



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 536 of 2022

1. Dulal Banerjee S/o Shri Durgadas Banerjee, Aged About 49 Years R/o 4/44, Parasrampur Towers, Link Garden CHS, Off Link Road, Lokhandwala, Andheri-West, Mumbai- 400053, Maharashtra
2. Mayur Govind Bhai Kanani S/o Shri Govind Bhai Gokaldas Kanani, Aged About 41 Years R/o 2004, Tapsya CHSL, Plot No. 21, SVP Nagar, Mhada, Andheri-West, Mumbai- 400053, Maharashtra
3. Sudhir Sarin S/o Shri Satish Chandra Sarin, Aged About 53 Years R/o 313, Jalvayu Tower, Near Devinder Vihar, Block Gaurishankar Sector-56, Gurgaon, Haryana - 122011
4. Sunil Sethi S/o Shri Baldeoraj Sethi Aged About 54 Years R/o 80 C, LIG DDA Flats, Gulabi Bagh, Delhi - 110007
5. Rajesh Kumar Mittal S/o Shri Omprakash Mittal, Aged About 47 Years R/o Flat No. 294, Seemant Vihar Apartments, Behind Radisson Hotel, Sector - 14, Kaus Hambi, Ghaziabad - 201012, Up

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Station House Officer, P.S- Devendra Nagar, Raipur District - Raipur (C.G.)
2. Mr. Gurmit Singh Bhatia S/o Late Shri Mahal Singh Bhatia, Aged About 50 Years R/o H. No. D-28, 29, Sector-5, Devendra Nagar, Raipur - 492001, Chhattisgarh.

---- Respondents

(Cause Title taken from Case Information System)

For Petitioners : Mr. Kishore Bhaduri, Senior Advocate with
Shri Pankaj Singh, Advocate

For State : Mr. Shashank Thakur, Dy.A.G.

For Respondent No.2 : Mr. Kashif Shakeel, Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice
Hon'ble Mr. Sachin Singh Rajput, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

26/06/2024

This petition has been filed by the petitioners aggrieved by the



registration of FIR against the petitioners for the offences punishable under Section 34, 120-B, 409 and 420 of IPC.

2. In this petition, the petitioners have prayed for following relief (s) -

"It is, therefore, most respectfully prayed that in light of the above stated facts, the grounds mentioned therein and the submissions made in the present Petition/Application; this Hon'ble Court be pleased to take cognizance and exercise its inherent powers as provided under the provisions of Section 482 of the CrPC and allow the present Application and in the interest of justice, equity, fair play and good conscience, be pleased to:

A. Quash the FIR No.051/2020 u/s 120-B, 409, 420, 34 of IPC lodged at P.S. Devendra Nagar, Raipur, Chhattisgarh on 10 June 2020 and all and any consequential proceedings arising therefrom;

B. Pass such other orders/directions as this Hon'ble court may deem fit proper in the interest of justice, equity and good conscience."

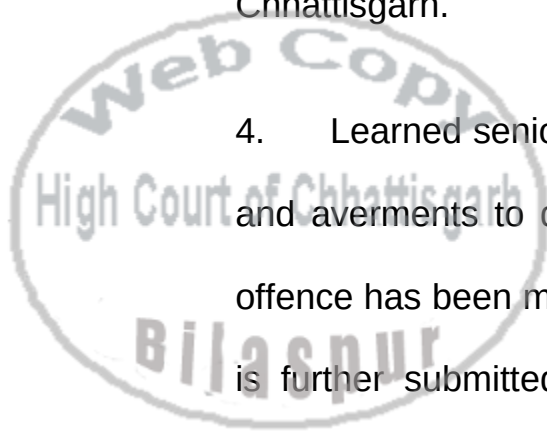
3. The undisputed facts of this case are that the Applicants/Petitioners were the nominee Directors of Hathway CCN Multinet Pvt Ltd. (hereinafter referred to as "HCMPL") with its registered office at Pagaria Complex, Mini Mata Parisar, Near Pandri Bus Station, Pandri, Raipur, Chhattisgarh-490023. HCMPL is engaged in carrying out cable TV business as a Multi System Operator providing cable TV signals to its subscribers either directly or through Local Cable Operator formerly known as Hathway Digital Pvt. Ltd (hereinafter referred to as "HDL") which held 51% shares in HCMPL. The Applicants/Petitioners were the nominee Directors in HCMPL on behalf of HDL. On 10th June 2020, the Complainant/Respondent No.2





