



GAHC010202392017

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./828/2017

AJAY HALDIA

S/O- LATE AMAR NATH HALDIA, R/O- 4 NEW TANGRA ROAD, BUILDING
PS MARVELLA, FLAT 7A, P.S- TANGRA, KOLKATA- 700046, PROP. OF M/S
TEA MECH INDIA HAVING OFFICE AT 96D, KARAYA ROAD, P.S- KARAYA,
KOLKATA- 700019

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY PP, ASSAM

2:BALENDRA KUMAR GOSWAMI
S/O- LATE SARAT CHANDRA GOSWAMI
R/O- BEHIND OMEGA EYE CLINIC
LANKESWAR
P.O- JALUKBARI
GHY- 14
DIST- KAMRUPM
ASSAM

Advocates for the petitioner:

Mr. K. Gooptu, Sr. Advocate,
Mr. A. Das,
Mr. N. Sharma and
Mr. D. Das.

Advocate for the respondent No.1:

None.

Advocate for the respondent No.2:

Mr. K.N. Choudhury, Sr. Advocate,
Mr. T. Deuri and
Mr. B. K. Kashyap.



:: BEFORE ::

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Date of hearing: 07.12.2021.

Date of judgment: 20.01.2022.

JUDGEMENT AND ORDER

Heard Mr. K. Gooptu, learned senior counsel appearing for the petitioner as well as Mr. K. N. Choudhury, learned senior counsel appearing for the respondent No.2. None appears for respondent no.1.

2. By filing this petition under Section 482 of the CrPC, the petitioner sought for quashing, cancellation and setting aside the FIR, dated 01.02.2017 as well as the proceedings/investigations and dropping of all allegations in connection with the CID P.S. Case No.3/2017 (corresponding to G.R. No.1083/2017), under Sections 406/408/420 of the IPC.

3. The case of the petitioner in brief is that the petitioner is the proprietor of M/s. Tea Mech (India) (in short 'the Tea Mech'), which is engaged in business of manufacture and supply of engineering goods and processing machinery for tea, sesame, nuts, grains industries. The petitioner is also working as a Managing Agent for logistics in grain based distillery.

4. M/s. Brahmaputra Biochem Pvt. Ltd. (in short 'the BBPL'), having its registered office at Jaipur and corporate office at Mumbai, had entered into a business relationship with Tea Mech, and to carry on such business relation, a Contract/Agreement of Managing Agency was entered between the BBPL and Tea Mech on 16.01.2015, containing various terms and conditions.

5. The BBPL independently placed order along with attached commodity trade agreement with various suppliers and traders after negotiation, agreement and fixation of price, which facilitated by the petitioner. The payments were effected by the BBPL to the suppliers and traders. No payment towards purchase of grains against purchase orders were ever made to Tea Mech Company/the petitioner Company. According to the petitioner, Tea Mech had outstanding dues recoverable from BBPL in pursuance of the said agreement and on account of and for managing the grain, handling and logistics, Tea Mech sent letter to the BBPL, claiming Rs. 84,64,998/-, dated 05.09.2016 (vide Annexure-3) and repeatedly requested to pay the outstanding dues, but they never bothered to reply to the said letter, although verbally made request for time to arrange the money. In the backdrop, the business transactions between the parties being purely commercial in nature and during existence of agreement, without resorting to any dispute resolution in terms of the said agreement, after a long lapse of time, BBPL suddenly filed an FIR, dated 18.07.2017, with CID, Assam, which has been registered as CID PS Case No. 3/2017, dated 01.02.2017, under Sections 406/408/420 IPC. It is submitted that as has been mentioned in the FIR, BBPL never asked for any money or dues payable to BBPL by the petitioner or had shown any intention to terminate the agreement. The FIR was dated 18.01.2017, but registered on 01.02.2017 and suddenly, on 06.02.2017, petitioner received a letter from the BBPL, making a counter claim of Rs. 1,36,97,352/- from the petitioner, contending that there is no any outstanding dues of Rs. 84,64,998/-, claimed by the petitioner, with an intention to defraud the petitioner by such belated reply, which is nothing but an afterthought.

