



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO.1933 OF 2023

1. Nitin Hiralal Khanna
Age : 46 years, Occ : Business,
R/o 201, Mangaldeep CHS Ltd.,
Devidas Cross Line, Opp. Neel Tower,
Boriwali (West), Mumbai.
2. Nayan Takarshi Shah
Age : 48 years, Occ : Business,
R/o 345/A-2, Block No.14,
Hemkunj, Mulund (West),
Mumbai.
3. Asif Suleman Shaikh
Age : 49 years, Occ : Business,
R/o G-2, 7th Floor, Agripada,
Central Mumbai, Mumbai.

..APPLICANTS

-VERSUS-

1. State of Maharashtra
Through Investigating Officer,
Osmanpura Police Station,
Tq. & District Aurangabad
2. Pankaj Madanlal Agrawal
Age : 48 years, Occ : Business,
R/o B-502, August Home,
Ulkanagari, Garkheda,
Aurangabad.

..RESPONDENTS

...
Advocate for Applicants : Mr. S.V. Dixit
APP for Respondent- State : Mr.V.K. Kotecha
Advocate for Respondent No.2 : Miss. Poonam V. Bodke Patil
...

**CORAM : SMT. VIBHA KANKANWADI AND
R.W.JOSHI, JJ.**

RESERVED ON : 18th NOVEMBER, 2024.

PRONOUNCED ON : 29th NOVEMBER, 2024

JUDGMENT (PER R.W. JOSHI, J.) :

. Present application is filed under section 482 of the Code of Criminal Procedure, 1973 by accused nos.1 to 3 for quashing the offence registered with Osmanpura Police Station, Aurangabad City on 14.06.2021 vide F.I.R. No.134/2021, for the offence punishable under sections 420 and 406 read with section 34 of the Indian Penal Code, the charge-sheet No.39/2022 and R.C.C. No.898/2022 pending before the Judicial Magistrate, First Class, Aurangabad. The informant is arrayed as respondent no.2 in the application.

2. The informant has lodged a report with the Police Station stating that he is a partner of registered partnership firm named "M/s Agrawal Retails". He says that he got acquainted with applicant nos.1 and 3 somewhere around the year 2018. He was introduced to accused nos.1 and 3 by one Paras Ostwal. The informant has stated that applicant no.3 had represented that their company namely "AN Retail Ventures Private Limited" (hereinafter referred to as "ANR" for brevity) is a franchisee of a company at Mumbai named "Lekhraj Corp Private Limited" (Hereinafter referred to as "LCPL" for brevity), which is

engaged in the business of manufacture and sale of garments under brand name, "Cotton World". Applicant no.3 suggested that respondent no.2 should also start the said business by taking franchisee of ANR and offered to introduce him with Mr. Sanjeev Lekhraj and Mr. Lavin Lekharaj, Directors of the LCPL. He states that after that applicant no.3 took him to the office of LCPL, at Mumbai for meeting with Mr. Sanjeev Lekhraj and Mr. Lavin Lekharaj. On discussion with Mr. Sanjeev Lekhraj and Mr. Lavin Lekharaj, they suggested to respondent no.2 that he should obtain franchisee through ANR, since all the rights regarding appointment of franchisees were given to ANR vide letter dated 08.01.2019. Respondent no.2 has stated that he was given an assurance that commission of franchisee will be paid at the rate of 16% of the sale achieved or Rs.90,000/- per month, whichever is higher. Respondent no.2 states that he was informed that it will not be possible to allot franchisee to an individual, and therefore, he formed a partnership firm named "M/s Agrawal Retails" comprising of himself and his two brothers, as advised. The firm was registered on 14.12.2018. Thereafter, three separate franchisee agreements were entered into between Agrawal Retails and ANR. These three franchisee agreements are dated 10.01.2019 and their terms are identical. The franchisee outlets are located at Prozone Mall, Aurangabad, Nirala Market, Aurangabad and Kharadi, Pune. The relevant terms, of three franchisee agreements titled as "Memorandum

of Understanding” (hereinafter referred to as “MOU”) executed on 10.01.2019 are as under :-

“3. Term:

a. This MOU shall commence upon the date of execution and shall continue for period of 5 years and shall renew by mutual consent between the Parties unless terminated earlier by either party.

b. Upon such termination, the Agent shall cease marketing and offering for sale the Products and shall continue to abide by the obligation refrain from sharing with any third party any of the Company’s confidential information.

