Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1281 OF 2015
WITH
INTERIM APPLICATION NO. 4376 OF 2024
IN
WRIT PETITION NO. 1281 OF 2015

M/s. Mayfair Housing Pvt Ltd & Ors. .. Petitioners

Versus

Bhavesh Vrajlal Mehta & Anr. .. Respondents

.....

- Mr. Niranjan Mundargi i/by Mr. Rohan Hogle, Advocates for Petitioners
- Ms. Gauri S. Rao, APP for State
- Mr. James Godwin, General Power of Attorney Holder of Mr. Bhavesh Mehta -, Respondent No. 1
- Sunil Rane, PSI (Pairavi Officer) Juhu Police Station

.....

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 26, 2026.

JUDGEMENT:

1. Heard Mr. Mundargi, learned Advocate for Petitioners; Ms. Rao, learned APP for State and Mr. Godwin, General Power of Attorney Holder of Respondent No. 1. They both have placed their written submissions of their oral arguments before the Court along with citations which they seek to rely upon.

2. Present Petition is filed under Article 226 of Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 seeking to quash and set aside MECR No.22 of 2014 dated 21.09.2014 for offences of cheating, criminal breach of trust and forgery arising out of order dated 02.08.2014 passed in C.C. No.340/SW/2014 by

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learned Metropolitan Magistrate 10th Court Andheri, Mumbai under Sections 406, 420, 465, 467, 469 and 471 of Indian Penal Code. Petitioner No.1 is a real estate development company, Petitioner Nos.2 to 4 are its directors and beneficial shareholders. Respondent No.1 is First Informant – Complainant.

3. Briefly stated, facts relevant for adjudication of the present quashing Petition are as under:-

3.1. Petitioners No.1 to 4 are arraigned as Accused Nos.1 to 4. Accused No.1 constructed a building called Mayfair Sweet Haven at Vile Parle, Mumbai (for short "**said building**"). Vide registered Agreement for Sale dated 09.02.2010, Respondent No.2 – Complainant along with his mother purchased Flat No.201 (for short "**said flat**") in the said building along with 2 covered car parking spaces. Complainant paid Rs.2.57 crores towards sale consideration. In the FIR it is alleged that additional Rs.12 lakhs was paid for two covered stilt car parking spaces, Complainant was put in possession of said flat on 13.03.2010. Complainant started residing therein with his family from 24.03.2010. It is alleged that all amenities as promises by Accused No.1 were not fully provided hence complainant addressed complaint letter dated 15.04.2010 to Petitioner No.1. This letter was replied to by letter dated 21.04.2010. Complainant thereafter filed Non Cognizable Complaint against Petitioner No.1 on 27.04.2010. It is alleged in the

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FIR that Complainant started parking his two cars in car parking space Nos.1 and 2 after he started residing in the building. It is alleged that Accused No.1 sold the other unsold flats and car parking spaces to prospective flat purchasers including car parking space Nos. 1 and 2 which was objected to by Complainant. One such flat purchaser of Flat No.301 was allotted car parking space Nos.1 and 2. There was exchange of correspondence between the parties with regard to car parking spaces Nos.1 and 2. According to Complainant, Petitioner No.1 committed various offences under MOFA and notwithstanding advance maintenance amount collected by it as developer, warrant of attachment was issued by Corporation for which Complainant was asked to pay substantial property taxes.

3.2. Being aggrieved, Complainant filed police complaint on 07.11.2012 against Petitioner No.1, however after thorough enquiry and investigation, police authorities came to the conclusion that since the dispute raised by Complainant was civil in nature, Complaint was not registered. On 02.01.2013, Complainant filed a fresh Complaint with the Deputy Commissioner of Police for the same cause of action which was also not lodged on the ground that the dispute was civil in nature. Complainant was duly informed by the Police authorities in writing. Notwithstanding this, Complainant approached the Magistrate under Section 156(3) of CrPC.

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3.3. The dispute of Complainant which is seen from the FIR and the material placed on record pertains to 2 car parking spaces *qua* another flat purchaser in the same building who was allotted the same car parking spaces which were used by Complainant.

