

Reserved on : 08.11.2024
Pronounced on : 22.11.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF NOVEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 10546 OF 2024

BETWEEN:

- 1 . MR. SOURISH BOSE
S/O INDRANIL BOSE
AGED ABOUT 39 YEARS
R/AT NO.43, D.H.ROAD
KOLKATA
WEST BENGAL STATE - 700 034.

- 2 . SMT. DEEPANVITA GHOSH
W/O MUKESHKAR
AGED ABOUT 54 YEARS
R/AT FLAT NO.F.10
SANVI RESIDENCY
RAJANNA LAYOUT
HORAMAVU AGARA
BENGALURU - 560 043
NOW R/AT NO.136
DR. A.K.PAUL ROAD
VTC BEHALA, SUB-DISTRICT
CIRCUS AVENUE, KOLKATA - 700 034.

... PETITIONERS

(BY SRI HASHMATH PASHA, SR. ADVOCATE FOR
SRI MOHAMMED MUBARAK, ADVOCATE)

AND:

1 . STATE OF KARNATAKA BY
HENNUR POLICE STATION
BENGALURU CITY – 560 084.

REPRESENTED BY
LEARNED STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . MR. DENU T.NAIR
AGED ABOUT 54 YEARS
R/AT NO.2/25, AMAZON LOGISTIC
AMAZON TRANSPORTATION
SERVICES PRIVATE LIMITED
HRBR LAYOUT, 3RD BLOCK
BENGALURU.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., AND 528 OF BHARATIYA NAGARIK SURAKSHA SANHITA PRAYING TO A. QUASH THE FIR REGISTERED IN CRIME NO.153/2017 ON THE FILE OF THE HENNUR POLICE STATION, BENGALURU FOR THE OFFENCES P/U/S/ 420 OF IPC AS AN ABUSE OF PROCESS OF LAW AND IT IS WITHOUT JURISDICTION.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.11.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/accused 1 and 2 are knocking at the doors of this Court calling in question proceedings in C.C.No.50666 of 2019 pending before the XI Additional Chief Metropolitan Magistrate, Bengaluru arising out of a crime in Crime No.153 of 2017 registered for offences punishable under Section 420 r/w 34 of the IPC.

2. Heard Sri. Hashmath Pasha, learned senior counsel appearing for the petitioners and Sri B. N. Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1.

3. Facts, in brief, germane are as follows:-

A crime comes to be registered on 25-04-2017 in Crime No.153 of 2017 for offence punishable under Section 420 of the IPC. The 2nd respondent is the complainant. It is the case of the prosecution that the complaint alleged that a company by name Amazon Seller Services Limited ('Amazon' for short) is in the

business of providing online market to customers across the country. Its website is Amazon India. Customers can order for the product by login into Amazon India Website and those who would order can either pay in advance or cash on delivery or any other mode. If there is any complaint, the customer will have the option for return of the product which is called 'C' return (customer return). The company/Amazon has a tie up with other business companies one of which is E-Bay. The customers who want to buy the product from Amazon can book it through E-Bay. The E-Bay will place the order to Amazon for the product to be delivered to the door step of the customers. Therefore, the chain is this way. A customer places his order for a product in Amazon through E-Bay and the product will be delivered by Amazon to the customer. The C-return option that is available to the customer is return of articles to be picked up by Amazon at the delivered address and after approval and acceptance of the delivered goods back, the amount that was paid will be refunded back to the customer who had booked the product through an account.

4. The allegations sprang during the period from 01-12-2016 to 21-04-2017 to an extent of 104 orders with C-return option. Those items which were defective when the customers receive, they would initiate C-return and the items were collected at different address and refund was credited to a different person. This resulted in huge loss to Amazon in a sum of ₹69,91,940/-. The gist of the complaint is as narrated hereinabove. The Police after investigation filed a charge sheet against the two petitioners for offences punishable under Section 420 read with 34 of the IPC. Filing of the charge sheet and taking of cognizance by the concerned Court has driven these petitioners to this Court in the subject petition.

