IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.102 of 2025
Judgment reserved on: 18.08.2026
Date of Decision: 26.08.2026

Vinod Kumar .....Petitioner

Versus

State of H.P. & another .....Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes.

For the petitioner: Mr. B.S.Chauhan, Senior Advocate with Ms. Aditi Rana, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General with Mr. Ravi Chauhan Deputy Advocate General, for the respondent-State.

Mr. Karan Singh Kanwar, Senior Advocate with Ms. Upasana, Advocate, for respondent No.2.

Sandeep Sharma, Judge(oral):

Through instant petition filed under Section 528 of the Bharatiya Nagrik Suraksha Sanhita, 2023, prayer has been made on behalf of the petitioner for quashing of FIR No. 0059/2022, dated 02.06.2022, under Sections 420, 406, and 120-B of IPC (corresponding to Sections 318(4), 316(2) read with Section 61(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS), registered at Police Station, Kala Amb, District Sirmaur, Himachal Pradesh as well as

[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

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consequent proceedings, if any, pending in the competent Court of law.

2. For having bird's-eye view, relevant facts as emerge from the pleadings adduced on record by the respective parties, are that respondent No. 2 ***(hereinafter referred to as the 'complainant'),*** who is one of the Director of the company, namely M/s Amba Shakti Ispat Limited, a company engaged in the manufacturing of MS Billets, TMT Bars, Angles and Channels at Plot No. 6 & 6-A, Industrial Area, Phase-II, Trilokpur Road, Kala Amb, District Sirmaur, Himachal Pradesh, approached the Superintendent of Police, District Sirmaur at Nahan, seeking investigation into the alleged fabrication and use of forged documents, bogus transactions, cheating and criminal conspiracy, invoking Sections 420, 466, 467, 468, 471, read with Section 120-B of the IPC. After conducting preliminary inquiry, FIR sought to be quashed came to be registered at Police Station detailed hereinabove, initially under Sections 420, 406, and 120-B of IPC (corresponding to sections 318(4), 316(2) read with Section 61(2) of the Bharatiya Nyaya Sanhita).

3. Complainant averred in the complaint that for manufacturing the products, as detailed above, company requires MS scrap (Melting Steel Scrap) as raw material and such scrap is procured through agents engaged for the said purpose. Petitioner (herein 'accused No. 1') Vinod Kumar, Proprietor of M/s GT Iron

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Store, New Delhi, was engaged as an agent for supplying the MS scrap to the complainant's company. Aforesaid person entered into agreements with the complainant's company dated 01.04.2019 (retrospectively effective from 01.07.2017) and 01.01.2021 for supplying MS Scrap either himself or through other firms/agencies to be arranged and managed by him. Since complainant's Company required large quantities of scrap, petitioner/accused offered to arrange supplies through various firms and agencies for a commission of ₹50/- per metric ton. Under the agreement dated 01.01.2021, petitioner/accused disclosed that he would arrange supplies through: M/s Mahesh Trading Company, M/s Rajshree Trading Company, M/s Aggarwal Trading Company, M/s G.T. Iron Store, M/s D.P. Trading Company, M/s Parwati Traders and M/s Jai Mata Traders.

4. After his having entered into aforesaid agreement, petitioner-accused introduced M/s Mahesh Trading Company through its proprietor accused No. 2, Mohit Kumar Taneja and M/s Rajshree Trading Company through its proprietor accused No. 3, Raja**,** as suppliers of MS scrap to the company. Petitioner-accused assured the company that the transactions and the supplying firm were genuine and he would indemnify the company against any loss arising from any default or irregularity. To establish the genuineness of the transactions, petitioner-accused allegedly furnished KYC documents

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of the firms, their proprietors' identity, residence proof including PAN and Aadhaar nos., address proofs including GST registration certificates, cancelled cheques/bank statements, purchase invoices, e-way bills, bilties, and other documents. The transactions were also reflected in the complainant's company's GSTR-2A and GSTR-2B for claiming Input Tax Credit (ITC) on supplied material invoices. On the basis of aforesaid information and documents furnished by the petitioner-accused, company made payments towards the cost of material and IGST, amounting to Rs. ₹11, 03, 42,000/- to Accused No. 2 and ₹10, 44, 00,000/- to Accused No. 3. The petitioner-accused received a commission of approximately ₹6, 05,501/- in connection with these transactions.