lodged a criminal complaint against the Applicants/Petitioners at PS Devendra Nagar, Raipur, Chhattisgarh alleging that the Applicants/Petitioners had acted in connivance with an intent to cheat and defraud the Complainant/Respondent No. 2 and had engaged in misappropriation of the amounts of HCMPL which led to registration of FIR No.051/2020. It was further alleged that the Applicants/Petitioners issued and created forged documents for illegal purposes, consequently resulting in loss incurred by the company, i.e. HCMPL. Based on such complaint, FIR under Section 120-B, Section 409, Section 420 read with Section 34 of IPC was registered against the petitioners at P.S- Devendra Nagar, Raipur, Chhattisgarh.

4. Learned senior counsel for the petitioners submits that no basic facts and averments to demonstrate a prima facie case of commission of any offence has been made out in the FIR against the Applicants/Petitioners. It is further submitted that despite the settlement arrived at between the Applicants/Petitioners and the Respondent No.2/Complainant wherein the Respondent No.2/Complainant had agreed to take steps for closure and/or withdrawal of the case against the Applicants/Petitioners, in the light of the provisions of Section 320 of the CrPC which prescribes the Section 120-B and Section 409 of the IPC to be non-compoundable in nature, the Applicants/Petitioners are left with no other remedy but to approach this Hon'ble Court invoking its inherent powers to quash the charges leveled against the Applicants/Petitioners. He submits that provisions of Section 320 CrPC would not limit or otherwise restrict the powers of the High Court under Section 482 of the CrPC. He further submits that the parties have

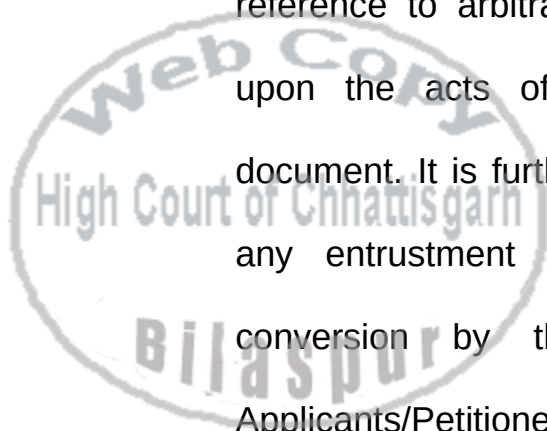




reached a settlement by executing the MOU dated 28 October 2020 as well the SPA wherein the Complainant agreed to extend the requisite cooperation required for the closure of the entire consequential proceedings arising out of FIR No. 051/2020 registered at P.S Devendra Nagar, Raipur. It is submitted that the terms and recitals of the MOU make it clear that the Respondent No. 2 i.e. the Complainant has himself expressed his intention and desire of withdrawing from the subject proceedings and has also further agreed to cooperate in the closure of all pending proceedings, and beign so permitting the proceedings arising out of the FIR to continue would be useless and would cause unnecessary hardships to the parties. He relies upon judgment of Hon'ble Supreme Court in the case of **B.S. Joshi and others vs. State of Harjana and another (2003) 4 SCC 675** in which the Hon'ble Apex Court has dealt with the consequence of a compromise in case of non-compoundable offences on several occasions. He further relies upon judgment of the Hon'ble Supreme Court in **Narinder Singh and Ors. v. State of Punjab and Anr. (2014) 6 SCC 466** wherein it has been held that while considering the applicable principles in case of settlement/compromise of non-compoundable offences laid the guidelines for quashing of such criminal proceeding by High Courts while exercising their inherent jurisdiction/powers under Section 482 CrPC. Reliance has been placed on judgment of the Hon'ble Supreme Court in the case of **Jayraj Singh Digvijaysinh Rana v. State of Gujarat and Anr. (2012) 12 SCC 401** wherein Hon'ble Supreme Court setting aside the judgment passed by the High Court rejecting a prayer for quashing an FIR under Section 482 of CrPC, allowed