4. Lock in period :

a. There shall be a lock in period of 1 Years. However, the Company will be entitled to terminate the Agreement at any time by giving one month notice or Agent will give 2 month of notice after completing initial 10 months of lock in period without assigning any reasons and in case of Non-performance/breaches of the terms and conditions of this MOU, Standards by the Consignment Agent.

5. Commission on sales :

a. The Company shall pay to the Agent 16% of all Net Product Sales OR Rs.90,000/- which is for

compensation, whichever is higher (Compensation amount guaranty till 10 initial months) of Franchisee expenses directly from the Agent's efforts. "Net Product Sales" shall be defined as the MRP less discounts less all Taxes, Charges, products returned or whatsoever.

b. Payments shall be made to the Agent on or before 7th day of every month for the subsequent month.

6. Interest free refundable security deposit :

a. Consignment Agent to pay Rupees 15 lacs (Rupees Fifteen Lacs only) as security deposit against Stocks, Goods, fitting and fixtures. Whenever the company demands for additional security deposit, Consignment Agent has to deposit the said amount, demanded by the company within the operational year.

b. The aforesaid security deposit shall be refunded to Consignment Agent at the time of expiry or earlier determination of this MOU within 30 days, after settlement of all the dues to the full satisfaction of the Company. The Consignment Agent shall have claim on the premises, stock of goods and other properties of the Company till he gets his security deposit amount in his account.

15. Payments:

a. At the Authorised Outlets, the Consignment Agent

shall honour all credit cards specified by the Company in writing; and sell the Authorised Products in exchange for cash or through acceptance of debit/credit cards:

i. For receipts in cash, the Consignment Agent will be required to (I) provide the Company with a reconciliation for the same every 5 days or more often if requested by the Company; and (ii) deposit the said sums into the Bank Accounts designated by the Company at the end of each day.

ii. For acceptance of debit/credit cards, the Company will install the Credit / Debit Card machine and all the charges will be on the account of the Company.”

3. Respondent No.2 has stated that the firm Agrawal Retails and partners have deposited a sum of Rs.51,00,000/- with ANR towards the deposits in terms of franchisee agreements/MOU.

4. It is stated in the FIR that the franchisee outlets were started at all the three places and that ANR had taken premises on rent, made all arrangements for operations of franchisee and had also supplied stock for three franchisee outlets. It is further stated that although, the clause 16 of the franchisee agreements/MOU provides that the amount of sale proceeds received from the customers through debit/credit cards and other online modes should be deposited in the

account of ANR, it was informed that the amounts should be deposited in the account of LCPL, accordingly, arrangements were made for direct transfer of the payments from customers received through online mode in the account of LCPL. Respondent no.2 accepts that his firm Agrawal Retails has received commission from ANR, as under :-

Sr. No.	Date	Amount
1.	22.03.2019	Rs.2,41,000/-
2.	08.05.2019	Rs.2,00,000/-
3.	07.06.2019	Rs.4,14,800/-
	Total	Rs.8,55,800/-

5. Respondent No.2 states that he did not receive the amount of commission regularly as per the agreement. The franchisee agreement was unilaterally terminated by ANR by e-mail dated 29.06.2019 without any reason. It is stated that the termination is not as per the MOU, particularly, clause 4 thereof, which provides for lock-in period of one year. With this backdrop of facts, the FIR came to be lodged on 14.06.2021 raising a grievance that the security deposit of Rs.51,00,000/- was not refunded and commission amount of Rs.8,23,000/- was also outstanding. Thus the respondent no.2 claims that his firm Agrawal Retails was entitled to receive an amount of Rs.59,23,000/, which was not paid.

6. It will be pertinent to mention here that initially, the names

of the Directors of Mr. Sanjeev Lekhraj and Mr. Lavin Lekharaj were also mentioned in the FIR. However, dispute between Agrawal Retails and LCPL was amicably settled. LCPL has paid a sum of Rs.20,00,000/- to Agrawal Retails vide Cheque No. 000954 dated 07.08.2021 drawn on Axis Bank Ltd. in terms of the settlement dated 31.08.2021. The names of directors of LCPL are not included in the charge sheet since the informant did not intend to prosecute them in view of the settlement.

7. Respondent No.1 has completed the investigation in the matter and has filed charge-sheet No.39/2022 on 09.05.2022. The case is registered as R.C.C. No.898/2022.

8. The applicants have challenged the F.I.R. along with charge-sheet by filing the present application under Section 482 of the Code of Criminal Procedure.