5. The learned senior counsel Sri. Hashmath Pasha representing the petitioners would vehemently contend that the crime is erroneously registered. These are online transactions. Therefore, Section 66D of the Information Technology Act, 2000 ('the Act' for short) is what had to be laid against these petitioners and not Section 420 of the IPC. He would further elaborate this contention by submitting that if Section 66D of the Act had to be invoked which is a non-cognizable offence, permission of the

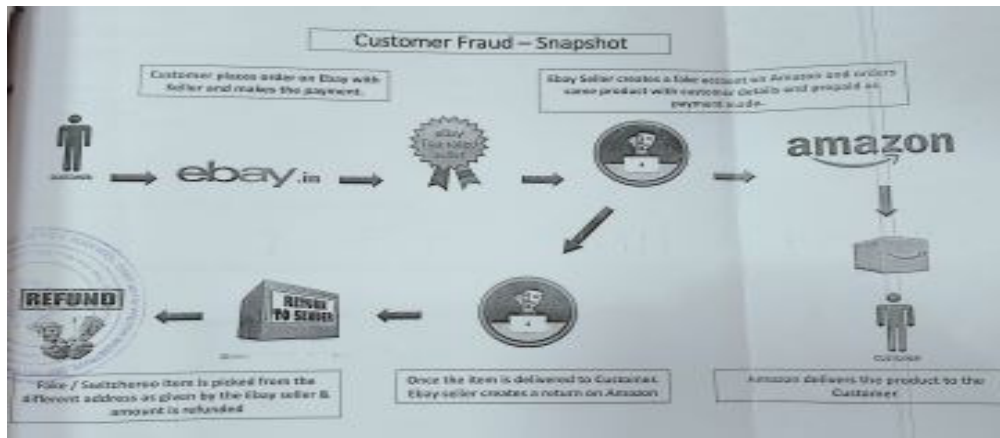
learned Magistrate would be required and, therefore, it has vitiated the entire proceedings. He would take this Court through the documents appended to the petition, seeking to demonstrate that the delivery address, billing address and shifting address are all noted in the transaction. When C-return has to be processed, it cannot be picked up from any other address nor delivered to any other address. The refund will be processed and paid to the account from which the transaction has taken place. It is his submission that there cannot be a fraud in such process at all. He would further contend that, at best even if this Court were to consider that it is a matter of trial, it would be against accused No.1, and accused No.2 has not done anything to be tried.

6. Per contra, the learned Additional State Public Prosecutor Sri B.N. Jagadeesha would vehemently refute the submissions to contend that every interesting modus operandi is adopted by these petitioners. Since it is an online transaction it can be operated from anywhere. He would succinctly explain the modus. It is his submission that accused No.1 places an order to be delivered to accused No.2 and one lady in eBay, relative of accused No.1

processes the order. The moment it is delivered, accused No.2 initiates C-return. While C-return is initiated, the product in the box is changed. C-return is taken back which is routed through eBay. Therefore, what these petitioners would gain is that they have the original product with them and money of the product also with them as refund is received. This went on for a long time and Amazon noticed it after 104 transactions. He would submit if this cannot be a matter of trial, what else can be is his submission. He seeks dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are a matter of record. The issue of on-line transaction is what is projected in the case at hand. The transaction can be graphically portrayed as follows:



A customer places an order through eBay for a product to be delivered from Amazon. The product is delivered to accused No.2. Accused No.1 who had booked the product to be delivered to accused No.2 initiates C-return. While doing so, it is the allegation that the product is changed and sub-standard product is returned in place of delivered product. The illustration would be this way. A product - iPhone is booked and is delivered to accused No.2. Accused No.1 initiates C-return. The phone inside the box is changed while returning. It is not an iPhone, but some other phone of lesser value. It is this modus operandi that went on for 104 transactions and close to ₹70/- lakhs, is the fraud. The representative of Amazon Transport Services registers a complaint. The complaint reads as follows:

"To
Station In-Charge/Officer,
Hennur Police Station,
Bengaluru-560 043.

