

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3023 OF 2022

1. Mr. Dharmendra Rathore
S/o. Gore Lal Rathore
Age : 49 years, Occupation : Professional
R/at: 2712, Overseas Apartment, Plot No. F-9
Sector 50, Gautam Buddha Nagar, Noida
Uttar Pradesh 201301

2. Mr. Dheeraj Mehta
S/o. A. K. Mehta
Age : 49 years, Occupation : Professional
R/at: B-1/705, Paradise Apartments,
Plot No.40, I. P. Extn., Patparganj, East Delhi
Delhi 110092. Petitioners

V/s.

1. The State of Maharashtra
(Through P. I., Yerawada Police Station,
Pune).

2. Mr. Ramdas Anandrao Kamthe
Age : 56 Years, Occupation : Business,
R/o. Plot No.33, Padmachaya Society,
Gulmohar Bungalow, Kharadi, Pune
Maharashtra. Respondents

**WITH
WRIT PETITION NO. 3555 OF 2022**

1. Smt. Charu Srivastava
W/o. Late Umang Srivastava
Age : 46 years, Occupation : Business
R/at: G-11, 2nd Floor
Green Park Extension
South West Delhi, Delhi 110016

2. Mr. Neeraj Mittal

S/o. Late S. C. Mittal

Age : 54 years, Occupation : Professional

R/at: 26, Shivalik Apartments

Alaknanda, South Delhi

Delhi 110019

3. Mr. Raj Kumar

S/o. Babu Lal

Age : 56 years, Occupation : Professional

R/at: C-5, Eldeco Residency Greens, First Floor,

Greater Noida, Gautam Buddha Nagar,

Sector 50, Gautam Buddha Nagar, Noida

Uttar Pradesh 201308

... Petitioners

V/s.

1. The State of Maharashtra

(Through P. I., Yerawada Police Station,
Pune).

2. Mr. Ramdas Anandrao Kamthe

Age : 56 years, Occupation : Business
R/at: Plot No.33, Padmachaya Society,
Gulmohar Bungalow, Kharadi, Pune,
Maharashtra

... Respondents

Mr. Vikram Sutaria a/w. Mr. Hrituraj Singh, Leepika R. i/b Bansal Chorbele Law Chambers for the Petitioners in both Writ Petitions.

Mr. Ashish I. Satpute, A.P.P. for Respondent No.1-State.

Mr. Drupad Patil for Respondent No.2 in both Petitions.

Mr. Lamkhade, API, Yerwada Police Station, Pune.

**CORAM : A. S. GADKARI AND
RANJITSINHA RAJA BHONSALE, JJ.**

RESERVED ON : 16th OCTOBER 2025

PRONOUNCED ON : 11th FEBRUARY 2026

JUDGMENT [Per: RANJITSINHA RAJA BHONSALE, J] :-

- 1) By the present Petitions under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973, the Petitioners seek to quash the FIR bearing C.R. No.240 of 2022, dated 29th May 2022 registered with Respondent No.1 i.e. Yerwada Police Station, Pune, under sections 406, 420, 120-B read with 34 of Indian Penal Code along with proceedings therein. The said F.I.R. has been filed by the Respondent No.2 i.e. original Complainant.
- 2) Heard Mr. Vikram Sutaria for the Petitioners, Mr. Ashish Satpute, A.P.P for Respondent No.1-State and Mr. Patil for Respondent No.2. Perused the record.
- 3) By Order dated 21st October 2022, this Court had issued Notices to the Respondents. Respondent No.1 was directed to continue with the investigation but not to file charge-sheet without the leave of this Court. Writ Petition No. 3023 of 2022 was directed to be tagged alongwith Criminal Writ Petition No.3555 of 2022.
- 4) In Writ Petition No 3023 of 2022, the Petitioner No.1 is the original Accused No.1 and the Petitioner No.2 is the original Accused No.2 in C.R. No. 240 of 2022 of which the Petitioners seek quashing. It is the contention of the Petitioners that a Term Sheet dated 15th November 2016 was executed between the wives of the Petitioners and the Respondent No.2. That, as per the Term Sheet, the wives of the Petitioners were inducted as Whole

Time Directors of the Respondent No.2's company. It was agreed that, the wives of the Petitioners would be a part of the interactive team of the Respondent No.2's company. That, the salary of Rs. 3,00,000/- (Three lakhs) per month would be paid to them with effect from 1st March 2017.