9. The principal contention of Mr. S.V. Dixit, learned counsel for the applicants is that the dispute between the parties is purely of civil nature, and that, respondent no.2 has unnecessarily given a criminal colour to a civil dispute only with a view to arm twist the applicants and to exert pressure upon them through criminal proceeding in order to force ANR and its directors i.e. the applicants

herein to accede to and accept the civil claim of Agrawal Retails. It is contended that the essential ingredients of cheating and criminal breach of trust are not made out even if the contents of the FIR and charge-sheet so also the documents collected during investigation and filed along with the charge-sheet are taken on their face value.

10. As against this, the contention of Mr.V.K. Kotecha, learned APP for respondent no.1 and Miss. Poonam Bodke Patil, learned counsel for respondent no.2 is that the ingredients of cheating and criminal breach of trust are clearly made out. The agreement was terminated within the locking period and security deposit and the amount of commission was also not paid. The applicants had dishonest intention in doing so. They contend that merely because civil remedy is available for recovery of amount it would not mean that the applicants should be exonerated of an offence committed by them. They submit that in a given set of facts, the civil proceeding and criminal prosecution can be simultaneously prosecuted.

11. It is undisputed that the three franchisee agreements have been terminated by Agrawal Retails within the locking period provided under clause 4 of the MOU. It is also undisputed that the security deposit of Rs.51,00,000/- received by ANR has not been refunded to Agrawal Retails.

12. It will also be pertinent to mention that a civil suit for recovery of amount is filed by Agrawal Retails against ANR and ANR has also filed counter claim for recovery of amount in the said civil suit. The learned advocate for the applicants made a statement to that effect during the course of hearing, which was in all fairness confirmed by learned advocate for respondent no.2.

13. Before dealing with the facts of the present matter, we propose to consider the essential elements of the provisions of sections 420 and 406 of the IPC under which offence is registered against the applicants. We shall first deal with section 420 and thereafter section 406 of IPC.

14. The Hon'ble Supreme Court has held in the matter of ***Hridaya Ranjan Prasad Verma and others Vs. State of Bihar and another*** reported in **(2000) 4 SCC 168** as under :-

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

offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

15. The aforesaid judgment in the matter of Hridaya Ranjan Prasad Verma is followed in the matter of **Satishchandra Ratanlal Shah Vs. State of Gujarat and another** reported in **(2019) 9 SCC 148**, wherein it has held that mere inability of a person to return the amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown to exist at the beginning of the transaction. The Hon'ble Supreme Court has held that *mens rea* is an essential element of the offence of cheating. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

16. The ratio laid down in the matter of **Hridaya Ranjan Prasad Verma** is further approved and followed in the case of **Mitesh Kumar J. Sha Vs. State of Karnataka and others** reported in **(2022) 14 SCC 572**.

17. Recently, in the matter of **Raju Krishna Shedbalkar Vs**

State of Karnataka and another reported in **(2024) SCC Online SC 200**, the Hon'ble Supreme Court has reiterated and followed the law laid down in the matter of ***Hridaya Ranjan Prasad Verma and Indian Oil Corporation*** to reiterate the legal principle that mere breach of contract will not amount to offence of cheating unless the *mens rea* for the same exists at the very inception of the transaction. The relevant observations of the Hon'ble Supreme Court are reproduced hereinbelow:-

“7. A perusal of the aforesaid provision shows that the offence of cheating is in two parts. The first is where a person fraudulently or dishonestly deceives another in inducing that person to deliver any property to any person etc. The second part of the offence would be made out if somebody is deceived to do an act which causes damages or harm to that person “in body, mind, or reputation or property is said to have cheated”. Time and again, this Court has reiterated that in order to make out an offence under cheating the intention to cheat or deceive should be right from the beginning. By no stretch of imagination, this is even reflected from the complaint made by the informant.”

18. The offence of cheating is made out if a person deceives another person and either fraudulently or dishonestly induces the person deceived to deliver any property to any person. Property includes money as well. The parting of money/property should be a

direct consequence of deceit and fraudulent or dishonest inducement. This deception and fraudulent/dishonest inducement must exist at the very initiation of the transaction under which money changes hands. These are the essential ingredients of offence of cheating punishable under section 420 of the IPC. With this we need to examine as to whether these ingredients are made out from the contents of FIR and material collected by the respondent no.1 during the course of investigation and included in the charge sheet.