4. Mr. Mundargi learned Advocate appearing for Petitioner namely Accused Nos.1 – 4 would submit that Petitioner No.1 – Developer has not sold any car parking spaces to Complainant which is *prima facie* clear from reading of the registered Agreement for Sale dated 09.02.2010. He has taken me through the the Agreement, copy of which is appended to page No.142 and Chargesheet is appended at page No.94 of the Petition. He would submit that neither did Petitioner No.1 take any separate consideration from Complainant for allotment of the alleged 2 car parking spaces nor allotted them to him.

4.1. He would submit that said flat (Flat No.201) which was sold to Complainant was the sample flat prepared in the said building consisting of all specifications, amenities and facilities as per his registered Agreement for Sale which was accepted by Complainant after thoroughly examining the flat which was occupied by him and his family. He would submit that said flat sold to Complainant was a sale ready possession flat for which Complainant availed a housing loan from Bank of India which was duly disbursed in accordance with law. He would submit that Complainant is a busybody who has been

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evading payment of maintenance charges since several years and has been filing frivolous proceedings against other occupants of the building and Petitioner No.1 – Developer on vexatious grounds by alleging pending disputes and avoiding payment of maintenance charges on that pretext.

4.2. He would submit that Complainant is not cooperating with formation of the Body of Flat Purchasers under the provisions of Maharashtra Ownership of Flats Act. He would submit that Complainant's twin complaints with the police authorities and the DCP in 2012 were thoroughly investigated with regard to the same cause of action which is the subject matter of present FIR and only after investigation and inquiry it was concluded that it was a pure civil dispute. He would submit that Complainant filed S.C. Suit No.476 of 2013 before the City Civil Court at Dindoshi against the flat purchaser of Flat No.301 for claiming entitlement to use of the two specific car parking space Nos.1 and 2 which were never ever allotted to him.

4.3. He would draw my attention to the fact that one year prior to filing of Complainant's Civil Suit, the Flat Purchaser of Flat No.301 in the said building filed S.C. Suit No.1340 of 2012 for the same car parking spaces wherein interim relief was rejected but in Appeal from Order proceedings, this Hon'ble Court passed order dated 29.04.2014 while disposing off Civil Application No.573 of 2014 and directing the

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Flat purchaser of Flat No.301 and Complainant to occupy one car parking space in the front and the second car parking space in the rear and further specifically directed Complaint to occupy car parking space No.2 in the front and car parking space No.6 in the rear and flat Purchaser of Flat No.301 to occupy car parking space No.1 in the front and car parking space No.11 in the rear. He would submit that this order was not followed by Respondent No.1. He would submit that since this order was not followed, Contempt Petition No.3014 of 2014 was filed against Complainant wherein he gave an undertaking that he will comply with the order dated 29.04.2014 which was recorded in the further order dated 10.03.2015 passed by this Court. Complainant thereafter challenged order dated 29.04.2014 by filing Special Leave Petition which was rejected by Supreme Court on 25.07.2014. Hence the order dated 29.04.2014 became final.

4.4. He would submit that it is in the above backdrop, Complainant approached the Metropolitan Magistrate 10th Court, Andheri by filing a fresh Complaint for the same cause of action and on the same set of facts. He would submit that by the impugned order dated 02.08.2014, Magistrate directed registration of FIR under Section 156(3) of CrPC and impugned MICR No.22 of 2014 was registered. He would submit that order of the Magistrate is appended at page No.79 of the Petition which is a cryptic order which merely states that on hearing the Complainant and perusing the documents,

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case is made out which requires investigation and Complainant discloses commission of a cognizable offence. He would urge this Court to therefore allow the present Petition and quash the impugned order and the MECR complaint which has been filed on the basis of complete non application of judicial mind by the learned Magistrate and due to the civil nature of the present dispute.

5. Before I adjudicate the present Petition, I need to record the submissions made on behalf of Complainant who is present before me. Complainant has appointed his Constituted Attorney who is one Mr. James Thomas Godwin and has persuaded me to allow him to argue on his behalf. He has filed an Interim Application also which seeks to modify the previous order passed by this Court dated 06.08.2024 regarding representation by the Attorney on the basis of unregistered Power of Attorney. That Application is also decided herein. Present Petition is filed in 2015 for quashing of MECR and it has seen the light of the day today. Several orders have been passed in the present Petition. Advocate was appointed through legal aid to represent Respondent No.1 – Complainant previously however due to exigencies he withdrew his appearance. Thereafter, several orders have been passed for legal representation to Complainant. It is further seen that mediation attempt has failed despite both parties agreeing to the same which is duly recorded by this Court in its order.