SUBJECT: Complaint for reporting fraud, cheating and criminal conspiracy.

Dear Sir,

I, Mr. Denu T. Nair, aged 43 HBR Lay-out Amazon and residing at A-402, Rohan Jharoka, Yemalur, Bangalore-37, am writing to you for and on behalf of Amazon Seller Services Limited ("**Amazon**") to report a fraud and cheating incident against Ms. Deepanwita, resident of Sanvi Residency 1st Floor, 33 Rajanna Layout, Horamavu, Agara. I would like to briefly bring out the facts for your reference.

- 1. Amazon is in the business of providing an online marketplace to sellers across the country. Market place allows a seller to list products to be sold online and at the same time customers can login on Amazon India website and purchase the listed products. Customers have the choice of paying online or paying on receipt of product using the 'cash on delivery' model. Further, customer also has the option of returning the purchased product to Amazon within a stipulated time period against refund of their monites;**
- 2. Our station team has informed us that one of our customers Deepanwita Ghosh has been misusing the customer return ("C return") option. They noticed an unusual pattern of placing C returns i.e., the perpetrator used to purchase high value products and against the same order id, would fraudulently return a different low cost product to claim full value of the original product in refund every time. Upon further deep dive, we have become aware of the following additional facts.**
 - i. Deepanwita Ghosh is an Amazon customer who indulges in purchases of high value items using her account. Details of her account at Amazon have been mentioned at Exhibit-I;**

- ii. Until now, she has placed over 104 high value orders but all under different names and delivery addresses. While placing orders, she mentioned a different customer name and address each time. It may be noted that all these were prepaid orders: **Refer Exhibit-I (List of delivered Invoices)**.
- iii. **In each case, after the product was delivered, she raised a return request (sometimes within 24 hours). It may be noted that all returns were scheduled from a different address i.e., the product delivery address was different from the C return pick up address. In a lot of cases, the return was scheduled from a different city altogether.**
- iv. Further it may be noted that while all 104 products were scheduled to be delivered at different addresses, all C return pick ups were scheduled from three addresses only. The three addresses used by the perpetrator are listed at exhibit-1. The contact numbers listed by the perpetrator for scheduling C return are also listed at **Refer Exhibit-2 (List of details)**.
- v. **As soon as the Amazon associate picked up the product, Amazon processed her refund for each picked up return. Upon receiving the product at the Amazon center, Amazon found a low cost and different product each time.** Therefore, Amazon started investigating the issue internally – **Refer Exhibit-3 (Process of Missing Shipments at Warehouse – Missing swictheroo)**.
- vi. After we became suspicious about her unusual purchases and return pattern, we started checking the product being returned by her in her presence. On two occasions when we checked the product being returned in her presence and found that the product did not match the original purchased product, she immediately cancelled the return. However, she placed another return request for the same product against the same order id but scheduled a C return pick up from a

different address and returned wrong low cost product and defrauded Amazon again – **Refer Exhibit-4 (Statement of Amazon Associates)**.