6. The petitioner, after receipt of the said reply tried to seek an explanation

from them, with a view to resolve the dispute in an amicable manner in terms of the agreement, as in the agreement there is an arbitration clause, but it was not responded. Suddenly, on 01.08.2017, at 09:00 pm, the petitioner was forcibly taken to his office at 96, D, Karaya Police Station by some unidentified persons, accompanied by the agents of the BBPL and identifying as Police Officers from CID, certain documents were seized from him and provided him the seizure list, arrest memo and asked him to sign some cheques by way of threat to transfer money to BBPL. It was told that if he signed the cheques and transferred the money as directed, he would be allowed to walk free and under such threat from the police personnel of the CID, he had to sign the cheque, as dictated (copy of arrest memo, seizure list and notice under Section 41 A CrPC annexed).

7. After said incident, petitioner sent letter of complaint dated 09.08.2017, through Speed Post to the O/C, Karaya Police Station, informing the entire incident that had occurred and prayed for justice and to take necessary steps against the accused persons. Thereafter, the petitioner filed a complaint before the court being C. Case No. 2640/2017 under Sections 143/323/341/386/506/120B/34 of the IPC and the learned court at Alipore finding *prima facie* case against the accused, initiated the case and the issued process regarding such criminal acts and conduct. Further, it is contended that after such incident, the petitioner's health has been severely impacted being a CABG (heart bypass) patient with present unstable heart condition and severe diabetes. Petitioner also sent a notice, invoking arbitration proceedings pursuant to notice dated 19.08.2017 for appointing arbitrator in terms of the said agreement, which was accepted by BBPL although had not agreed with the selection of the arbitrator.

8. Thus, it is contended that allegations in the FIR do not constitute any ingredient of the offence alleged. Furthermore, in view of the arbitration clause in the agreement between the parties, criminal proceeding is not maintainable and it has been filed *mala fide* by the informant, with a view to harass the petitioner and same is liable to be quashed and set aside.

9. Without disputing the fact that both the parties has entered into an agreement as averred by the petitioner's side, the informant/respondent no.2 in his written objection submitted that both the criminal and civil remedy can be pursued in above situation and as a matter of fact they are not mutually exclusive but co-extensive. It contends that merely because a civil remedy is available a criminal prosecution is not completely barred. It is submitted that there is material in the instant case to proceed against the accused petitioner under section 406/408 and 420 IPC. The various terms and conditions of the agreement has been referred by the respondent no.2 and course of action that have undertaken since the day of execution of the agreement between the parties on 16.01.2015 and the transaction in this regard in detail, (for the sake of brevity all details is not narrated here). Respondent, however, denied that they never replied the letter dated 05.09.2016 (claiming certain amount as indicated above).

10. It is their stand that they have replied to the said letter on 06.02.2017, contending that M/s. Tea Mach (India) is the managing agent and their responsibility is to procure grains and deliver it to BBPL and to secure the refund of the due amount. Denying any outstanding amount in terms of the letter dated 05.09.2016, it is contended that the petitioners company itself has failed to discharge their obligation under the agreement, against the advance amount paid to the traders and hence not entitle to claim any amount of commission

from the BBPL.

11. As regard the filing of the case before the CID, it is stated that a person can choose a police station to make his complaint of a cognizable offence and police is under obligation to register the FIR without delay in accordance with law. So far as the allegation that the petitioner was forcibly taken to his office on 01.08.2017. It is stated that on 01.08.2017, S/I of CID in connection with the present case arrested the petitioner and seized various articles and documents and also served a notice under Section 41(a) and Section 50 CrPC and there is no illegality in the investigation so far carried out.

12. It is further stated that the complaint case filed by the petitioner vide case no.2640/2017 before the court of Alipore, South Pargana is an afterthought.

13. Respondent no.1 has also filed written objection against the allegation made by the petitioner's side, about the conduct of the police officials of the CID Department. Superintendent of Police, CID in his reply/objection denying the allegation by the petitioner, has submitted that on the basis of the written FIR filed by the informant on 01.02.2017, CID P.S. Case No.3/2017 was registered and one Arup Kr. Mahanta, Inspector of CID was entrusted with the investigation. It is stated that as the major part of the investigation is centered at West Bengal, hence a team consisting of Sri Nirmal Baishya, APS, Addl. S.P., CID Assam along with other officers of CID, were deputed for investigation in connection with the case. Accordingly, the aforesaid team with the I/O of the case proceeded to Kolkata on 31.07.2017 for investigation. On arrival, the team visited the office of the Commissioner of Police, Kolkata, Addl. Director of Police, CID, West Bengal, Kolkata and discussed the case in details. After discussion, the team was divided into two smaller teams. One team consisting of the I/O Insp. Arup Mahanta with Addl. S.P. Sri Nirmal Baishya and Inspector Manzoor

Ahmed proceeded to M/S Mamoni Traders at village- Purbadevpur, Bhatar, Burdwan and village- Baragram, P.S. Memeri, Rasulpur, Burdwan for investigation on 01.08.2017 with the assistance of a team provided from CID, West Bengal.