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6. I am conscious of the fact that this is a criminal case. Though the office has rejected the request of First Informant – Complainant to allow his Constituted Attorney to argue the case, a request application is made by Respondent No.1 – Complainant dated 09.02.2023 requesting this Court that due to constraints, financial situation, mental stress, Petitioner's old parents and their medical issues, Petitioner's children's education and his livelihood, Petitioner be allowed to be represented by his friend's son who is well versed with the matter and who can place all issues before the Court effectively. Both Respondent No.1 – Complainant and his Constituted Attorney Mr. Godwin are present in court before me. I have interacted with them. Considering this is a Writ Petition filed under Article 226 of the Constitution of India and under Section 482 of CrPC and the request made by Respondent No.1 - Complainant who, in my opinion, may not be in a position to effectively argue his own case, the graceful request made by him and after interacting with Complainant and his Constituted Attorney, I am of the opinion that Respondent No.1 complainant should be allowed to be represented by his Constituted Attorney so that he gets a fair chance of effectively pleading his case in the present proceedings. Mr. Mundargi does not have any objection so long as the case does not get protracted.

7. If I have to deal on technicalities then this Petition, which is pending since last 11 years, will remain pending further and get

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further protracted. Once Respondent No.1 – Complainant's grievance is met with and his submissions are heard and considered, I see no impediment in hearing and adjudicating present Petition.

8. Mr. James Thomas Godwin, Constituted Attorney of Respondent No.1 – Complainant has argued on behalf of Respondent No.1 and would submit that Petitioner No.1 – Developer failed to provide several amenities and facilities in the said flat purchased by Complainant as per his registered Agreement for Sale and therefore it amounts to cheating and criminal breach of trust of the MOFA provisions. He would submit that Petitioner No.1 – Developer promised to supply drinking water facility in the said building but it was not readily provided and therefore he failed to comply with his promises made to Respondent No.1 – Complainant. He would submit that Complainant started parking his vehicles in car parking space Nos.1 and 2 from the day he started residing in the said building and none of the occupants and the developer obstructed the Complainant from doing so. He would submit that Respondent No.1 paid Rs.12 lakhs extra for the two car parking spaces and therefore they exclusively belong to him.

8.1. He would submit that after Occupation Certificate was received from Brihanmumbai Municipal Corporation on 20.01.2010, Petitioner No.1 – Developer started selling open car parking spaces in

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the said building premises to prospective flat purchasers and portion of the common terrace on the seventh floor was sold to the prospective flat purchasers on the 6th floor by construction of a wall on the said common terrace. He would submit that when Complainant opposed such illegalities and filed written complainant with the Municipal Corporation and the Executive Engineer, Building Proposal Department, Petitioner Nos.2 to 4 started threatening Complainant and his family members. He would submit that Petitioner No.1 – Developer promised to provide gymnasium and fitness center in the said building but did not do so, hence Petitioners committed breach of the same and Complainant was constrained to register Complaint for cheating and criminal breach of trust under the Indian Penal Code.

8.2. He would submit that in the said building there was a problem of water leakage / seepage from the bathrooms on the higher floors which caused damage to the wooden flooring and walls which was not addressed by the Developer. He would submit that as flat purchasers began to reside in the said building, residents started facing crunch of parking spaces and therefore Petitioner No.1 - Developer constructed illegal parking shed at the rear side of the said building which was demolished on the Complaint filed by Complainant.