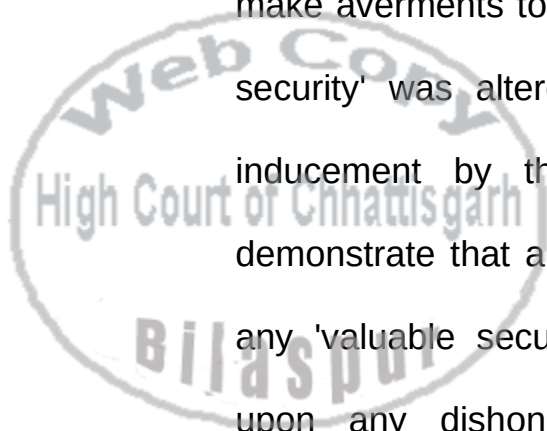


the appeal and quashed the impugned FIR for offences punishable under Sections 467, 468, 471, 420 and 120-B of the IPC in view of a settlement executed between the parties. Learned senior counsel vehemently argued that notwithstanding and without prejudice to the MOU executed between the parties, even if the allegations are taken to be true at face value, the same do not fulfill the pre- requisites or establish a prima facie case under Section 120-B, Section 409 and Section 420 of IPC. It is pertinent to note that the FIR makes bald averments and allegations against the Applicants/Petitioners and fails to fulfill the essential conditions required to invoke the aforesaid provisions. A bare perusal of the FIR evinces reference to arbitrary losses allegedly incurred by HCMPL consequent upon the acts of the Applicants/Petitioners without any supporting document. It is further submitted that there is no iota of material showing any entrustment of property on the Applicants/Petitioners and its conversion by the Applicants/Petitioners. He submits that the Applicants/Petitioners were the nominee directors of HCMPL on behalf of HDL and had no role to play in the day- to-day operations and management of HCMPL as HDL had only been an investment partner inter-alia providing technical know-how, support, and strategic directions and notably, criminal breach of trust under Section 409 of IPC and cheating under Section 420 of IPC are offences antithetical to each other and cannot co-exist. It is further submitted that the essential pre-requisites/conditions to constitute an offence of criminal breach of trust under Section 409 of IPC mandates that a person should have been entrusted with a property (in his capacity of a public servant or in the way





of his business as a banker, merchant, factor, broker, attorney or agent) in connection whereof the alleged criminal breach of trust has been committed. The FIR fails to identify any specific property entrusted to the Applicants/Petitioners in respect of which the alleged criminal breach of trust has been committed. In fact, the FIR narrates individual instances of loss incurred by HCMPL to establish liability on the Applicants/Petitioners. The allegations enumerated in the FIR, in essence are in relation to alleged non-deposit of amounts in HCMPL's account by the Applicants/Petitioners and alleged non-payment of dividends/profits to the Complainant. It is submitted that in order to invoke Section 420 of the IPC, it is necessary to make averments to the effect that a 'property' was delivered or a valuable security' was altered/destroyed by the Complainant upon a dishonest inducement by the Applicants/ Petitioners. The complaint fails to demonstrate that any property was delivered by the Respondent No.2 or any 'valuable security' was altered/destroyed by the Respondent No.2 upon any dishonest inducement on part of Applicants/Petitioners. Consequently, the FIR fails to disclose basic facts required to prove and demonstrate the commission of an offence under these provisions in law. It is reiterated that the allegations enumerated in the FIR, in essence are in relation to alleged non-deposit of amounts in HCMPL's account by the Applicants/Petitioners and alleged non-payment of dividends/profits to the Complainant. It is further argued that the offence according to the Complaint in lieu of which the Applicants/Petitioners are said to have allegedly conspired are under Sections 409 and 420 of the IPC. However, as clearly demonstrated herein-above, the offences under the aforesaid





Sections of the IPC are not made out from the FIR. Consequently, the allegations made in the Complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute an offence under Section 120B of the IPC. Therefore, it is prayed that in view of the MOU, the pending proceedings arising out of the FIR may be quashed.