5. On 20.07.2021, a search/raid was conducted at the premises of the complainant's company by officers of the GST Department. During the inspection, complainant came to know that the transactions and tax invoices issued by M/s Mahesh Trading Company and M/s Rajshree Trading Company were considered bogus and illegal by the GST authorities. Complainant alleged in the complaint that petitioner-accused, despite being responsible under the agreement for indemnifying/compensating the company against the liabilities, did not compensate it and instead retained the commission recovered by him. Complainant also alleged that petitioner supplied material to the company through firm which were

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never in existence and got illegal invoices generated from the said firm. Complainant also alleged that petitioner-accused subsequently issued a demand notice for ₹1,22,08,204/-, comprising a principal sum of ₹1,04,67,903/- plus interest up to 15.02.2022 and instituted proceedings before the National Company Law Tribunal (NCLT), New Delhi. In the afore background, complainant asserted in the complaint that accused Nos. 1 to 3, acting individually and/ or in conspiracy with each other, had allegedly induced the complainant's company to part with substantial amounts on the basis of purportedly false and fabricated documents and transactions, thereby causing financial loss to the company and corresponding wrongful gain to the accused persons. The complainant further alleged in the complaint that as a consequence of the alleged irregular transactions, company was required to deposit approximately Rs. 1.00 crore towards Input Tax Credit (ITC) and was further subjected to a demand of ITC amounting to Rs. 2.66 crores by the GST authorities. In the aforesaid background, police, after having conducted the preliminary inquiry, registered the FIR sought to be quashed. Petitioner has approached this Court in the instant proceedings for quashing of the FIR on the ground that the dispute *inter se* the parties is purely civil in nature and that the invocation of criminal law, if permitted, would amount to an abuse of the process of law.

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6. Pursuant to the notice issued in the instant proceedings, respondent No. 1 has filed the reply, enclosing therewith relevant documents relating to the investigation. The facts as have been noticed hereinabove have not been disputed rather stand admitted. Prayer has been made on behalf of aforesaid respondent to dismiss the petition on the ground that the petitioner/accused, in connivance with other co-accused, created or facilitated transactions through bogus and untraceable firms. GST invoices, e-way bills, and other documents were fabricated and used to claim wrongful ITC, which has been further confirmed through raids and inquiries conducted by the Directorate General of GST Intelligence (DGGI) and hence case clearly discloses fraudulent and criminal intent, not a mere contractual dispute.

7. I have heard learned counsel representing the parties and gone through the record carefully.

8. Before ascertaining the genuineness and correctness of the submissions and counter-submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate upon the scope and competence of this Court to quash the criminal proceedings, while exercising power under Section 482 of Cr.PC (now 528 of BNSS).

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9. A three-Judge Bench of the Hon'ble Apex Court in case titled **State of Karnataka** v. **L. Muniswamy and others**, 1977 (2) SCC 699, held that High Court while exercising power under Section 482 Cr.PC is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

10. Subsequently, in case titled **State of Haryana and others** v. **Bhajan Lal and others**, 1992 Supp (1) SCC 335, the Hon'ble Apex Court, while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC, again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

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11. The Hon'ble Apex Court in **Prashant Bharti** v. **State (NCT of Delhi)**, (2013) 9 SCC 293, relying upon its earlier judgment titled as **Rajiv Thapar and Ors** v. **Madan Lal Kapoor**, (2013) 3 SCC 330, reiterated that High Court has inherent powers under Section 482 Cr.PC., to quash the proceedings against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while exercising its inherent jurisdiction under Section 482 of the Cr.PC, Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

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12. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that where a criminal proceeding is manifestly attended with *mala fide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC can proceed to quash the proceedings.