4.1) That, an Agreement was executed on 1st September 2018 with the Petitioner No.1 whereby the Respondent No.2's company had appointed the Petitioner No.1 as a Consultant with a lock-in period of 3 years from 1st September 2018. That, the Respondent No.2's company had agreed to pay an amount of Rs.3,00,000/- per month to the Petitioner No.1 as compensation. That, the Respondent No.2, has vide an e-mail dated 17th July 2018, addressed to Cosmos Bank specifically admitted that the Petitioner No.1 is an Invitee Director and that it was agreed/proposed to allot 30% of the company shares to the Petitioner No.1 as sweat equity. The Petitioners submit that, no *prima facie* case is made out against the Petitioners for the offences under the provisions of the Indian Penal Code as alleged. That, the FIR has been lodged with ulterior motives to harass the Petitioners. That, the guidelines issued by the Hon'ble Apex Court in the case of *State of Haryana Vs. Bhajan Lal , 1992 Supp. (1) SCC 335*, would very squarely applicable to the present case.

5) In Writ Petition No 3555 of 2022, the Petitioner No.1 is the original Accused No.5 and wife of Mr. Umang Srivastava (since deceased), the original Accused No.3. The Petitioner No.2 and 3 are the original Accused Nos.4 and 6 in C.R. No. 240 of 2022. That, the Petitioner No.2 had resigned

from the directorship of the Casa Brands India Pvt. Ltd., on 31st January 2022 and had never actively been involved in the decision making process. That, Casa Brands India Pvt. Ltd. was totally run by late Shri. Umang Srivastava (Accused No.1). That, Petitioner No.3 is a professional director in Krsna Home Products Pvt. Ltd and that Krsna Home Products Pvt. Ltd is not liable to pay any amount to the Respondent No.2. That, the relationship between Respondent No.2 and the Petitioners/Casa Brands India Pvt. Ltd is of contractual nature. That, there is a business agreement for sourcing of 'Bonita' branded products of Casa Brands India Pvt. Ltd. That, on 6th August 2019, the Respondent No.2's company i.e. Perfektion (Asia) Pvt. Ltd. was appointed as a partner for the purchase of furnished goods from Krsna Home Brands Pvt. Ltd and was to supply the same to Casa Brands India Pvt. Ltd. That, the said transaction is purely commercial and business transaction and any dispute there from would be civil in nature.

6) Learned APP appearing for the State, informed that, the investigation has been completed and the charge-sheet is ready to be filed in the concerned Trial Court. Learned APP further submitted that, the Investigation Agency has *prima facie* found the involvement of the Petitioners in the crime and therefore the Petitioners will be charge-sheeted.

7) In the backdrop of the aforesaid submissions of the learned A.P.P and after considering the said factual position and more particularly in view of the observations of the Hon'ble Supreme Court in the cases of (i) *Iqbal alias*

Bala and Ors. Vs. State of U.P and Ors (2023)8 SCC 734: 2023 Online SC 949 and (ii) *Central Bureau of Investigation V/s. Aryan Singh, reported in (2023) 18 SCC 399* the learned Advocate for the Petitioner was asked as to whether the Petitioner would prefer the option of availing the alternate remedy, which without being unduly onerous provided an equally efficacious remedy of approaching the learned trial Court under the provisions of the Code of Criminal Procedure, 1973 or the Bharatiya Nagarik Suraksha Sanhita, 2023. Learned Advocate appearing for the Petitioners, after considering the observations and the ratio laid down by the Hon'ble Apex Court, in the aforesigned judgements insisted to go on with the merits of present Writ Petitions.

8) The facts germane to consider if the Petitioner has been able to make out a case for quashing of the criminal prosecution under section 482 of the Code of Criminal Procedure, 1973 are as under:

8.1) The present FIR has been filed by the Respondent No.2, who conducts his business at Pune in the name of Eagle Logistics and Perfektion (Asia) Pvt. Ltd. It is contended that, the Respondent No.2 was desirous of expanding his business/starting a business on larger scale for his children. In or around June 2016, he through a friend Mr. Shrikant Tanwade, was introduced to one Mr. Dharmendra Rathod and Mr. Dheeraj Mehta. That, Mr. Dharmendra Rathod, who was working at a senior/important post in IEKA, a multinational company, advised him to start a company and that he will

appoint a Respondent No.2 as an original equipment manufacturer. That, on the said assurance, Respondent No.2 along with Mr. Dharmendra Rathod and Mr. Dheeraj Mehta inspected a property at Shikrapur, Pune for establishment of a company.