- vii. When Amazon spoke to some of the original recipients (refer ii above) of the products using the contact number given at the time of purchase, they confirmed that the original product was retained by them and not returned. On further discussion, we were told that they had placed orders on ebay.com for purchase of products through one eBay seller who functions under the name of 'rajarshi96' and from some other sellers. One of the recipients has shared the seller and purchase details from eBay with us. (**Refer Exhibit-5 list of customers been contacted**).
- viii. It may be noted that eBay seller Rajarshi96 is an active seller on eBay and is engaged in selling Nikon Cameras, high end Music Systems and televisions – **Exhibit 6 eBay Seller detail**.
- ix. Post analyzing the IP Details for all the orders, following observations were noticed: For around 48% of orders it is suspected that the IP address used on the orders are proxy as these are from different international locations. Remaining 52% of orders the IP matches to West Bengal under an internet service provider by name The Creative Eye Software Solution. G. T. Road, Pandua, Hooghly, West Bengal, India – 9475045384. **Refer Exhibit-7**.
- x. It is pertinent to mention here that refunds were made to A/Cs of Federal Bank (90 refunds), Axis Bank (four refunds), ICICI (six refunds) and Yes Bank (three refunds). **Refer Exhibit-8**.
- xi. **We suspect that Deepanwita Ghosh operates the eBay seller account of Rajarshi96. We believe that after receiving customer orders on eBay through Rajarshi96, Deepanwita places a parallel order on Amazon India website and directs Amazon to ship the product to her eBay customer. After the eBay customer receives the product, she initiates a C**

return to return a random and incorrect product in order to secure return of monies originally paid to Amazon.

3. **As of now we are aware of 104 such C returns which have in aggregate led to a monetary loss of ₹69,91,940/- (Rupees sixty-nine lakhs ninety-one thousand nine hundred forty only) to Amazon. A detailed list of orders placed, shipments delivered, return orders and refunds processed is provided at Exhibit-3;**
4. In view of this fraud and cheating by Ms. Deepanwita Ghosh, you are requested to investigate into this case, apprehend the culprit and help render justice.

Please treat this as a first information report from Amazon and kindly provide us the FIR number assigned in the matter.

For Amazon Seller Services Limited

Sd/- Signature.

Dated: April 21,2017

Enclosed –

- 1.Exhibit 1 - List of Invoices Delivered to Customers.
- 2.Exhibit 2 - List of Addresses Customer return pick up versus Delivery address.
- 3.Exhibit 3 - List of shipments found Miss-match while processing at Warehouse.
- 4.Exhibit 4 - Statements of Amazon Associates.
- 5.Exhibit 5 - Details of contacted customers who ordered the shipments.
- 6.Exhibit 6 - EBay registered seller details
- 7.Exhibit 7 - IP details of orders.
- 8.Exhibit 8 - list of payment Ref IDs generated on Refunds.”

(Emphasis added)

The complaint is in minute detail. The Amazon had discovered that accused No.2, Amazon customer indulges in purchase of high value items using her account and after the product is delivered within 24 hours she raised a return request. The return was scheduled from different addresses. The product delivery address was different from C-return picked up address. Amazon takes back the product on C-return and refund is processed for each of the product. But, Amazon in the returned box has found a low-cost product on such return. The Police, after investigation, file a charge sheet. The summary of the charge sheet as obtaining in column No.7 reads as follows:

“ಬೆಂಗಳೂರು ನಗರದ ಹೆಚ್.ಬಿ.ಆರ್ ಲೇಔಟ್ ನಲ್ಲಿರುವ ಅಮೆಜಾನ್ ಟ್ರಾನ್ಸ್‌ಪೋರ್ಟ್ ವೈವೇಟ್ ಲಿಮಿಟೆಡ್ ನಲ್ಲಿ ಇನ್‌ವೆಸ್ಟಿಗೇಟಿಂಗ್ ಮ್ಯಾನೇಜರ್ ಆಗಿ ಸಾ-1 ರವರು ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆ. ಆನ್‌ಲೈನ್ ಮಾರ್ಕೆಟಿಂಗ್ ebay India ltd ಕಂಪನಿಗೆ ಗ್ರಾಹಕರು ತಮಗೆ ಬೇಕಾದ ವಸ್ತುಗಳನ್ನು ಬುಕ್ ಮಾಡಿರುತ್ತಾರೆ. ಸದರಿ ವಸ್ತುಗಳು ಗ್ರಾಹಕರಿಗೆ ತಲುಪುವಂತೆ ಅಂಕಣ-4 ರಲ್ಲಿ ಕಂಡ ಎ-1 ಆರೋಪಿಯು ಆನ್ ಲೈನ್‌ನಲ್ಲಿ ಅಮೆಜಾನ್ ಕಂಪನಿಯಲ್ಲಿ ಗ್ರಾಹಕರಿಗೆ ತಲುಪುವಂತೆ ಬುಕ್ಕಿಂಗಾ ಮಾಡಿಕೊಂಡು ಗ್ರಾಹಕರು ಬುಕ್ ಮಾಡಿದ ವಸ್ತುಗಳು ಗ್ರಾಹಕರಿಗೆ ತಲುಪಿದ ನಂತರ ಅಮೆಜಾನ್ ಕಂಪನಿಗೆ ಮೋಸ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಎ-1 ಆರೋಪಿಯು ಸದರಿ ವಸ್ತುಗಳು (ಗ್ರಾಹಕರಿ- ಒರಿಜಿನಲ್ ವಸ್ತುಗಳು ತಲುಪಿದ ನಂತರ) ಸರಿಯಾದ ವಸ್ತುಗಳ ಅಲ್ಲವೆಂದು ರಿಟರ್ನ್ ಪಿಕ್‌ಪ್‌ಗೆ ಮತ್ತೆ (ಅಮೆಜಾನ್ ಕಂಪನಿಗೆ ಆರ್ಡರ್ ಮಾಡಿ ರಿಟರ್ನ್ ಪಿಕ್‌ಪ್‌ಗೆ ಹೆಸರು, ವಿಳಾಸ ಮತ್ತು ಅಕೌಂಟ್ ನಂಬರ್ ಬದಲಾಯಿಸಿ ರಿಟರ್ನ್ ಪಿಕ್‌ಪ್‌ಗೆ ಬೇರೆ ಬೇರೆ ಕಡೆಗಳ ವಿಳಾಸ ನೀಡಿ (ಒರಿಜಿನಲ್ ಗ್ರಾಹಕರು ಬುಕ್ ಮಾಡುವ ಸಮಯದಲ್ಲಿ ನೀಡಿದ ವಿಳಾಸಗಳನ್ನು ಹೊರತುಪಡಿಸಿ) ಅಮೆಜಾನ್ ಕಂಪನಿಯವರು ವಸ್ತುಗಳನ್ನು ರಿಟರ್ನ್ ಪಡೆದುಕೊಳ್ಳುವ ಸಮಯದಲ್ಲಿ ರಿಟರ್ನ್ ಪಿಕ್‌ಪ್‌ಗೆ ಡ್ಯೂಪ್ಲಿಕೇಟ್ ವಸ್ತುಗಳನ್ನು ನೀಡಿ ರಿಟರ್ನ್ ಪಿಕ್‌ಪ್ ಆದ 24 ಗಂಟೆಯೊಳಗೆ ಅಮೆಜಾನ್ ಕಂಪನಿಯಿಂದ ಹಣ ಸಂದಾಯ ಮಾಡಿಕೊಂಡು ಅಮೆಜಾನ್ ಕಂಪನಿಗೆ ಮೋಸ ಮಾಡುತ್ತಿರುತ್ತಾರೆ. ಇದೇ ಬೆಂಗಳೂರಿನಲ್ಲಿ ರಿಟರ್ನ್ ಪಿಕ್‌ಪ್ ಆಗುವ ವಸ್ತುಗಳಿಗೆ ಎ-2 ಆರೋಪಿತೆಯು ವಿಳಾಸ ನೀಡಿ ಎ-2 ಆರೋಪಿತೆಯು ಎ-1

ಆರೋಪಿಯು ಕಳುಹಿಸಿಕೊಡುತ್ತಿದ್ದ ಡ್ಯೂಪ್ಲಿಕೇಟ್ ವಸ್ತುಗಳನ್ನು ಅಮೆಜಾನ್ ಕಂಪನಿಯ ಡೆಲಿವರಿ ಬಾಯ್ ಗೆ ನೀಡುತ್ತಿದ್ದು, ವಸ್ತುಗಳು ರಿಟರ್ನ್ ಆದ 24 ಗಂಟೆಯೊಳಗಾಗಿ ಅವರ ಅಕೌಂಟ್‌ಗೆ ಹಣ ಸಂದಾಯ ಮಾಡಿಕೊಂಡು ಅಮೆಜಾನ್ ಕಂಪನಿಗೆ ಮೋಸ ಮಾಡಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.”