13. The Hon'ble Apex Court in case tilted **Anand Kumar Mohatta and Anr**. v. **State (Government of NCT of Delhi**) Department of Home and Anr, AIR 2019 SC 210, has held that abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation and as such, the abuse of law or miscarriage of justice can be rectified by the court while exercising power under Section 482 Cr.PC. The relevant paras of the judgment are as under:

> *16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows:-*
>
> > *"482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

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17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court (G. Sagar Suri and Anr. V. State of U.P. and Others, (2000) 2 SCC 636 (para 7), Umesh Kumar v. State of Andhra Pradesh and Anr. (2013) 10 SCC 591 (para 20). Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court."

14. The law relating to quashing of criminal cases was explained by the Hon'ble Supreme Court in **B.N. John v. State of U.P., 2025 SCC OnLine SC 7** as under:-

"7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in State of Haryana v. Ch. Bhajan Lal, 1992 Supp (1) SCC 335, wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to a private and personal grudge." (emphasis added)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1) it has been mentioned that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, then the FIR or the complaint can be quashed.

As per clause (4), where the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed."

10. This position was reiterated in Ajay Malik v. State of Uttarakhand, 2025 SCC OnLine SC 185, wherein it was observed:

"8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the

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> broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.
> 9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby pre-empting the Prosecution from building its case before the Trial Court. The grounds for quashing, inter alia, contemplate the following situations : (i) the criminal complaint has been filed with mala fides; (ii) the FIR represents an abuse of the legal process; (iii) no prima facie offence is made out; (iv) the dispute is civil in nature; (v.) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably **(State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335).”**

15. Aforesaid law, clearly stipulates that court can exercise power under Section 482 of the Code of Criminal Procedure (now Section 528 of BNSS), to quash criminal proceedings, in cases, where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

16. Now being guided by the aforesaid proposition of law laid down by the Hon’ble Apex Court, this Court would make an endeavor to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

17. In nutshell, case of the petitioner, as has been projected in the petition and further canvassed by Mr. B.S.Chauhan, learned Senior Advocate, duly assisted by Ms. Aditi Rana, Advocate, is that dispute, if any, *inter se* petitioner and respondent No. 2 is to be

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governed by the terms and conditions of the agreements, which cannot be stretched to the extent to harass either of the parties by lodging an FIR. Mr. Chauhan, further argued that FIR, sought to be quashed, is primarily a civil dispute and has no criminal element against the petitioner and the entire criminal proceeding is nothing but an abuse of the process of law and as such, this is a fit case where this Court, while exercising powers under Section 528 of BNSS, can proceed to quash the FIR. He submitted that question of cheating the respondent No. 2 does not arise because agreements itself are complete documents which can be implemented by filing petition before the competent Court of law. He further submitted that no evidence with criminal element against the petitioner has been collected/ recorded owing to the fact that the present dispute is to be governed by the agreements which speaks in volume qua the fact that the dispute is essentially of civil nature. He submitted that as per agreement dated 01.07.2017, Clause 7 specifically deals with statutory liability of the parties and agreement dated 01.04.2019, Clause 8 provides for indemnification of principal party. Mr. Chauhan submitted that since in terms of aforesaid agreements, petitioner-accused is under an obligation to indemnify the company qua the loss, if any, suffered on account of non-deposit of GST, petitioner-accused is liable to indemnify the company, but certainly he cannot be pressurized by invoking criminal proceedings, rather for that purpose

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appropriate remedy is to file civil suit before a competent Court of law. Mr. Chauhan submitted that the allegations in the FIR, even if taken at their face value, do not disclose the essential ingredients of the offence of cheating against the petitioner. The mere existence of a contractual dispute cannot constitute the offence of cheating. He further submitted that extraordinary delay in completion of investigation and presentation of the challan cannot be attributed to the petitioner, rather petitioner has consistently cooperated with the investigation and has appeared before the Investigating Officer whenever required by the concerned Investigating Officer. He submitted that normally challan is to be filed within 90 days, however, in the present case, despite co-operation, no challan has been filed till date. The continued pendency of criminal proceedings without any conclusion of the investigation is causing serious prejudice and harassment to the petitioner and as such, prayer made on his behalf for quashment of FIR deserves to be allowed.