8.2) That, Mr. Dharmendra Rathod and Mr. Dheeraj Mehta showed their inclination to leave their job with IKEA and join the Respondent No.2. That, they proposed that, they get a partnership of 30% and deposit of Rs.36,00,000/-.

8.3) That, the Respondent No.2, refused the partnership offer, but agreed to deposit the amount of Rs.36,00,000/-. That, in the year 2016-2017, an amount of Rs 36,00,000/- was deposited in the bank account of the wives of Mr. Dharmendra Rathod and Mr. Dheeraj Mehta. That, Respondent No.2, had paid an amount of Rs.26,00,000/- by cheque to develop relationship with the officer of IKEA.

8.4) That, in the year 2019, about 90% of the construction work of the building of the Respondent No.2 company was completed and the same would functional in about 5 to 6 months. That, the Mahanagar Co-operative Bank had sanctioned the Cash Credit Loan of Rs.1,35,00,000/- to Respondent No.2.

8.5) That, Mr. Dharmendra Rathod told Respondent No.2 that, he is acquainted with the Directors of (i) Casa Brands India Pvt. Ltd and (ii) Krsna Home Products Pvt. Ltd. That, Respondent No.2 should purchase products from Krsna Home Products Pvt. Ltd. and sell the same to Casa Brands India

Pvt. Ltd. That, for the said transaction, Casa Brands India Pvt. Ltd. will pay 6.75% profit on the products purchased by them. The said payment would be made within the next 3 months and Respondent No.2 would get a good trading margin, which would be helpful to pay interest on the bank loan, etc.

8.6) That, in the month of July, 2019, Respondent No.2 and his friend Mr. Shrikant Tanawade went to Delhi for a business meeting/talks with Petitioner Nos.1 to 3, Directors of companies Casa Brands India Pvt. Ltd and Krsna Home Products Pvt. Ltd. That, the Petitioner No.1 to 3 represented to Respondent No.2 that they want to start business transactions with him, and there would be a huge turnover if he can buys products from Krsna Home Products Pvt. Ltd and sells them to Casa Brands India Pvt. Ltd. The Respondent No.2 would get profit of 6.75%.

8.7) That, based on the said representations, Respondent No.2 company placed an order of Rs.2,63,18,554/- to Krsna Home Products Pvt. Ltd. and paid an amount of Rs.1,39,77,940/- towards the said order. This amount was paid from Respondent No. 2 cash credit account of Mahanagar Bank. That, on 8th August 2019, Casa Brands India Pvt. Ltd. placed an order of Rs.2,64,05,456/- with Respondent No.2. For the said sale order the Respondent No.2's company raised a bill of Rs.1,63,16,845/ on Casa Brands India Pvt. Ltd.

8.8) That, from 11th November, 2019 till 28th February, 2020, Casa Brands India Pvt. Ltd. paid Rs.61,95,006/- through RGTS to Respondent No.2.

That, on 24th March, 2020, Casa Brands India Pvt. Ltd. transferred an amount of Rs.1,00,000/- and on 28th August, 2020 transferred an amount of Rs.1,00,955/- thereby paying a total amount of Rs.63,95,061/-. That, an amount of Rs.75,81,979/- was due from Casa Brands India Pvt. Ltd.

8.9) That, after the Covid-19 Pandemic/lockdown, Respondent No.2 started demanding amount from the Directors of Casa Brands India Pvt. Ltd. No payments were made. As Respondent No.2 was suspicious, he visited the Petitioners at Delhi. That, Respondent No.2 could not meet the Directors but gathered information that, the said companies i.e. Krsna Home Products Pvt. Ltd. and Casa Brands India Pvt. Ltd. exchanged orders only on paper and that there was no production and/or selling of any product. That, further inquiries revealed that the members of the same family are the Directors of Krsna Home Products Pvt. Ltd. and Casa Brands India Pvt. Ltd. That, these facts were suppressed and the Respondent No.2 was made to place the orders. That, Respondent No.2 was made to place purchase orders and make payments to Krsna Home Products Pvt. Ltd. That, Casa Brands India Pvt. Ltd. paid only Rs.63,95,061/- out of the total bill of Rs.1,63,16,845/-, leaving an amount of Rs.75,81,979/- as outstanding. Respondent No.2 and his company were used by Krsna Home Products Pvt. Ltd. and Casa Brands India Pvt. Ltd. for their benefit. That, the profit of 6.75% was not paid to Respondent No.2. On these facts, the FIR has been registered of which quashing is now sought.