19. Admittedly, after termination of the MOUs/Joint Venture Agreements, Agrawal Retails had issued a legal notice dated 26.10.2019 to LCPL and ANR. The said notice is for recovery of amount of Rs.1,84,13,001/-. Perusal of the legal notice would demonstrate that there are no allegations of cheating or criminal breach of trust either against the LCPL or ANR. Perusal of the contents of the notice would demonstrate that the allegations against the LCPL and ANR are only regarding breach of contract, resulting in consequential losses. It will be pertinent to mention that the FIR is lodged on 14.06.2021 i.e. around 20 months after issuance of the said legal notice dated 26.10.2019.

20. That apart, perusal of the FIR and statement of the informant in the charge-sheet would demonstrate that undisputedly,

ANR had taken premises on lease for the business of Joint Venture, it had made all arrangements in the said premises for running of the said business and had also procured stock for business of three joint ventures outlets. Had there been any intention to receive the amount of deposit and misappropriate the same, the aforesaid acts for running of the joint venture business would not have been initiated by the applicants, who are Directors of ANR. It is obvious that ANR has also invested money for the running of franchisee outlets. It will be appropriate to quote a portion from the FIR English translation whereof reads as under :-

“ANR had taken shops on rent at all three locations and made arrangement in the three premises and had sent readymade cloths of cotton world in the three premises and accordingly, started the business as instructed by the company.”

21. It is stated in the FIR that Agrawal Retails had received the commission to the tune of Rs.8,55,800/-. The commission is paid at the rate of 16% of sale. It is thus clear that stock is worth Rs.53,48,750/- (Rs.8,55,800/- X 100/16). Not only this the FIR further states that Agrawal Retails has to recover amount of Rs.59,23,000/- including the security deposit of Rs.51,00,000/-, which means that according to

respondent no.2 commission of Rs.8,23,000/- is yet to be recovered. It means that stock of Rs.51,43,750/- (Rs.8,23,000/- X 100/16) was liquidated through sales at the franchisee outlets by Agrawal Retails. Thus, total stock worth Rs.1,04,92,500/- was sold by Agrawal Retails from three franchisee outlets. Of course these figures are tentative and are calculated only in order to determine whether there was any *mens rea* while entering into franchisee agreements/MOUs and while not returning the security deposit. It is undisputed factual position, as is apparent from the FIR itself, that the stocks were provided by ANR. Apart from this after termination of the franchisee agreement, Agrawal Retails has issued auction notice for sale of stock lying at the three franchisee outlets.

22. The allegation against the applicants, who are Directors of Agrawal Retails is that they had entered into franchisee agreement with an intention to cheat respondent no.2 and other partners of Agrawal Retails and to misappropriate the amount of security deposit received by ANR in terms of franchisee agreement. This version is difficult to digest. Had there been any such intention at the inception as is alleged then the amount would have been simply pocketed without doing anything in furtherance of franchisee agreement. It is undisputed that the premises of franchisee agreements have been taken on lease by ANR. ANR has also made all arrangements for running of the

business of the three franchisee outlets and most importantly provided stock for sale at the three Retail outlets. The value of these stock is certainly much more than the amount of Rs.51,00,000/- received by ANR towards deposit. It cannot be therefore said that the amount of Rs.51,00,000/- was received towards deposit with an intention to misappropriate the said amount. The dispute between the parties regarding refund of security deposit is clearly a civil dispute as is apparent from the undisputed factual position emerging from record.

23. Learned counsel for respondent no.2 has canvassed that ANR was not authorized to allot franchisee on behalf of LCPL, yet they entered into franchisee agreement with Agrawal Retails only in order to misappropriate the amount of deposit. In this regard, we may refer to Master franchisee agreement dated 10.01.2019 between LCPL and ANR. ANR the master franchisee enabled ANR to assign its rights under the agreement with the prior written consent of the franchiser/LCPL. It will be pertinent to mention that it is categorically stated in the FIR that Mr. Sanjeev Lekhraj and Mr. Lavin Lekharaj of LCPL had suggested to respondent no.2 to obtain franchisee of Cotton World from ANR instead of obtaining directly from the LCPL. It will also be pertinent to mention here that the amounts received from the customers at the three franchisee outlets were credited to the account of LCPL and account of sale transactions made in cash were also

required to be reported to the LCPL. Apart from this the commission for the sale transactions is paid by ANR. Thus, LCPL was fully aware about the franchisee agreements/MOU executed between Agrawal Retails and ANR. The submission of learned advocate for respondent no.2 in this regard that franchisee agreements/MOU were entered into without any authority in order to misappropriate the amounts or security deposit is liable to be rejected. We are hereby quoting English translation of relevant extract from the FIR, which would establish that franchisee agreement between ANR and Agrawal Retails were entered into with the knowledge and consent of the LCPL.