14. The second team consisting of Sri C.S. Tiwari, APS, Dy. SP, Insp, Deba Dutta and S.I. Shyamanta Sharma of CID, Assam proceeded to Liluah Police Station under Kolkata Police Commissionerate to conduct search and to take follow up action in the house/office and factory of alleged accused Sri Ajay Haldia with the personnel provided by the Liluah Police Station. The factory of M/S Tea Mech (India) located under the jurisdiction of Liluah Police Station was visited by the team and the alleged accused Sri Ajay Haldia was found present there. However said Ajay Haldia stated that the documents related to M/S Brahmaputra Biochem Pvt. Ltd. was at his office cum residence located at 96D, Karaya Road, Kolkata-19. Hence the team along with Sri Ajay Haldia went to Karaya Police Station and after taking police assistance from Karaya Police Station, the team went to the office cum residence of Sri Ajay Haldia at House No.96D of Karaya Road.

15. On arrival, Sri Ajay Haldia produced documents including contract between M/S Brahmaputra Biochem Pvt. Ltd. and M/S Tea Mech (India) dated 16.06.2015, Bank Statement covering the year 2015 of A/C No.20099720148 of Indus-Ind Bank, etc. The documents produced by him were seized in connection with the case. As the documents corroborated the FIR of the case, hence arrest memo, notice u/s 50 CrPC was prepared to cause his arrest in connection with the case. But before serving the arrest memo and the notice u/s 50 CrPC, said Ajay Haldia pleaded that as he has undergone bye-pass surgery of his heart recently and was under heavy medication, he would not be able to travel to



Guwahati at this health condition. On consideration of the fact of his health, age and being a permanent resident of 96D, Karaya Road, Kolkata-19, Sri Ajay Haldia was served a notice under the provision of section 41(A) CrPC asking for his appearance at CID, Assam, Ulubari, Guwahati on 16.08.2017 at 11 A.M. along with documents related to the case.

16. It is stated that at the office cum residence of Ajay Haldia, one of the member of M/S Brahmaputra Biochem Pvt. Ltd. namely Sri Arjun Arora arrived at the office for identification of accused Sri Ajay Haldia and both of them i.e. Ajay Haldia and Arjun Arora had a brief discussion between them. It is stated that the CID team identified themselves before the petitioner and the team was assisted by police personnel of local police station. Further, it is contended that both criminal proceeding and civil proceeding can proceed simultaneously if there is any ingredients of the criminal offence and whether there is any ingredients or not it can be ascertained only after thorough investigation of the case. Here in this case, the investigation could not progress further due to the stay order passed by this Hon'ble Court. The object of the criminal jurisprudence is to punish the offender, who commits any offence against any persons, property or the state. Pendency of civil matter or availability of civil remedies is not a bar for initiating criminal proceeding. Both the proceeding can run simultaneously and parallelly. FIR of the CID P.S. case No.07/2017 *prima facie* discloses commission of a cognizable offence under Section 406/408/420 IPC. There is no abuse of process if the investigation of the case is allowed to progress. Hence, invoking of Section 482 CrPC by this Hon'ble Court is not called for at this stage.

17. The petitioner herein has filed affidavit-in-reply to the written objection filed by both the respondents contending that it was the petitioner who lodged

the claim of non-payment of Rs.84,64,998/- on 05.09.2016 and without responding the same, after lapse of some 9 months, the informant lodged the FIR with ulterior motive, without paying the lawful dues and without exhausting to settle the matter in terms of the agreement (arbitration clause), filed the FIR as a pressure tactics and with the aid of the police agency has compelled him to remit money by way of cheque and RTGS. That although the arrest memo has been prepared, but he was never produced before the court. In fact, the petitioner was put under fear of arrest by showing arrest memo together with the seizure list only to obtain his signature in certain documents (as indicated above). Moreover, in spite of interim order of stay of investigation passed by this Court, the respondent no.1. in absolute violation of the same, issued further notice under section 41(A) which was also brought to the notice of this Court by way of supplementary affidavit, which discloses *mala fide* in the investigation. By annexing the order dated 11.06.2018, passed by Hon'ble High Court of Kalkata it has also been submitted that by the aforesaid order passed in AP No.1144/2017, the Hon'ble Kolkata High Court has appointed Sri Taposh Mukherjee (Retd. Judge) as sole Arbitrator without any objection from the respondent no.2 and in such backdrop while the dispute of purely civil in nature based on the agreement between the parties and the arbitration clause has already been invoked as per clauses contained in the agreement, further continuance of the criminal proceeding is nothing but abuse of process of law.