9) Learned Advocate for the Petitioner submits that, the transaction

between Respondent No.2 and Casa Brands India Pvt. Ltd. is a commercial contract and dispute arising therefrom is a civil dispute. Learned Advocate for the Petitioner submits that, Petitioner No.1 is the wife of Umang Srivastava (Accused No.1) who expired on 22nd April, 2021. That, Umang Srivastava was the Director of Casa Brands India Pvt. Ltd. That, Petitioner No.2 has resigned from the directorship of Casa Brands India Pvt. Ltd on 31st January, 2020 and was never actively involved in decision making process and that the company was totally run by Umang Srivastava. That, the Petitioner No.3 of Krsna Home Products Pvt. Ltd. has been dragged in by the Respondent No.2 with ulterior motives and that Krsna Home Products Pvt. Ltd. is not liable to pay any amount to Respondent No.2.

9.1) Learned Advocate for Petitioner would then refer to the Notice dated 2nd November, 2020 issued by the Lit Con Legal Associates on behalf of Complainant/Respondent No.2 to contend that, the tone and tenure of the notice clearly indicate that, the entire transaction is a commercial transaction and the disputes arising therefrom are civil in nature. Learned Advocate further submits that the said FIR is required to be quashed and set aside.

10) We have perused the entire record including FIR. The crux of the allegations made by the Respondent No.2 is that, it was on the representation and the assurances of the Petitioners and companies related to the Petitioners that, the Respondent No.2 incurred huge financial expenses/liability and advanced monies to the said companies. According to the Respondent No.2,

subsequent inquiries revealed that, the said assurance and representations were either false, misleading or incorrect. We note that, FIR has been lodged under Section 406, 420, 120-B r/w. 34 of Indian Penal Code. The Learned APP has informed this Court that, the investigation is now completed and a case has been made out against the Petitioners. The learned APP would submit that the charge-sheet is ready to be filed.

11) The Hon'ble Apex Court in the case of *Iqbal alias Bala and Ors. Vs. State of U.P. and Ors* (2023) 8 SCC 734: 2023 Online SC 949) has held that, even if the allegations in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, the appellants therein should prefer discharge application before the trial Court under Section 227 of the Code of Criminal Procedure as the investigation is over and charge sheet is ready to be filed before the competent Court of jurisdiction. The Hon'ble Apex Court in paragraphs 6 and 7 in the case of *Iqbal alias Bala V/s. State of U. P.* reported in (2023) 8 SCC 734 has observed that,

“6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should quash the FIR?

7. It is relevant to note that the victim has not furnished any information in regard to the date and time of the commission of the alleged offence. At the same time, we also take notice of the fact that the investigation has been completed and charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the

view that the appellants should prefer discharge application before the Trial Court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and charge sheet is ready to be filed before the competent court. In such circumstances, the Trial Court should be allowed to look into the materials which the investigation officer might have collected forming part of the charge sheet. If any such discharge application is filed, the Trial Court shall look into the materials and take a call whether any case for discharge is made out or not.”

12) In our opinion, the said observations are squarely applicable to the present case. The arguments advanced on behalf of the Petitioners are the defences of the Petitioners. We cannot, and ought not, under the jurisdiction of Section 482 of Criminal Procedure Code, entertain the defences or enter into that arena. According to us, this is not a case, which calls for exercise of jurisdiction under section 482 of the Criminal Procedure Code. According to us, no case for quashing is made out. Perusal of F.I.R. *prima facie* indicates that, there is substance in it and it clearly discloses commission of cognizable offence as alleged. What the Petitioners have raised before us are their defences, which can only be tested or tried at the trial. The defences raised by the Petitioners are all required to be raised in evidence at the trial. We have noted that it is the view of the Hon'ble Supreme Court that, in such circumstances, the trial Court should be allowed to look into the materials, which the Investigation Officer might have collected forming part of the charge sheet.

13) We have also noted that the Hon'ble Apex Court in the case of *Central Bureau of Investigation V/s. Aryan Singh, reported in (2023) 18 SCC 399 Supreme Court 1987*, has held that, the High Court cannot conduct a mini trial for appreciation of evidence on record while dealing with an application under Section 482 of the Code of Criminal Procedure, as if it is a mini trial and consider the application as if those are against the Judgment and Orders of the trial Court on conclusion of full fledged trial.