8.3. He would vehemently submit that Petitioner No.1 – Developer interfered with car parking space Nos.1 and 2 enjoyed by

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Complainant by relying on a purported Letter of Allotment letter dated 25.08.2011 allotting one covered car parking space no.6 and one open car parking space no.11 to the Complainant. He would submit that Petitioner No.1 – Developer sold more car parking spaces to flat purchasers than those which were approved in the sanctioned plan by the Municipal Corporation. He would submit that there was a dispute with occupant of Flat No.301 regarding occupation of car parking spaces and all parties approached the Civil Court to decide the same. He would submit that Petitioner No.1 – Developer collected 12 months advance maintenance amount from all flat purchasers but failed to give accounts for the same and did not disclose the details of the outgoings. He would submit that Petitioner No.1 - Develoepr did not take steps under MOFA to form the Body of Flat Purchasers and therefore he breached the statutory provisions of MOFA and cheated the flat purchasers with malafide intentions. He would submit that because of aforesaid breach of trust Complainant proceeded against Petitioner No.1 – Developer under criminal law. Hence he would submit that Petition for quashing be dismissed and Complaint be allowed to be prosecuted to its logical end.

9. I have heard the detailed submissions made by Mr. Mundargi, learned Advocate on behalf of Petitioners, Constituted Attorney on behalf of Respondent No.1 - Complainant and the learned APP for State and with their able assistance perused the entire record

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of the case. Submissions made on behalf of the parties have received due consideration of the Court.

10. At the outset it is seen that Respondent No.1 filed Interim Application No.4376 of 2024 seeking modification and review of order dated 06.08.2024. As discussed hereinabove in my opinion no purpose will be served in determining and adjudicating whether due to non - registration of Power of Attorney, the Constituted Attorney can be allowed to represent and argue on behalf of Respondent No.1. Complainant and his Attorney are both present before me in Court. Complainant is a Chartered Accountant by profession and is also in a position to argue his case but he is not acclimatized with the practice and procedure of making submissions and arguments in Court. He has behaved well and obediently in the Court. Equally his Constituted Attorney who is present in Court has also gracefully addressed the Court, therefore without entering into the merits and legality of the order dated 06.08.2024 for review, I am inclined to allow Interim Application No.4376 of 2024 and permit the Constituted Attorney to appear and argue the Petition finally before me today. The aforesaid Interim Application No.4376 of 2026 is allowed in terms of prayer clause (c) and disposed.

11. Writ Petition is heard finally today. Submissions are noted herein above. It is seen that principal grievance of Complainant in the

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present case pertains to and emanates from his car parking spaces dispute which has led to he filing several Complaints against Petitioner No.1 – Developer. It is an admitted position that Petitioner No.1 sold the sample flat to Complainant and it is further an admitted position emanating from the registered Agreement for Sale and the pleadings on record that car parking space nos.1 and 2 were never sold or allotted to Complainant. Complainant's further case regarding payment of Rs.12 lakhs extra for the two car parking spaces will be the subject matter of evidence and trial. Cross Suits are filed and pending. However it is seen that after Complainant started residing in the building he started parking his two vehicles in car parking space nos. 1 and 2 and continued doing so until the Petitioner No.1 – Developer allotted the said 2 car parking spaces to flat purchaser of Flat No.301. This is the real point of trigger from where the dispute commenced. Between 2010 and 2012, Complainant enjoyed car parking space Nos.1 and 2. In 2012 flat purchaser of Flat No.301 filed Civil Suit against Complainant with regard to the said 2 car parking spaces. Record shows that Complainant also filed Suit with regard to the same cause of action in the year 2013. Both flat purchasers namely Complainant and purchaser of Flat No.301 were specifically directed by this Court in Appeal from Order proceedings to use two car parking spaces each as directed in the said order alluded to hereinabove. Respondent No.1 - Complainant was unsuccessful in his challenge to

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the same before the Supreme Court and filed undertaking in Contempt proceeding in this Court to abide by the order.

12. It is seen that both Suits filed by Complainant and flat purchaser of Flat No.301 are pending in the Trial Court and they will be taken to their logical end. Regarding non provision of amenities by Developer, it is of two types (i) amenities inside the flat i.e. leakage and seepage from bathroom etc. and (ii) amenities outside the flat i.e. non availability of drinking water etc. Since Respondent No.1 - Complainant purchased the sample flat, hence there cannot be any grievance regarding non provision of amenities inside the flat. It is seen that Respondent No.1 – Complainant took possession of the said flat and started residing therein without demure. It is seen from the record that only when the dispute relating to car parking space nos.1 and 2 had arisen, Respondent No.1 filed complaint about breach of trust and cheating.