18. While specifically referring Clause 7 and 8 of agreements dated 01.07.0217 and 01.04.2019, which specifically deals with the statutory liability of the parties for indemnifications of principal party, Mr. Chauhan, submitted that respondent No.2 cannot now circumvent the agreed contractual mechanism by setting the criminal law in motion against the petitioner merely to exert pressure upon him. In support of his aforesaid submissions, he placed reliance upon the

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recent judgment passed by Hon'ble Apex Court in case titled **Vandana Jain & others vs. The State of Uttar Pradesh & others**, Criminal Appeal No.1127 of 2026.

19. To the contrary, Mr. Rajan Kahol, learned Additional Advocate General representing the respondent-State and Mr. Karan Singh Kanwar, learned Senior Advocate, duly assisted by Ms. Upasana, Advocate representing respondent No. 2, vehemently argued that petitioner has attempted to dilute serious allegations leveled against him, which pertains to a conspiracy to cheat the complainant's company by supplying MS Scrap through fictitious and non-existent firms, thereby causing wrongful loss to the complainant's company and wrongful gain to the petitioner and other co-accused persons. Above named counsel further argued that during the course of the investigation, it has emerged that petitioner, in connivance with other accused persons, had created and fabricated financial transactions through bogus and untraceable Firms. GST invoices, e-way bills, and related documents were fabricated and utilized for claiming wrongful Input Tax Credit (ITC) and these circumstances came to light during raids, inquiries and verifications conducted by the Directorate General of GST Intelligence (DGGI). Thus, the allegations disclose fraudulent and criminal intent and cannot be characterized as a mere contractual or civil dispute. They further submitted that existence of indemnity clauses in the agreements does not bar or

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preclude criminal prosecution where the allegations disclose the commission of cognizable offences. They submitted that the allegations regarding forged documents, fake KYC documents, fraudulent GST registrations and misrepresentations constitute criminal acts. Hence, a civil agreement cannot be utilized as a shield to evade criminal liability arising from acts of fraud, cheating, forgery, or conspiracy. They submitted that investigation has revealed a well-orchestrated conspiracy to defraud the company through forged documentation and misrepresentation and as such, contention raised by learned Senior Counsel for the petitioner that there is no criminal element in the allegations deserves outright rejection. They further submitted that the reliance placed by the petitioner upon Clauses 7 and 8 of the agreements is wholly misconceived, rather, said clauses themselves contemplate and fasten liability upon the petitioner in the event of bogus transactions, non-existent entities, or other irregularities. Hence, the conduct of the petitioner requires investigation and cannot be examined merely as a contractual dispute at the stage of consideration of the petition for quashing.

20. It is admitted case of the parties that petitioner herein Vinod Kumar, proprietor of M/s GT Iron Store, was engaged as an agent by the company for supplying MS scrap. It is not in dispute that petitioner entered into agreements with the company dated 01.04.2019 and 01.01.2021 for supplying MS scrap, either himself or

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through other firms/agencies to be arranged and managed by him. It is also not in dispute that petitioner, in his capacity as an agent, was entitled to a commission of ₹50 per metric ton. In terms of the agreement dated 01.01.2021, petitioner agreed to arrange supplies through six companies, including two companies, namely M/s Mahesh Trading Company and M/s Rajshree Trading Company. To establish the genuineness of the transactions *inter se* company and the suppliers through which scrap was to be supplied, petitioner furnished KYC documents of the firms, their proprietors' identity, residence proofs including PAN and Aadhaar No., address proofs including GST registration certificates, cancelled cheques, bank statements, purchase invoices, e-way bills, billities and other related documents. Pursuant to the aforesaid agreements, suppliers made certain supplies and such transactions were duly reflected in the company's GSTR-2A and GSTR-2B for claiming the ITC on supplied material invoices.