“Mr.Sanjeev Lekhraj and Lavin Lekhraj of Cotton World said that, rather than becoming dealers of the company directly you obtain franchisee from ANR who are our master franchisee.”

“Thereafter Directors of ANR Asef Shaikh and Nitin Khanna asked me to deposit the amount of daily sales in the account of LCPL rather than depositing the same in the account of ANR. Thereafter I contacted Mr.Sanjeev Lekhraj of LCPL and inquired with him about the bank account details such as name of the bank and account number in which amount of daily sales was to be deposited. On this, Mr.Lekhraj of LCPL instructed me to deposit the amount in account of LCPL bearing no.32783020143 with SBI Mumbai branch. Accordingly I have deposited the amount of daily sales in the account of LCPL.”

“The amount received through cards swipe machines also used to be credited to the bank account of LCPL.”

24. In view of the factual position emerging from record as aforesaid and the legal principles we are of the opinion that the material on record does not remotely indicate that applicants had entered into the MOUs relating to three franchisee outlets by deceiving the partners of Agrawal Retails or with any fraudulent or dishonest intention so as to attract the ingredients of sections 415 and 420 of the IPC. 24. As discussed above, it is clear that having entered into MOU with Agrawal Retails, the applicants had made all arrangements for providing stocks, acquiring premises for business of three franchisee outlets and also making all necessary arrangements for running of the business. All these facts clearly establish that there was no intention in the inception not to honour the commitment under the agreement. The accused persons through their company have acted on the agreement by making aforesaid arrangements and have also expended money for the same.

25. As regards section 406 of the IPC which deals with the criminal breach of trust, there cannot be any dispute that *mens rea* is also an essential element of the said offence. Criminal breach of trust is defined under section 405 of the IPC. The ingredients of criminal

breach of trust are dishonest misappropriation or conversion of property by a person who is entrusted with a property or has domain over it. Dishonest intention is an essential element of the criminal breach of trust. We may state that whereas for an offence of cheating fraudulent or dishonest intention must exist at the inception of the transaction that may not be the case with the offence of criminal breach of trust. The dishonest intention must exist while a person misappropriates or converts to his own use any property. The word, 'property' under section 405 includes money as well.

26. The Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. and others Vs. State of Uttar Pradesh and another*** reported in 2024 SCC Online SC 2248 has held in paras 29 and 30 as under :-

"29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation,

both the offences cannot co-exist simultaneously.”

27. The allegation for criminal breach of trust is that despite termination of the contract, the accused persons have not refunded the amount of security deposit of Rs.51,00,000/-. We may note that after termination of the MOU, the applicants had issued two communications calling upon the informant to conduct reconciliation. It is undisputed that stocks procured by the company of the applicants i.e. ANR were lying in three franchisee outlets with Agrawal Retails firm of the informant. It is obvious that upon termination of the franchisee agreement reconciliation was necessary. In the subsequent letter dated 17.10.2019, the applicants have quantified the value of stocks at Rs. 1,82,88010. The value may or may not be correct. However, it is undisputed that stocks procured by ANR were lying at the three franchisee outlets. This stock was sought to be auctioned by the firm of the informant vide public auction notice dated 28.11.2019. It is also stated in the letter dated 17.10.2019 that Agrawal Retails had not deposited amount of Rs.5,79,009/- generated through cash sales in the three franchisee outlets. In the said letter dated 17.10.2019, ANR has requested Agrawal Retails to remit the amount of Rs.1,88,67,019/- after adjusting security deposit of Rs.45,00,000/-.

28. The letter dated 17.10.2019 is followed by the legal notice

dated 07.11.2019 issued by ANR to M/s Agrawal Retails through advocate in which the amount of Rs.1,88,67,019/- is claimed with interest. It is after issuance of notice dated 07.11.2019 that tender notice for sale of stocks is issued by M/s Agrawal Retails on 28.11.2019.

29. Thus it is clear that ANR, (the company of the applicants) was eager for reconciliation i.e. settlement of account. Readiness to adjust security deposit is clearly exhibited from the aforesaid letters, particularly, the letter dated 17.10.2019 issued by ANR. It is in this backdrop, that the fact that in the first legal notice dated 26/10/2019 issued by Agrawal Retails, there is no mention of any criminal intent assumes greater significance. The legal notice speaks of contractual obligations only and not of any criminal intent either in obtaining the amount of security deposit or in not refunding the same. The dispute is clearly a civil dispute between the parties.