(Emphasis added)

The aforesaid is the modus operandi. The learned senior counsel would submit that this cannot attract Section 420 of the IPC as ingredients of Section 415 are not met and it ought to be an offence under Section 66D of the Act and not Section 420 of the IPC.

9. Let me first demolish the outlandish submissions of the learned senior counsel, taking recourse to Section 66D of the Act. It is his submission that Section 66D ought to have been invoked in 2017 and not Section 420 of the IPC and if Section 66D was to be invoked, it was a non-cognizable offence. If it was a non-cognizable offence, permission of the learned Magistrate was required under the Act. In that case, only a particular rank officer of Police should investigate the matter and investigation should be by cyber crime Police. This submission cannot but be said to be **preposterous**, in the least. They are all fictional, as there is no crime registered

under Section 66D. If there is no charge laid under Section 66D, there is no warrant to even consider these submissions.

10. The next submission is with regard to Section 420 of the IPC. Section 420 of the IPC has its ingredients in Section 415 of the IPC. They read as follows:

“415. Cheating.—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.

... ..

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 a 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.”

Section 415 mandates that the accused right from the inception should have a dishonest intention to cheat and in furtherance of such cheating should lure any person to part with his property. The

submission that it would not get attracted is unacceptable. Section 415 is unequivocal of intention to induce a person so deceived to deliver any property with a dishonest intention from the inception. If the facts are pitted to the ingredients of Section 415, what would unmistakably emerge is that, the property of Amazon is with a dishonest intention booked and secured, again with a dishonest intention, returned and refund is sought on a changed product. Two properties are retained again with dishonest intention. One the product itself and the other the money of the product. If this cannot be cheating, it is ununderstandable as to what can be a classic illustration of ingenious cheating. The submission of the learned senior counsel for the petitioners that it would not amount to cheating is on the face of it is unacceptable. The further fact is that the amount close to ₹70/- lakhs is found in the coffers of the account of accused No.1. The submission is that there are some debits also from his account. Therefore, the ingredients are not met, is again a figment of imagination of the learned senior counsel.

11. On the advent of internet and its tremendous advancement, the world today is unipolar. Crimes and its commission have become ingenious, particularly in the digital age of today. There is huge proliferation in the cyber crimes and online frauds in particular. It is developed to an alarming rate, leaving the victims in their wake. The modus operandi, in these new age crimes, have completely changed the conventional acts of robbery and dacoity. Though they still exist, but the digital crimes have overshadowed the conventional crimes. The consequences of such crimes are beyond boundaries. It is, therefore, they are modern age crimes.

12. The case at hand is shrouded with seriously disputed questions of fact and any such seriously disputed questions of fact can be thrashed out only in a full-blown trial. This Court would be loathe to interfere with such facts which require a full-blown trial. In this context, it would become apposite to refer to the judgment of

the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**¹ wherein it has been held as follows:

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai

¹ (2021) 9 SCC 35

Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

9.2. In Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. **It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.** Similar view has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in

quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC

with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise

of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed.”

(Emphasis supplied)

The Apex Court holds that, when the case is shrouded with seriously disputed questions of fact, the High Court should not interfere. The questions of fact are so seriously disputed in the case at hand; they are maze and it would amaze this Court to interfere on such facts.

13. For the aforesaid reasons, finding no merit, the petition is **rejected**. Interim order of any kind operating shall stand dissolved.

It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of

petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending between the parties.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:SS