13. In my opinion, the entire *lis* raised by Respondent No.1 – Complainant is purely civil in nature and there is no hint of criminality involved therein. In the present case it is seen that there are two police reports prepared after thorough enquiry i.e. one by Juhu Police Station and one by DCP categorically concluding that no cognizable offence is made out despite which learned Metropolitan Magistrate has passed the order dated 02.08.2014 without recording any reasons whatsoever

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before directing registration of FIR. It is seen that the Magistrate has not applied his judicial mind and his order does not give reasons for not accepting the two police reports. It is seen that when judicial authority reaches a conclusion contrary to the material collected and where the final order will trigger criminal investigation then it is the duty of the judicial body to give reasons which must exist and relate to the material. The impugned order dated 02.08.2014 does not even refer to the police reports and is in substance, an order without application of mind which cannot be sustained under the provision of Section 156(3) of CrPC.

14. In the present case, the dispute as observed and alluded to hereinabove is a clear civil dispute which is given the color of criminality by the Complainant. There is no satisfaction recorded by the learned Magistrate whatsoever that a cognizable offence is disclosed. The order of the magistrate dated 02.08.2014 is a cryptic order without recording *prima facie* reasons for his satisfaction to direct registration of MECR, investigation and filing of chargesheet against Petitioners whatsoever.

15. Attention is drawn to a very recent judgment of the Supreme Court decided in the case of ***Edelweiss Asset Reconstruction Company Ltd. Vs. State of NCT Delhi and Ors.***[1] wherein it is held that at the stage of quashing the Court does not weigh evidence, determine the

1 Criminal Appeal No.4622 of 2026 decided on 29.09.2026

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truth of allegations or adjudicate the rights of parties under their contract, instead what the Court looks at is whether the allegations taken at face value disclose the essential ingredients of the offences alleged and to undertake this exercise, Court reads the complaint as a whole and in its proper context. It is also held therein that Court may take into account documents of unimpeachable character that are admitted by the Complainant and the circumstances emerging from the record so long as it does not embark upon appreciation of disputed evidence and facts.

16. The Supreme Court in the case of ***Maksud Saiyed v. State of Gujarat*** [2] settled the law on application of judicial mind by Magistrate while passing an order under Section 156(3) CrPC by holding that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, Magistrate is required to apply his mind and Magistrate must examine whether averments contained in the Complaint disclose an offence by the persons sought to be proceeded against, particularly where accused person is a company.

17. The Supreme Court in the case of ***Priyanka Srivastava v. State of U.P*** [3] held that there is a growing tendency to invoke Section 156(3) CrPC in a routine manner to settle scores and that Applications filed under Section 156(3) of CrpC must be supported by an affidavit, so that the Applicant is accountable, and that the Magistrate must be

2 2008) 5 SCC 668
3 (2015) 6 SCC 287

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vigilant about the nature of the allegations. The relevant paragraph No.27 is reproduced below for ease of reference:-

> *"**27.** Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. ... But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to."*

18. In the case of ***Iqbal alias Bala Vs. State of U.P***[4], the Supreme Court held that when proceedings are held to be vexatious or frivolous the court owes a duty to look into the attendant circumstance and if need be, read between the lines.

19. In the present facts and circumstances it is clear that Complainant's grievance regarding car parking spaces and amenities is purely a civil dispute and there is no criminality involved whatsoever therein. The fact that Complainant himself filed a Civil Suit in 2013 militates against his own case in pursuing criminal proceedings. In that view of the matter it leads to answering the question whether the ingredients of the offences alleged are disclosed against the Petitioners .

20. The Supreme Court in the case of ***State of Haryana Vs.***

4 2023 8 SCC 734

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Bhajan Lal,[5] enumerated, by way of illustration, the categories of cases in which the High Court may exercise its powers under Article 226 or Section 482 CrPC to prevent abuse of process or to secure the ends of justice. The first, third, fifth and seventh categories are directly relevant to the facts of the present case. The relevant paragraph No.102 reads thus:-

> *"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under*

5 1992 AIR 604

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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."