21. It is also admitted case that pursuant to the supplies, company made payments towards the cost of material and IGST, amounting to ₹11,03,42,000/- to M/s Mahesh Trading Company through its proprietor Mohit Kumar Taneja, and ₹10,44,00,000/- to M/s Rajshree Trading Company through its proprietor Raja and the petitioner also received commission of approximately ₹6,05,501/- in connection with these transactions. The entire dispute arose *inter se*

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parties on 20.07.2021, when a search/raid was conducted at the premises of the company by the officers of the GST Department. During the raid, it transpired that the transactions and tax invoices issued by M/s Mahesh Trading Company and M/s Rajshree Trading Company were considered bogus and illegal by the GST authorities, as a result thereof, company was required to deposit approximately ₹1, 00, 00,000/- towards ITC and was further subjected to demand of ITC amounting to ₹2.66 Crore by the GST authorities.

22. Under the agreements, while undertaking to arrange supplies through various suppliers, as detailed hereinabove, including M/s Mahesh Trading Company and M/s Rajshree Trading Company, petitioner also undertook to make good any liability arising on account of supplies being non-existent, non-payment of GST, bogus purchases, or any other irregularity attributable to the supplying firm. He allegedly assumed responsibility to pay full liability and indemnify the principal equal to the amount of the GST liability. Complainant alleged that the petitioner, despite being responsible under the agreement for indemnifying/compensating the company against that liability did not compensate it, rather, issued a demand notice of ₹1,22,08,204/- and instituted proceedings before the National Company Law Tribunal (NCLT).

23. In nutshell, the case of the petitioner is that since the dispute between the parties is purely of a civil nature, FIR, sought to

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be quashed, is a sheer abuse of the process of law and as such, cannot be permitted to sustain. Heavy reliance has been placed upon Clauses 7 and 8 of the agreements dated 01.07.2017 and 01.04.2019, which provide for the indemnification of the principal party.

24. At this stage, it would be profitable to reproduce Clause 7 & 8 of the agreements dated 01.07.2017 and 01.04.2019, which reads as under:-

Agreement dated 01.07.2017

> **"7. Statutory Liability**:- That the principle is eligible to claim GST ITC on material purchased from above mentioned firms/supplies, in case any liability arises due to any reason" firm not found on address", "GST not paid by supplier "purchase of supplier is bogus" or " any other reason not mentioned here" than Agent will be liable to pay full liability, indemnify to principle with an amount equal to GST liability (GST amount including interest and penalty) paid by principal.
>
> 8. **Performance and Remedies**:- Agent's failure to comply with any of the terms and conditions of this agreement shall be grounds for the exercise by principal of any one or more of the following remedies:-
>
> **a**. Cancellation of this Agreement:-
>
> B. Cancellation of all or any part of nay undelivered purchase order without notice;
>
> C. Termination of all current and future business relationship;
>
> D. Recovery from Agent and supplier of the firm of any damages sustained by principal as a result of agents breach or default, which amount may be withheld or offset against funds owned by Principal to Age; and
>
> These remedies are not exclusive and are in addition to all other remedies available to "Principal at law or in equity".

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Agreement dated 01.04.2019

"7. **Performance and Remedies**:- Agent's failure to comply with any of the terms and conditions of this agreement shall be grounds for the exercise by principal of any one or more of the following remedies:-

a. Cancellation of this Agreement:-

B. Cancellation of all or any part of nay undelivered purchase order without notice;

C. Termination of all current and future business relationship;

D. Recovery from Agent and supplier of the firm of any damages sustained by principal as a result of agents breach or default, which amount may be withheld or offset against funds owned by Principal to Age; and

These remedies are not exclusive and are in addition to all other remedies available to "Principal at law or in equity".