5. Learned State counsel submits that the complainant, who is Director of the Hathway Bhaskar Multinet Pvt. Limited lodged complaint against the petitioners that after appointment of the complainant as a Director of the CCN company, he made demands for his dividend in the company but he has been assured to be paid later. It is submitted that the complainant was not shown the accounts of the company and was being avoided to see the same and it was revealed that dividend amount till 10/06/2020 was not given to him. It is further submitted that during the course of investigation, other offences under Section 467, 468 and 471 of IPC were also added and after completion of investigation, final charge sheet was produced before the competent Court. It is submitted that the petition devoid of merits and substance, is liable to be dismissed. It is submitted that as the investigation is under progress and on completion of investigation, the police will submit a report accordingly. It is further submitted that the law is very well settled regarding quashing of FIR that the same power should be exercised very sparingly and in the exceptional circumstances only. It is submitted that the investigating agency may be allowed to carry on the necessary investigation. In support of his arguments, he relies upon judgment of Hon'ble Supreme Court in the case of **State of W.B. v. Swapan Kumar Guha (1982) 1 SCC 561, Dineshbhai Chandubhai Patel**

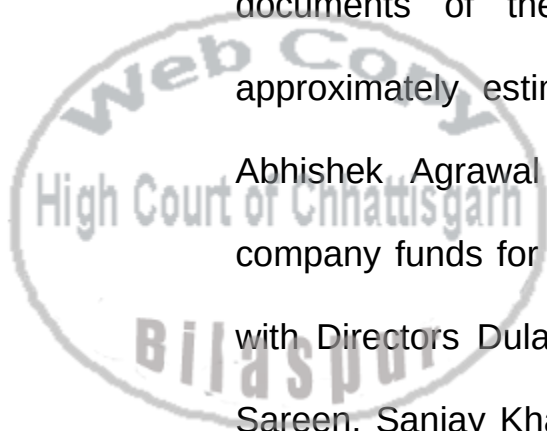


v. State of Gujrat (2018) 3 SCC 104, Rajiv Thapar v. Mandal Lal Kapoor (2013) SCC 330 and Vinod Raghuvanshi v. Ajay Arora (2013) 10 SCC 581. Therefore, it is submitted that the instant petition is not maintainable as no facts and grounds have been urged by the petitioners warranting any interference by the Hon'ble Court.

6. Learned counsel for respondent No.2 submits that Respondent no.2 was the Director of Hathway CBN Multinet Pvt Ltd. In addition to Respondent No.2, Abhishek Agarwal, Ashok Agarwal, Dulal Banerjee Mayur Govind Bhai Kanani, Sudhir Sarim, Sunil Sethi, Rajesh Kumar Mittal, Manish Kumar Jain were also the Directors of the company. The Company has been involved in cable networking and were running the business since 2010. In the year 2016 after Government of India issued directives to install digital boxes to digitize the service, Respondent No.2 was apprised by one director namely Abhishek Agarwal that company started distribution of digital connection. Respondent No. 2 asked for profits from Abhishek Agrawal and Ashok Agrawal but received only false promises and they said that profit will only be given as soon as distribution works get completed. It is submitted that Respondent No. 2 never received any profit from the above mentioned persons. It is pertinent to mention here that Respondent No.2 was never called for any meetings of the company. Respondent No.2 was suspicious of the business activities of the above named persons, and asked for information regarding company's account in the form of company's account book etc., and came to know that Abhishek Agrawal, Ashok Agrawal, Dulal Bannerji, Mayur Govind bhai Kanani, Sudhir Sarin, Sunil Sethi, Rajesh Kumar Mittal and Manish Kumar