18. I have heard the submission of learned counsel for both the parties as well as gone through the pleadings of both the parties and the documents on record.

19. The learned counsel for the petitioner Mr. Goptu has reiterated the same contention as averred in the petition that the informant without responding to the claim made by the petitioner dated 05.09.2016, illegally raising a counter

claim of Rs.1,36,97,252/- has filed FIR only to defraud the petitioner of his legitimate dues. Mr. Goptu has vehemently stated that such an FIR filed in suppression of all relevant facts, i.e. about the claim made by the petitioner, about the arbitration clause and the agreement and all about earlier communication between the parties, is bad in law inasmuch as it fails to disclose the commission of any cognizable offence save and except some civil liability. Submission has been made at length that the informant by unfair means has pressurized the petitioner to fulfill their claim one-sidedly, without resorting to decide the matter in lawful manner by invoking the arbitration clause in terms of the written agreement. Further, it is contended that the conduct of investigating agency also a reflection of highhandedness of the informant company and in view of all above, the entire proceeding is required to be quashed and set aside.

20. Learned Senior Counsel for the respondent Mr. K.N. Choudhury *per contra* has submitted that there is no illegality in registration of the FIR upon receipt of the FIR of a cognizable offence and there is no absolute bar to initiate a criminal proceeding, even if there is civil liability. Reliance has been placed from the decision of *M/s. Medchl Chemicals & Pharma P. Ltd. –vs- M/s. Biological E. Ltd. & Ors., (2000) 3 SCC 269* to submit that at the initial stage of investigation power under Section 482 CrPC should not be exercised to prevent a lawful investigation. It is also held that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit.

21. As regard the investigation that was carried out, it has been submitted that as the petitioner's side has not responded to the notice under Section 41(A) IPC, for which the petitioner was arrested and the CID officials has disclosed the course of investigation in its reply/objection, clarifying their position and there is no irregularity in the investigation so far carried out by the CID.



22. Having regard to the rival submission of the parties, let us start with the FIR which is reproduced below:

“BRAHMAPUTRA BIOCHEM PRIVATE LIMITED

CIN: U24119MH2010PTC268920

Date.....

*To,
The Additional Director General of Police,
CID, Assam
Guwahati 7*

Dated : 18th January, 2017,

Dear Sir,

Sub:-FIR

I have the honour to inform you that on 16th January, 2015 an agreement was executed between M/s Brahmaputra Biochem Pvt Ltd., and M/s. Tea Mech (India) a sole proprietorship concern of Mr. Ajay Haldia carrying on business from 96D, Karaya Road Kolkata 700019 to supply 5,000 Mt of grain viz., maize, rice etc to M/s. Brahmaputra Biochem Pvt Ltd., which is an alcohol manufacturing company situated at AIIDC, Chaygaon, district Assam.

Tea Mech (India) has taken net amount of Rs.1,36,97,352 through RTGS in various accounts nos. as per details attached herewith located at Burdwan (West Bengal) in the name of their own persons to supply the said grain but they did not supply the grain and neither returned the amount paid by M/s. Brahmaputra Biochem Pvt Ltd.,

On asking him regarding the transaction, he is not taking interest in supplying the contracted grains and in repaying the money. More than one year has already passed and now his mobile is found switched off and he has stopped responding to our calls. Therefore I think they have committed a breach of trust by cheating the firm by not repaying the money nor supplying the said grains.

Hence, I request you to kindly register a case against Tea Mech (India) Mamoni Traders Burdwan West Bengal & BBS Enterprises Deoghar,

Jharkhand who have misappropriated the company money by cheating and fraudulently managing the company's fund against promising supply of grains.