8. **Indemnifications**:- Agent agrees to indemnify and save harmless Principal, its subsidiaries and affiliates, and each of their respective directors, officers and employees from any all liabilities, causes of action, lawsuits, penalties, claims or demands(including the costs, expenses and reasonable attorneys' fees on account thereof), arising or alleged to have arisen in whole or in part from the negligent or willful acts or omissions of Agent and suppliers or form the breach by Agent or any of its obligations hereunder, or form the failure of Agent/suppliers to comply with any federal, state or local statute regulation, order or requirement, or with any international law or legal requirement , or otherwise arising out of or in connection with the services/ material provided by Agent hereunder, including, without limitation, any loss arising out of dishonest or fraudulent acts or any claim, demand, proceedings or action brought against Principal, its subsidiaries, affiliates and each of its or other respective directors, officers and employees or by reason of any alleged or actual negligence, bad faith or willful misconduct on the part of Agent, including, but not limited to any such claim or proceedings arising out of or in connection with the Material (M.S.Scrap), or (2) any demand/penalty/ interest/ taxes claim by any department under any law due to failure/fraud or omission by agent and suppliers through which material was supplied."

25. As per aforesaid clauses in the agreements, the Principal i.e., company is eligible to claim GST ITC on material

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purchased from the above-mentioned firms/suppliers and in case any liability arises due to any reason, like firm not found on address", "GST not paid by supplier "purchase of supplier is bogus" or "any other reason not mentioned here" than Agent will be liable to pay full liability, indemnify to principle with an amount equal to GST liability. As per Clause 8 of the agreement, Agent's failure to comply with any of the terms and conditions of the agreement shall be grounds for the exercise by the Principal of the following remedies:

> ***a) Cancellation of agreement;***
> ***b) Cancellation of all or any part of undelivered purchase orders without notice;***
> ***c) Termination of all current and future business relationships;***
> ***d) Recovery from the Agent and supplier/firm of any damages sustained by the Principal as a result of the Agent's breach or default, which amount may be withheld or offset against funds owed by the Principal to the Agent and these remedies are not exclusive and are in addition to all other remedies available to the Principal at law or in equity.***

26. Careful perusal of afore condition contained in the agreement clearly suggests that company, besides taking recourse to the aforesaid remedies, can also take recourse to other remedies available to it under the law. As per indemnification clause, the agent i.e., petitioner herein agreed to indemnify and save harmless Principal, its subsidiaries and affiliates and each of the respective directors, officers and employees from any and all liabilities, cause of

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action, lawsuits, penalties, claims or demands arising or alleged to have arisen in whole or in part from the negligent or willful acts or omissions of agent and suppliers appointed by him.

27. True it is that as per aforesaid clause contained in the agreements, petitioner, being agent, can be made liable to make good any liability arising on account of the supplier being non-existent, non-payment of GST, bogus purchases, or any other irregularity attributable to the supplying firm, but this Court is not persuaded to agree with learned Senior Counsel representing the petitioner that, in terms of Clauses 7 and 9 contained in the agreements dated 01.07.2017 and 01.04.2019, complainant is estopped from instituting criminal proceedings against the petitioner for his attempt to cheat the complainant's company by supplying through fictitious and non-existent firms, thereby causing wrongful loss to the complainant's company and wrongful gain to himself and other accused.

28. As per the reply filed by the respondent-State, it has clearly emerged in the investigation that the petitioner, in connivance with other accused, falsely created bogus and untraceable firms and then facilitated financial transactions through such firms. GST invoices, e-way bills, and other documents were fabricated and utilized for claiming wrongful Input Tax Credit (ITC), which act of the petitioner came to the notice of the company pursuant to raids,

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inquiries, and verifications conducted by the Directorate General of GST. Aforesaid allegations clearly disclose fraudulent and criminal intent and certainly cannot be characterized as a mere contractual or civil dispute.

29. Moreover, this Court is persuaded to agree with learned Additional Advocate General and Mr. Karan Singh Kanwar, learned Senior counsel representing respondent No. 2 that indemnity clauses in the agreements do not bar or preclude criminal prosecution where the allegations disclose the commission of a cognizable offence. Allegations regarding forged documents, fake KYC documents, fraudulent GST registration, and misrepresentation constitute criminal acts. Though, clauses, which is being relied upon themselves contemplate and fasten liability upon the petitioner in the event of bogus transactions, non-existing entities, or other irregularities, but allegations of financial fraud, manipulation of documents, bogus transaction, and the use of fictitious entities, which require a full and fair investigation cannot be decided in these proceedings.