14) We may also make a useful reference to the Judgment of Supreme Court in the case of *Manik B. V/s. Kadapala Sreyes Reddy & Anr., reported in (2023) SCC OnLine SC 2540*, wherein the Hon'ble Supreme Court has held that, the Court would exercise its power to quash a proceeding only if it finds that taking the case at its face value, no case is made out. The Supreme Court has observed that, it is not permissible for Court to go into the correctness or otherwise of the material placed by the prosecution in a chargesheet. The argument and submissions advanced by the Petitioner across the bar, amount to entering into the arena of evidence and trial, which in our opinion is not permitted. We have already noted that, the investigation of the crime is already completed and chargesheet is ready to be filed.

15) We are of the firm view that at the stage of quashing of the proceeding while exercising power under Section 482 of Criminal Procedure Code, the Court is not required to conduct mini trial or test the veracity of the material collected during the investigation, unless of course there is a strong

case of malafide or vexatious litigation or the use of the criminal law machinery for the seeking personal vengeance by filing false cases or initiating a malicious prosecution. The falsity or the vexatious nature of the case should be *prima facie* evident on the face of it and on a bare perusal of the complaint.

16) This Court has in a recent decision, in the case of *Hemendra Pranjivan Bosmiya vs. The State of Maharashtra and Anr*, in Criminal Application No.277 of 2023 in Paragraph Nos. 5, 5.1 and 5.2 held that:

"5. In the case of Central Bureau of Investigation vs. Aryan Singh (AIR 2023 SC 1987), the Apex Court held that, the High Court cannot conduct a mini trial for appreciation of evidence on record while dealing with an application under Section 482 of Cr.P.C., as if it is a mini trial and consider the application as if those are against the Judgment and Orders of the Trial Court on conclusion of trial."

5.1) *In the case of Manik B Vs. Kadapala Sreyes Reddy, the Apex Court has held that, the scope of interference while quashing the proceedings under Section 482 of Cr.P.C. is very limited and the power would be exercised only if the Court finds that taking the case at its face value, no case is made out at all. That, it is not permissible for the Court to go into the correctness or otherwise of the material placed by the prosecution in the chargesheet.*

5.2) *In the case of Iqbal @ Bala and Ors. vs. State of U.P and Ors., (2023 SCC Online SC 949), the Apex Court declined to interfere in the order of the High Court rejecting the petition filed for quashing of the FIR, taking note of the fact that, the investigation had been completed and chargesheet is required to be filed. The view taken by the Apex Court is that the Trial Court should be allowed to look into materials which the investigation officer might have collected forming part of the chargesheet, despite the observation of the Apex Court that the allegation leveled in the FIR do not inspire any confidence.*

17) In view of the aforesaid facts and law as laid down by the Supreme Court, we are of the opinion that, it would only be appropriate to relegate the Petitioner to avail the remedy of filing a discharge application before a trial Court after the Police files charge-sheet. We also note that, it is not the case that, by refusing to entertain a petition under section 482 of the Code of Criminal Procedure, the Petitioner is left with no remedy. It is a settled position of law that, the High Court would not entertain a Petition under Article 226 of the Constitution of India, where Petitioner has an alternative remedy, which without being unduly onerous provides an equally efficacious remedy. It is a well settled law and a recognized principle that, a party should avail for himself such remedies, which are available under the law, before he resorts to a constitutional remedy. The purpose and object of a Petition under Section 482 of Criminal Procedure Code is to prevent the abuse of process of law and to secure the ends of justice. The same does not mean that, the remedy available or provided under law ought to be brushed aside and this Court be directly approached under Section 482 of Criminal Procedure Code.

18) Considering the above dictum of the Hon'ble Supreme Court, at this stage, when the investigation is over and the charge-sheet is ready to be filed, we are not inclined to consider the allegations and the counter allegations of the parties and look into the detailed facts. In our opinion, the same would amount to conducting a mini trial while exercising jurisdiction of

quashing under section 482 of the Code of Criminal Procedure, 1973. The same is not permissible in law. The arguments of the learned Advocate for the Petitioners if looked into, would amount to examining the defence of the Petitioners, which cannot and ought not to be done under the jurisdiction of Section 482 of Code of Criminal Procedure, 1973.

19) In view of the aforesaid facts and circumstances and by observing that the alternate remedy available to the Petitioner to approach before the trial Court, both the Petitions are disposed off.

(RANJITSINHA RAJA BHONSALE, J.)

(A.S. GADKARI, J.)