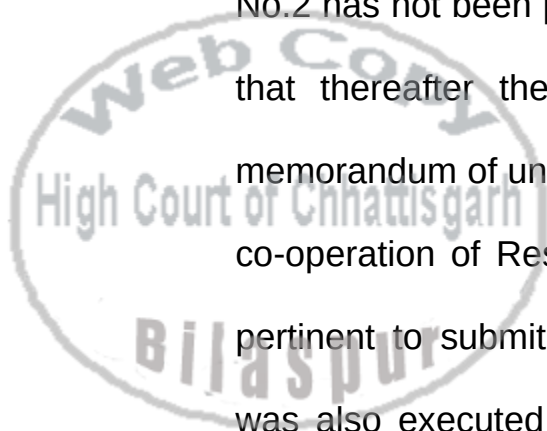


Jain have colluded and has illegally bought set top box from Indore which were used in our business behind the back of the petitioner and also used fake and forged documents to run the business which caused Rs.3,30,00,000 loss to business of the Company. Respondent No.2 also came to know that the above named persons did not deposit Rs.10,00,00,000 and an amount of Rs. 10,00,00,000 approx. got the company as carriage fee in the accounts of the company thereby embezzled money by distributing among themselves illegally, due to which the company suffered loss of about Rs.20,00,00,000/-. Also with the same *modus operandi* the above mentioned person have deliberately modified documents of the company and caused loss of Rs.40,00,00,000 approximately estimated company to the company. He submits that Abhishek Agrawal used to run the company who incidentally used company funds for his personal use and misappropriated the funds along with Directors Dulal Bannerjee, Giriraj Garg, Mayur Bhai Kanani, Sudhir Sareen, Sanjay Khanna, Sunil Sethi and Rajesh Kumar Mittal and Ashok Agrawal thereby causing huge loss to the company. The Respondent No.2 has from his own sources came to know that for the last several years, the Petitioners have colluded and generated fake bills to show fake purchase in the name of different traders thereby got companies fund, by which company incurred loss of Rs. 5,00,00,000 which can be verified from the records of the company, the said record is in the possession of Abhishek Agarwal. It is pertinent to submit here that the above mentioned persons have misappropriated funds received from local cable operators by not issuing receipts of company for the said amount and used it personally,





hence caused serious loss to company. Similarly Abhishek Agrawal has opened an account in Central Bank of Civil lines and Shankar Nagar branches and deposited the above said amounts and used it personally behind the back of Respondent No.2 and in these transactions Ashok Agrawal played active participation and by this act, they have caused huge loss to the company. He submits that after the complaint made by Respondent No. 2 before the Registrar of Companies, he was contacted by the Petitioners and gave assurance that they will pay profit of the company any time soon and will refund the amount of loss incurred by the Company. He submits that despite assurances being made, respondent No.2 has not been paid any single penny by the petitioners. It is submitted that thereafter the petitioners approached the Respondent No.2 and memorandum of understanding was executed on 28.10.2020 with regard to co-operation of Respondent No.1 to withdraw the F.I.R. in question. It is pertinent to submit here that in furtherance Share Purchase Agreement was also executed between the Petitioners and Respondent No. 2. It is pertinent to mention here that Petitioners are not honoring clause 1 of the agreement which in fact is the very foundation of share purchase agreement which is the seller shall transfer shares to the purchaser and also they are not complying with the mandate of clause 2.2(d)(ii) which is resignation of Directors nominated by the Seller from their directorships on the board. As the Petitioners are not willing to honor the above mentioned clause, the Respondent No.2 has no option but to continue the legal battle before the Court below to get his rightful dues. He submits that in the instant case, the allegations made in the FIR makes out a case for





investigation. He submits that according to the circumstances, conditions and reasons which is mentioned in the reply of the instant Petition, it would not be just, fair and reasonable to quash the F.I.R. No.051/2020 registered at P.S. Devendra Nagar, Raipur, C.G.

7. We have heard learned counsel for the parties and perused the records.

8. The Law in respect of exercise of jurisdiction under Section 482 of the Code of Criminal Procedure seeking relief for quashment of FIR/Criminal Proceedings has been propounded by the Supreme Court in the matter of **Indian Oil Corporation v. NEPC India Ltd. And others** reported in **2006 (6) SCC 736** wherein it has been held as hereunder:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Ku7. We have heard learned counsel for the parties and perused the records.

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(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal



ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

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 break down 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. In *G. Sagar Suri vs. State of UP* [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of 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 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."