30. Reply filed by the respondent-State clearly reveals that FIR discloses serious economic offences involving fraudulent misrepresentation, forgery, inducement and financial deception amounting to more than ₹21 Crores, which squarely falls within the ambit of cognizable offences under the Indian Penal Code. The investigating agency, after completing the investigation, has prepared

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charge sheet for offences punishable under Sections 420, 467, 468, 469, 471, and 120B of IPC.

31. Leaving everything aside, certain conditions of the agreement refer to indemnity does not preclude criminal prosecution in the presence of criminality, rather forged documents, fake KYC, and GST registrations along with misrepresentation amount to offences under the IPC and mere civil agreements cannot be used as a shield to evade criminal liability. Otherwise also, by now it is well-settled that civil and criminal liabilities can co-exist where cheating, misrepresentation and fraud are evident. The FIR, sought to be quashed, clearly discloses the ingredients of cheating, criminal breach of trust, and conspiracy under the IPC.

32. Careful perusal of Section 415 IPC reveals that it has two parts: The first part makes it necessary that deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person to either:(a) deliver property to any person, or b) consent that any person shall retain any property. The Second part requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit if he was not so deceived. Besides, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation, or property. The deception is a necessary ingredient for the offence of cheating

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under both parts of aforesaid section. To invoke aforesaid provision of law, complainant must allege/ prove that inducement had been caused by deception exercised by the accused. The explanation to the section clarifies that non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.

33. To constitute an offence of cheating the intention to deceive should be in existence when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Merely failure to keep a promise subsequently cannot be the sole basis to presume that dishonest intention existed from the very beginning.

34. True it is that every breach of contract may not give rise to an offence of cheating, rather only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat developed later, the same cannot amount to cheating. To establish an offence of cheating, complainant is under an obligation to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made about failure on the part of the accused to keep his promise, in the absence of a dishonest intention at the time of making the initial promise, no offence under Section 420 of IPC is made out. However, in the instant case dishonest intention of the petitioner is apparent from the

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time of his entering into the agreement with the company to supply scrap through firms/companies, which were subsequently found to be bogus.

35. Though, the question whether non-fulfillment of promise/ commitment by the accused is a reflection of his or her dishonest intention at the time of making the promise is ordinarily a matter of trial, but yet High Court, in exercise of its inherent powers under the Code or under Article 226 of the Constitution, as the case may be, upon consideration of the attending circumstances, take a decision whether the dishonest intention existed or not at the time of making the promise and if it comes to the conclusion that the alleged conduct of the parties does not reflect a dishonest intention of the accused from the very beginning, it may quash the criminal complaint/proceedings and relegate the aggrieved party to civil remedies.

36. In the case at hand, the petitioner, being agent of the company, entered into an agreement for supplying MS Scrap either by himself or through other firms/agencies to be arranged and managed by him. Under the agreement dated 01.01.2021, he disclosed the names of certain companies through which he proposed to supply the scrap. However, subsequently, two companies, namely, M/s Mahesh Trading Company and M/s Rajshree Trading Company were found to be bogus and non-existent. The very act of the

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petitioner introducing two companies, namely M/s Mahesh Trading Company and M/s Rajshree Trading Company, which was allegedly non-existence, for supply of scrap, clearly discloses dishonest intention of the petitioner from the very inception. Since factum with regard to non-existence of aforesaid companies/suppliers was in the knowledge of the petitioner being agent of the company, coupled with the fact that he with a view to establish the genuineness of the transactions, furnished KYC documents of the firms, their proprietors' identity, residence proofs including PAN and Aadhaar No., address proofs including GST registration certificates, cancelled cheques, bank statements, etc, this Court is not persuaded to agree with learned Senior counsel representing the petitioner that complainant/respondent has initiated criminal proceedings merely to enforce a contractual claim, rather criminal proceedings appear to have been initiated against petitioner for his having allegedly committed cheating and forging of documents. Since it has emerged in the investigation that petitioner, in connivance with other co-accused had created and facilitated financial transactions through bogus and untraceable firms and thereafter, GST invoices, e-way bills, and other documents were fabricated and utilized for claiming wrongful Input Tax Credit (ITC), as a result thereof, huge loss was caused to the company as well as to the public exchequer, this Court is persuaded to conclude that allegations contained in the FIR prima

