it is a clear case of breach of promise of the contract, against which the Complainant already approached the proper authority for adjudication of the matter. That apart, there cannot be any vicarious liability under criminal law. In the light of aforesaid mentioned discussion, proceeding with the criminal case is a mere abuse of process of law. The power vested under Section 482 on this Court has to be exercised in quashing criminal proceedings that are clothed with a predominant or sole civil flavour.

36. In the result, the Criminal petition is allowed. The criminal proceedings in C.C.No.1555/2022 on the file of I Additional Metropolitan Magistrate at Vijayawada, Krishna District registered for the offences

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under Sections 409, 384, 506, 420 r/w 120A and 34 of IPC are quashed against Petitioners/Accused Nos.1, 2, 3 & 5.

Pending applications, if any, shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date:25.10.2024
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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CrI.P.No.9794 of 2022

Dt.25.10.2024

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