For M/s Brahmaputra Biochem Pvt. Ltd.,"

23. From the plain reading of the FIR, it reveals that the informant has alleged that the petitioner company has taken certain amount for supply of grains in terms of the agreement entered into between the parties, but neither grains was supplied nor money was returned. The said conduct of the petitioner company is stated to be a breach of trust by cheating. Although the FIR was filed on 01.02.2017, but they have not disclosed certain facts which goes to the root of the matter. Firstly, there is no whisper about the claim made by the petitioner's side that was made much earlier of the filing of the FIR that is on 05.09.2016 neither there is any mention about the terms and conditions of the agreement including that there is a clause for arbitration to settle the dispute through arbitration. As it was a commercial transaction between the parties, it was incumbent on the part of the informant/respondent side to settle the dispute in terms of the agreement rather than to flout such agreement and resort to criminal proceeding. From the various admitted communication between the parties vide Annexure-6 it reveals that the informant company has given reply to the letter dated 05.09.2016 only after filing of the case on 06.02.2017 denying any liability to pay such amount on their part, making some counter claim from the petitioner company.

24. There is no denial about the agreement entered into between the parties dated 06.01.2015 vide Annexure-1 and as per the terms and condition of the

agreement the petitioner company is an managing agent to procure, store and supply grains, upon payment of commission and duration contract was for 10 years. Clause 20 of the agreement provides for dispute resolution –that any dispute arising out of the contract, the parties shall attempt to first resolve such dispute/claim through mediation between them and in the event dispute is not resolved through such discussion, than after serving a written notice to the other party the claim shall finally settled by arbitration of a sole arbitrator under Arbitration and Conciliation Act and arbitrator shall be mutually appointed by the parties.

25. From the documents on record, it reveals that the petitioner side has served written notice (vide Annexure-10 dated 19.08.2017) upon the respondent for arbitration and the respondent has also accepted the proposal (vide Annexure-11 dated 14.09.2017) showing willingness to appoint arbitrator of their choice. Pursuant to which the petitioner filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of sole arbitrator in terms of Clause 20 of the agreement dated 16.01.2015 which was registered as AP No.1144/2017. The Hon'ble High Court at Kolkata vide order dated 11.06.2018 on the basis of the said application on the mutual agreement between the parties has appointed one Retd. Judge of the Kolkata High Court as sole arbitrator to adjudicate the dispute between the parties. There is no dispute about the above proposition which has brought into record by the petitioner's side in its additional affidavit. That being the position, when the claim of respective parties is under subjudice before the arbitrator, the allegation of the informant/respondent company about misappropriate and cheating is not appropriate.

26. On the other hand, what amounts to cheating and entrustment have been defined in the Indian Penal Code and there is a fine distinction between the two offences. Section 415 defines cheating and the ingredients of the cheating is as follows:

“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

The section requires –

- (1) deception of any person,
- (2)(a) fraudulently or dishonestly inducing that person
 - (i) to deliver any property to any person, or
 - (ii) to consent that any person shall retain any property,

or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.”

27. The section comprises two separate set of Acts which the person deceived may be induced to do so. Firstly, he may be induced fraudulently to deliver the property, secondly in doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first category inducement must be fraudulent or dishonest or in the second category

inducement must be intentional. We may refer the following decisions where the Hon'ble Supreme Court has held that- mere breach of contract simpliciter does not constitute an offence.

28. In *Hridaya Rangan Pd. Verma And Ors vs State Of Bihar, (2000) 4 SCC 168*, it has been held that to hold a person guilty of cheating 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.

29. In *(2007) 14 SCC 776, All Cargo Movers (India) Private Limited and Others –vs- Dhanesh Badarmal Jain and Another; (2008) 11 SCC 670, Suneet Gupta –vs- Anil Triloknath Sharma and Others; and (2019) 9 SCC 148, Satishchandra Ratanlal Shah –vs- State of Gujarat and Another* similar view has been reiterated that mere breach of promise, agreement or contract does not *ipso facto* constitute an offence criminal breach of trust under Section 405 IPC without there being clear case of entrustment. Further, it has been held that allegations in the criminal complaint must disclose necessary ingredients thereof. The court can for the purpose of finding out as to whether said allegations are prima facie correct, take into consideration the correspondence exchanged by the parties and other admitted documents. Criminal proceedings should not be encouraged while is found mala fide or otherwise abuse of the process of the court. Further, it is held that the superior court while exercising inherent power under Section 482 CrPC, the court should strive to serve the ends of justice.