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facie disclose fraudulent and criminal intent and certainly cannot be characterized as a mere contractual or civil dispute. The existence of indemnity clause in the agreements nowhere bars or precludes criminal prosecution, especially when allegations disclose the commission of cognizable offences. The allegation regarding forged documents, fake KYC documents, fraudulent GST registration and misrepresentation constitute a criminal act.

37. Otherwise also, this Court is of the view that prima-facie petitioner has caused substantial loss to the complainant's company by facilitating supply of MS scrap through bogus/ non-existing firms and has caused the complainant's company to part with substantial amounts. Similarly, material placed on record indicates that petitioner was not merely acting independently but in connivance with accused No.2 and 3 and as such, necessary ingredients of Section 120-B IPC are met at this stage. However, whether requisite ingredients of Section 406 of IPC are established or whether the petitioner has acted in connivance with other accused is a matter of trial and cannot be adjudicated at this stage.

38. In case titled ***Vandana Jain and Others*** **(supra**), which has been pressed into service by learned counsel representing the petitioner, cannot be made applicable to the present facts and circumstances of the case. There cannot be any quarrel to the proposition of law laid down in the aforesaid case that where the

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dispute *inter se* parties is predominantly civil in nature, invocation of criminal law amounts to an abuse of the process of law. In the aforesaid case, High Court dismissed the writ petition *in limine,* vide impugned order, without considering whether the facts spelt out in the FIR disclose a purely civil cause of action, as also whether the allegations made, make out an offence *qua* preparation of a false document. The Hon'ble Apex Court, having perused the relevant documents, especially the agreement arrived *inter se* parties, arrived at a conclusion that insofar as the allegation regarding non-fulfillment of contractual obligation is concerned, recourse to appropriate civil remedy was required and there is nothing to suggest that dishonest intention existed from the beginning. Since in the aforesaid case, Hon' ble Apex Court arrived at the conclusion that no offence of cheating is made out and there was no false representation in the joint venture agreement, proceeded to quash the criminal proceedings. However, in the instant case, there is a specific allegation against the petitioner that he, in connivance with the other accused, not only created and facilitated financial transactions through bogus and untraceable firms, but also fabricated GST invoices, e-way bills, and other documents, as a result thereof, wrongful loss was caused to the company as well as the Government exchequer and wrongful gain accrued to the petitioner. Rather, in the case before the Hon' ble Apex Court, the security amount, which was otherwise bone of contention and was

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neither being released/refunded was adjustable against the share of the first party derived from the sale proceeds and as per the conditions of the agreement, the appropriate course was to take recourse to civil remedies.

39. However, in the instant case, though as per the indemnification clause the petitioner is liable to indemnify the company for its losses, but certainly in the garb of the agreement, he cannot escape criminal prosecution for his having allegedly committed acts of cheating and forgery, which can only be decided in the criminal proceedings on the basis of evidence, if any, adduced on record by the prosecution.

40. Having perused the material adduced on record, especially the reply filed by the respondents, this Court is of the view that prima facie case under Sections 420, 406, and 120-B of IPC (corresponding to Sections 318(4), 316(2) read with Section 61(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS), is made out against petitioner and as such, this Court is not persuaded to exercise power under Section 482 Cr.P.C(now Section 528 of BNSS) to quash the FIR, which in the given facts and circumstances, is required to be taken to its logical end by a competent Court of law on the basis of pleadings as well as evidence led on record by the respective parties.

41. Consequently, in view of detailed discussion made herein above and law taken into consideration, this Court finds no merit in

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the present petition and accordingly same is dismissed, alongwith pending applications, if any.

42. Any observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and shall remain confined solely to the adjudication and disposal of the present petition.

(Sandeep Sharma),
Judge

August 26, 2026
(shankar)

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