30. The facts of the case demonstrate that the amount under MOUs was deposited by the firm of informant with ANR of which the applicants are directors. Likewise stocks of franchisees were procured by ANR and were at the disposal of Agrawal Retails, as franchisee. Therefore, when the transaction fail apart by termination of franchisee agreements, reconciliation for the purpose of settlement of account

had become necessary. Till this reconciliation is done, ANR would be entitled to withhold the security deposit. Therefore, taking the entire material on its face value, we do not consider that any case is made out to remotely demonstrate criminal breach of trust by applicants, who are directors of ANR simply on the ground that security deposit is not refunded.

31. There is growing tendency to give criminal colour to civil dispute in order to avoid long pending litigation. People at a times tend to resort to shortcut by invoking the provisions of criminal law although the same are not applicable. This practice of invoking the provisions of criminal law in the civil dispute has been deprecated by the Hon'ble Supreme Court repeatedly. The Hon'ble Supreme Court has held in the matter of **G. Sagar Suri and another Vs. State of U.P. and others** reported in **(2000) 2 SCC 636** as under:-

"8. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process

of any court or otherwise to secure the ends of justice.”

32. Similar view is taken in the matter of ***Indian Oil Corporation Vs. NEPC India Ltd., and others*** reported in **(2006)6 SCC 736** as under:-

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

14. *While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”*

33. The aforesaid judgments have been followed in the matter of **Mitesh Kumar J. Sha (supra)**, wherein it has reiterated that giving penal colour to a civil dispute amounts to abuse of process of law and such exercise must be discouraged by all concerned. After referring to catena of judgments on the aspects, the Hon'ble Supreme Court has quoted in paragraph 44 of the judgment holding as under :-

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

34. The complaint is filed only because the amount of security deposit is not refunded by ANR and its Directors, who are applicants in the present application. However, as stated above, reconciliation of accounts is not yet done, although, they had offered for reconciliation vide written communications. The allegations regarding entering into franchisee agreement without authority from the manufacturer LCPL is also not correct in view of the express statements in the FIR that the Directors of LCPL itself had asked Agrawal Retails to obtain franchisee through ANR so also the fact that sale proceeds through online transaction were deposited in the account of LCPL and account of cash sales from the three franchisee outlets has also been given to LCPL and at the same time, the amount of commission was paid to

Agrawal Retails from the account of ANR. Thus, the said allegation is also without any substance.

35. Learned advocate for respondent no.2 has relied upon the judgment of the Hon'ble Supreme Court of India in the matter of ***Kamaladevi Agrawal Vs. State of West Bengal and others*** reported in ***(2002) 1 SCC 555*** to contend that the common set of facts may give rise to a civil claim and also amount to an offence under penal law and as such merely because the civil claim is maintainable would not mean that criminal prosecution cannot be continued. She further claims that the Courts should not interfere with criminal proceedings merely because civil disputes are pending between the parties. She has emphasised on paragraphs 11 and 12 of the said judgment to buttress the said contention. There can not be any quarrel about the proposition canvassed by learned advocate for respondent no.2, however, we are of the opinion that the essential ingredients of sections 406 and 420 of the Indian Penal Code are not made out in the present case. The controversy *inter-se* between the parties is purely of civil nature. Initiation of criminal prosecution in the present set of facts is clearly an attempt to find out a shortcut to civil remedy, which is completely impermissible.

36. In view of the aforesaid, we are of the firm opinion that a

purely civil dispute between the parties is given penal colour. The continuation of the prosecution against the applicants will, therefore, amounts to abuse of process of Court. We are therefore convinced that the prosecution against the applicants deserves to be quashed in exercise of our inherent powers under section 482 of the Criminal Procedure Code. Accordingly, we pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) Offence registered against the applicants namely Nitin Hiralal Khanna, Nayan Takarshi Shah and Asif Suleman Shaikh with Osmanpura Police Station, Aurangabad City on 14.06.2021 vide F.I.R. No.134/2021, under sections 420 and 406 read with section 34 of the Indian Penal Code, the charge-sheet No.39/2022 and R.C.C. No.898/2022 pending before the Judicial Magistrate, First Class, Aurangabad are hereby quashed.

[R.W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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