21. In ***Indian Oil Corporation v. NEPC India Ltd.***[6], the Supreme Court summarised the principles of quashing laid down above. The Court held that complaint may be quashed where the allegations, taken at face value and accepted in their entirety, do not *prima facie* constitute any offence. For this purpose, Complaint is to be examined as a whole, without examining the merits of the allegations. The Complaint need not reproduce the legal ingredients verbatim but quashing is warranted where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offences.

22. For ready reference, provisions of Section 406 of IPC which is alleged in the present Complaint is reproduced hereunder:

Section 406 of IPC is reproduced hereunder:-

"406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with

6 (2006) 6 SCC 736

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> *imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

23. The ingredients of criminal breach of trust are well defined by the Supreme Court in its decision in the case of ***Prof. R.K. Vijayasarathy v. Sudha Seetharam***[7], in paragraph No.13 as follows:

> *"i) A person should have been entrusted with property, or entrusted with dominion over property;*
>
> *ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and*
>
> *iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."*

24. In ***Prof. R.K. Vijayasarathy*** *(supra)*, the Supreme Court emphasized that entrustment is a sine qua non for the offence. In ***Delhi Race Club (1940) Ltd. v. State of U.P.***[8] , the Supreme Court reiterated that without entrustment of property, or of dominion over property, there can be no criminal breach of trust. The expression "entrusted" connotes that the property is handed over to, or placed under the dominion of, the accused for a purpose. The person who hands it over reposes confidence in the recipient. The recipient holds the property, or deals with it, subject to that purpose, and does not hold it as his own.

25. Section 420 IPC, which is also alleged in the present

7 (2019) 16 SCC 739
8 (2024) 10 SCC 690

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Complaint is relevant to the controversy, and is reproduced hereunder:-

> Section 420 of IPC is reproduced below
>
> *"420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

26. From the above it is seen that essential ingredients of the charge of cheating are deception of a person, and fraudulent or dishonest inducement of that person, by reason of the deception, to deliver property, to consent to the retention of property, or to do or omit to do something which he would not otherwise have done. It is seen that for invocation of Section 420 IPC, there must in addition be a dishonest inducement to deliver property or to make, alter or destroy a valuable security. The deception must be practiced by the accused, and the dishonest intention must exist at the time of the inducement.

27. *In Hridaya Ranjan Prasad Verma v. State of Bihar* [9], with regard to breach of contract and criminal prosecution, the Supreme Court in paragraph No.15 held 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*

9 (2000) 4 SCC 168

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> *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."*

28. In the present case, applying the aforesaid principles and statutory provisions enunciated by the Supreme Court, it is seen that the Complaint does not disclose commission offence of cheating and breach of trust or forgery as the relationship of the parties is based on purely contractual terms and registered agreement for sale and the correspondence / documentary material. It is seen that only after Complaints started residing in his flat and two years thereafter when he was obstructed with his occupation and use of the 2 car parking spaces that the litany of complainants started and were made. The police authorities on two occasions after a through investigation concluded that the *lis* between parties was a civil dispute. Order of the learned Magistrate does not give any reasons. Parties are already before the Civil Court otherwise.

29. Hence, in view of the aforesaid observations and findings, I am not inclined to accept the submissions on behalf of the Complainant to allow continuing of the present criminal proceedings and prosecution. Present Petition deserves to be allowed. Petition is so allowed in terms of prayer clauses 'd' and 'e1' which read thus:-

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"*(d) That this Hon'ble Court may be pleased to quash and set aside the impugned M.E.C.R. No.22 of 2014, dated 21st September 2014 under Sections 406, 420, 465, 467, 469, 471 arising out of the Order dated 2nd August 2014 passed in C.C. No.340/SW/2014 passed by the Learned Metropolitan Magistrates' 10th Court at Andheri, Mumbai under Sections 403, 406, 420, 465, 467, 469 and 471 of IPC;*

(e1) That this Hon'ble Court be pleased to quash and set aside the impugned Order dated 2nd August 2014 passed by the Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai passed under section 156 (3) Cr. P.C. in C.C. No. 340/SW/2014/New C.C. No. 1329/PW/2015."