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 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

10. From the perusal of the above quoted judicial pronouncement it is apt that in order to exercise the power under Section 482 CrPC the Court has look into the fact that from the FIR and other material placed on record no prima facie case is made out against the applicant. The power under Section 482 CrPC has to be exercised sparingly and only in the cases where seven parameters prescribed in the case of Bhajan Lal (supra) are established. The main thrust of Shri Kishore Bhaduri learned Sr. Advocate is that the dispute between the complainant and the petitioner has been amicably settled a memorandum of understanding was executed by and between them. From perusal of the FIR and other material available on record no prima facie case under Section 120-B, 409, 420 read with 34 IPC



is made out and that the civil and commercial dispute has been given the colour of criminality. This submission has been vociferously opposed by Shri Kasif Shakeel learned counsel for respondent No.2/complainant by submitting that the petitioners herein had dishonest intention to cheat the complainant and even the conditions of memorandum of understanding have not been fulfilled by them. He submits that FIR against the petitioners is lodged under various section of the IPC including 120-B.

11. It appears that after investigation charge-sheet has also been filed and that the perusal of the FIR prima facie indicates the commission of cognizable offence by the petitioners. Statements of the witnesses also indicates this fact. FIR goes to show that the complainant had the business of cable networking which he was continuing since 2010. The said business was basically being run Ashok Agrawal, Abhishek Agrawal, Dulal Banerjee, Giriraj Garg, Mayur Govind Bhai Kanani, Sudhir Sarin, Sanjay Khanna, Sunil Sethy and Rajesh Kumar Mittal. The FIR also discloses that these persons did not give him the dividend and that on being asked for the same, they used to evade the same on one pretext or the other. Co-accused is also alleged to have assured the complainant that business of the company was to be expanded and that he (complainant) would be given his share in the profit. FIR also shows that the petitioners herein also gave him similar assurance that business of the company was being run properly but they never gave him the accounts of the transaction details. He was not even called to participate in the meetings of the company in the capacity of Director. These activities on the part of the petitioners caused suspicion in his mind and when he tried to secure information regarding



transaction details, he came to know about the discrepancies in the same. He also came to know that Abhishek Agrawal, Dulal Banerjee, Giriraj Garg, Mayur Govind Bhai Kanani, Sudhir Sarin, Sanjay Khanna, Sunil Sethy and Rajesh Kumar Mittal in connivance with Chief Manager Ashok Agrawal by fabricating documents the Set Up Boxes were purchased through unknown source of income and used the business of the company leading to the financial loss of Rs. 3,30,00000/- (Three crores and thirty lakhs). Complainant also claims to have come to know that out of the amount earned through the business of the company, Rs. 10,00,00,000 (Rs. ten crores) were received in cash which the petitioners instead of depositing in the Bank distributed among themselves illegally. The FIR also indicates that amount of the company was used by the petitioners for the purpose of personal expenses causing great financial loss to the company. It is also stated that all the accused persons had hatched a conspiracy and thereby caused a huge loss to the company. Statement of the witnesses recorded under Section 161 CrPC also states in the same manner and certain recoveries were also made during investigation.

12. Of course, the civil and criminal dispute cannot be given colour of criminality, but this Court cannot lose of sight of the fact that legitimate prosecution cannot be curtailed in exercise of the powers under Section 482 CrPC. Defence of the petitioners that the dispute has already been settle by entering into a memorandum of understanding has been denied by the complainant stating that the petitioners have not performed their part of the contract contained in the memorandum of understanding. All this would require recording of evidence and the things would be set right only



after a full-fledged trial reaches a logical conclusion. At this stage, when investigation is complete and the petitioners are trying to enforce the memorandum of understanding before this Court, it would not be appropriate to exercise its jurisdiction under Section 482 CrPC. The decisions of the Supreme Court sought to be taken support of by the counsel for the petitioners in a bid to quashment of the FIR, this Court has no hesitation to say that the facts involved in those cases being altogether different from the present one, cannot stand to the rescue of the petitioner.

13. Accordingly, the petition sans merit and is hereby dismissed.

Sd/-
(Sachin Singh Rajput)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