30. In *Satishchandra Ratanlal Shah* (supra), Hon'ble Supreme Court in para-14 has held that *"this court has usually cautioned against criminalizing the civil dispute such as breach of contractual obligations. The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducement which resulted in involuntary and inefficient transfers under Section 415 IPC."*

31. Undoubtedly, it is settled proposition of law that the complaint must disclose necessary ingredients of the offence. Turning to the present case in hand, as mentioned above, the FIR failed to disclose the necessary ingredients of either of the offences under Section 406 and 420 IPC. There is nothing to show that the petitioner had the dishonest intention at the time of execution of the agreement between the parties and their subsequent conduct for raising a claim for certain amount of money would not amount to cheating as indicated above. It is also noted from the materials on record there is nothing to hold that any property was entrusted to the petitioner which he dishonestly converted to his own use so as to satisfy the ingredients of Section 405 IPC punishable under Section 406 IPC. Both the parties in clear terms has entered into an agreement to carry their business/commercial transaction and both the parties has now raised claim and counter claim against each other and in the fitness of the matter, such a dispute is to be resolved by way of arbitrator in terms of the agreement. Such a criminal proceeding would be nothing but an abuse of a process of court.

32. This Court did not find any justification shown by the prosecution agency in carrying out the investigation in a hurried manner, only on the basis of the FIR

without scrutinizing as to whether the registration of a case under Section 406 and 420 IPC is justified in absence of basic ingredients constituting the offences. Although it is mandatory to register a case under the law and the investigating authority has the statutory right for investigation but it equally important on the part of the prosecuting agency for registration of the cases under proper provision of law. Mere using the words cheating and breach of entrustment in the FIR is not enough to register the case on the same section, without satisfying as to whether ingredients of such offence has been made out.

33. As has been held by Hon'ble Supreme Court in *Anil Mahajan - v- Bhori Industries Ltd. and another: (2005) 10 SCC 228*, that the substance of the complaint is to be seen. Mere use of the expression "cheating" in complaint is of no consequence.

In the present case, informant has expressed that they think accused petitioner has committed breach of trust by cheating by not repaying the amount & non-supplying the grains but there is no averment about deceit, fraudulent intention of accused at the time of entering into agreement wherefrom it can be gathered that the accused had the intention to deceive the complainant. That being so, only on assumption of the informant, a criminal prosecution cannot be initiated which has been done in this case.

34. Criminal law can be set into motion only on set of principles of law & procedure, not at the whims & caprice of a person. Use of language does not itself make out an offence, unless, ingredients of offence is *prima facie* made out in a complaint/FIR. Prosecuting authority, i.e. police has to play a neutral role in upholding the law & justice and a court of law, cannot alone, discharge

the same. Fundamental right of a person jeopardised, for improper function of statutory authorities and we all should conjointly discharge the liability to protect & preserve the dignity of law as well as secure rights of citizen in protective manner, within the constitutional framework. Life and liberty is precious to all and misery of facing unjustified litigation cannot be compensated, in real sense.

35. In view of the discussions and on the touchstone of the principles noted above, the present case, in my considered view, warrants interference, inasmuch as the ingredients of the offence of cheating punishable under Section 420 and the other offences 406/408 of IPC has not been made out in the FIR. That being the position, the case comes within the purview of the first category of the observation in *State of Haryana vs. Bhajan Lal, 1992 Supp. (1) SCC 335* wherein it has been held that where the allegation 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, the power under Section 482 CrPC can be invoked. As discussed above and the present case, reading the averment in the FIR in its entirety, the ingredients of intentional deception on the part of the accused at the beginning of the negotiations/agreement has neither been expressly stated or indirectly suggested in the complaint. All that respondent/informant has alleged that petitioner did not supply the grains nor return the advance money. Thus, key ingredients of dishonest intention in order to deceive the informant is not made out, even accepting the allegation on their face value. In such situation, continuing the criminal proceeding against the accused will be in my considered view abuse of process of court.



36. The broad principle for exercise of this extra ordinary power under Section 482 CrPC is that in case the allegations made against the accused *prima facie* do not disclose a cognizable offence, there can be no reason as to why the accused would suffer the agony of facing an illegal proceeding. A prosecution which is bound to lame to be interdicted in the interest of justice as continuance of which will amount to abuse of the process of law as has been held in *Sathish Mehra vs. State of NCT of Delhi, AIR 2013 SC 506*.

As a corollary of all above, the petition is hereby allowed. The entire proceeding pertaining to CID P.S. Case No.3/2017 (corresponding to G.R. No.1083/2017), under Sections 406/408/420 of the IPC is hereby quashed and set aside.

JUDGE

Comparing Assistant