30. It is further clarified that charge-sheet and proceedings arising out of M.E.C.R. No.22 of 2014 and new C.C. No.1329/PW/2015 are also quashed and set aside.

31. It is seen that Section 482 of the Criminal Procedure Code, 1973 conferred inherent powers on High Courts to pass such orders as are justified to give effect to any order in the Court, prevent abuse of process of any Court or secure the ends of justice. In the BNSS this provision stands incorporated with Section 528 which substantially reproduces the language and intent of Section 482 of the CRPC, 1973 High Courts invoke this provision to step in where cases have been instituted with *malafide* motives or to harass the accused person thereby avoiding procedural harassment. It empowers Court to dismiss FIRs or criminal proceedings if there is no *prima facie* case or evidence against the accused person/s or if orders are made in violation of the principles of natural justice. The exercise of such powers under Section

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482 of CRPC and now Section 528 of BNSS remains discretionary and varies from case to case.

32. In the above context, when *lis* between parties is frivolous and initiated so as to settle scores and without any cause of action whatsoever and the offence is not heinous or does not impact the society at large, the Court can consider such request for quashing of FIR. In such a case when criminal law is set into motion by Complainant and thereafter the aggrieved party seeks quashing of such criminal proceedings, in my opinion, it can be considered by Court to impose costs on the party who initiated the frivolous criminal proceedings.

33. For above levy of costs the legal principle rests on the logic that criminal law cannot be used as a bargaining chip or a tool for private settlements after draining the State and judicial resources which is what Respondent No.2 – First Informant is guilty of in the present case. In simple words, Courts cannot be used as a recovery mechanism to settle scores and/or bring the parties into subjugation. I am of the firm opinion that imposition of costs is required to be levied for three main reasons viz., wastage of public resources, consumption of valuable judicial time and for deterrence against vexatious litigation. This is because after the criminal machinery is set into motion, the Police Department is forced to take cognizance, conduct investigations,

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attend courts, deploy personnel, collect evidence and draft chargesheets, all using public funds/ public exchequer. Equally substantial judicial time of the Trial Courts and Sessions Courts is wasted for handling a case, presentation of a case, issuance of summons, scheduling of trial dates, appointment of prosecutors and their fees, etc. and ultimately quashing is allowed such judicial time stands completely wasted, which could have otherwise been used for genuine Trial Court matters/ litigation and in one way such matters result in clogging the legal system and lead to humongous pendency which becomes difficult to tackle. It is seen that Respondent No.2 - First Informant / Complainant has fulfilled all the aforementioned criteria noted by this Court for imposition of costs, hence levy of the same upon Respondent No.2 is necessarily justified in the light of the above observations made in the facts of the present case before this Court.

34. Another aspect to consider for imposing costs is that it curbs the growing trend of filing strategically exaggerated criminal complaints (especially matrimonial or commercial disputes) simply to force financial and legal settlements. In a given case made out on merits of the matter, even the Complainant can be put to costs while considering a quashing Petition purely on merits depending upon the facts of each case before Court. This Court is also equally conscious about not imposing costs blindly or mechanically if a particular party is

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not found to be remiss or at explicit fault for abusing the law, as also conscious about heinous offences impacting the society at large.

35. Applying the aforesaid principles to the facts of the present case, I am of the opinion that the Complainant for his action of filing frivolous and vexatious complaint, the Complainant should pay costs. Hence, Complainant is directed to pay costs of Rs.10,000/- towards the Corpus of **A.K. Munshi Yojana** a trust which runs medical centres, vocational training centres and which also runs a Special School called **J.T. Sheth Mandbuddhi Vikas Kendra**, imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163 within a period of two weeks from the date of uploading of this judgment. Complainant is present in Court and through his learned Advocate agrees to pay the aforesaid costs amount to the charity.

36. List the Writ Petition for compliance of the order before the regular roster bench seized with hearing Writ Petitions for quashing of FIRs regarding payment of costs on 16th December 2026.

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37. Advocate for Complainant shall remain present and show compliance on behalf of Complainant on the returnable date for compliance. If they do not remain present and there is non-compliance of this order, Court will pass appropriate orders which shall be noted by Complainant.

38. Writ Petition is allowed and disposed. Interim Application is also allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
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