

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09<sup>TH</sup> DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.10258 OF 2020 (GM-RES)

C/W

WRIT PETITION No.7855 OF 2023 (GM-RES)

**IN WRIT PETITION No.10258 OF 2020 (GM-RES)**

**BETWEEN:**

1 . SHRI SUSHIL PANDURANG MANTRI

2 . SHRI PRATIK SUSHIL MANTRI

3 . SMT. SNEHAL SUSHIL MANTRI

... PETITIONERS

(BY SRI C.V.NAGESH, SENIOR ADVOCATE A/W.,  
SRI MAHESH S., ADVOCATE)

**AND:**

- 1 . THE STATE OF KARNATAKA BY  
SUBRAMANYAPURA POLICE STATION  
BENGALURU CITY  
BENGALURU.
- 2 . MR. DHANANJAYA

... RESPONDENTS

(BY SMT. K.P.YASHODHA, HCGP FOR R-1;  
SRI DHANANJAYA, PARTY-IN-PERSON R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CR.P.C., PRAYING TO QUASH THE COMPLAINT DTD.30.8.2020 AND RESULTANT FIR IN CRIME NO.163/2020 OF THE RESPONDENT SUBRAMANYAPURA POLICE AGAINST THE PETITIONERS HEREIN FOR THE LEGED OFFENCES PUNISHABLE UNDER SECTION 406, 420, 415, 417 AND 34 OF IPC VIDE ANNEXURE-A AND B TO THE PETITION.

**IN WRIT PETITION No.7855 OF 2023 (GM-RES)**

**BETWEEN:**

- 1 . SRI SUSHIL PANDURANG MANTRI
  
- 2 . M/S. CASTLES VISTA PRIVATE LIMITED  
REGISTERED UNDER THE COMPANIES ACT, 2014  
(SUBSIDIARY OF M/S. MANTRI DEVELOPERS PVT LTD)  
REPRESENTED BY AUTHORISED SIGNATORY  
ACCOUNTS DEPUTY MANAGER  
RAVI SHANKAR  
R/O NO.41, VITTAL MALLYA ROAD  
BENGALURU – 560 001.
  
- 3 . M/S. MANTRI DEVELOPERS PVT. LTD.,  
REGISTERED UNDER THE COMPANIES ACT, 1956  
REPRESENTED BY AUTHORISED SIGNATORY  
ACCOUNTS DEPUTY MANAGER  
RAVI SHANKAR  
R/O NO.41, VITTAL MALLYA ROAD  
BENGALURU – 560 001.
  
- 4 . M/S. BUOYANT TECHNOLOGY  
CONSTELLATIONS PVT. LTD.,  
REPRESENTED BY AUTHORISED SIGNATORY  
ACCOUNTS DEPUTY MANAGER  
RAVI SHANKAR  
R/O NO.41, VITTAL MALLYA ROAD  
BENGALURU – 560 001.

... PETITIONERS

(BY SRI C.V.NAGESH, SENIOR ADVOCATE A/W.,  
SRI MAHESH S., ADVOCATE)

**AND:**

- 1 . DIRECTORATE OF ENFORCEMENT  
REP. BY ITS JOINT DIRECTOR  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
BENGALURU ZONAL OFFICE  
3<sup>RD</sup> FLOOR, 'B' BLOCK,  
BMTc, SHANTHINAGAR, K.H.ROAD  
BENGALURU – 560 027.
  
- 2 . THE ASSISTANT DIRECTOR  
DIRECTORATE OF ENFORCEMENT  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
BENGALURU ZONAL OFFICE  
3<sup>RD</sup> FLOOR, 'B' BLOCK,  
BMTc, SHANTHINAGAR, K.H.ROAD  
BENGALURU – 560 027.

... RESPONDENTS

(BY SRI MADHUKAR DESHPANDE, SPL.PP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS PENDING BEFORE THE HONBLE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE AND SPL. JUDGE FOR PREVENTION OF MONEY LAUNDERING ACT, BENGALURU IN SPL. C. C. NO. 2874/2022 FOR THE ALLEGED OFFENCES UNDER SEC 3 PUNISHABLE UNDER SEC 4 OF PREVENTION OF MONEY LAUNDERING ACT, 2002 AND ALL ITS FURTHER PROCEEDINGS VIDE ANNEXURE-B.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 26.07.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

**W.P.No.10258 of 2020:**

The petitioners are before this Court calling in question registration of a crime in Crime No.163 of 2020 for offences punishable Sections 406, 420, 415, 417 r/w 34 of the IPC.

2. The petitioners claim to be Directors of M/s.Mantri Developers Pvt. Ltd., a builder and a land development Company. It is the averment in the petition that the petitioners have delivered scores of projects all over the country. The 2<sup>nd</sup> respondent is the complainant. The 2<sup>nd</sup> respondent and few other members – investment based purchasers approached the petitioners/Company seeking purchase of flats in the project “Mantri Serenity” and accordingly applied for allotment of flats. Pursuant to the offer, the complainant and other members execute certain agreements for sale of undivided share of land and construction agreement *inter alia*. The project does not get completed in time, there is delay.

Due to the said delay, the complainant flags certain dishonest intentions and the averment in the petition is that he began to register threats and several complaints before various *fora*. It is the claim in the petition that due to intervening circumstances of recessions, complaints to the Karnataka State Pollution Control Board and other irregularities had resulted in delay of the project. The project gets completed and occupancy certificate is also received by the Authorities. The complainant moves the Real Estate Regulatory Authority ('RERA' for short) on several grievances and seeks to register a complaint before the jurisdictional police for the afore-quoted offences.

3. The complaint was that they are the unfortunate homebuyers in 'Mantri Serenity' promoted by Mantri Castles Pvt. Ltd., an associate and subsidiary of Mantri Developers Pvt. Ltd., The complaint narrates that he has paid more than Rs.69 lakhs as per construction link plan and other homebuyers have paid Rs.60-70 lakhs on an average or higher. The complaint alleges misrepresentation, money laundering and fraud against the homebuyers on the ground that the homes have not been given at

the appropriate time and the funds collected from all the homebuyers have been utilized, diverted or misutilised for several other purposes. It further claims that the property that the homebuyers should get have already been mortgaged to several Banks for the purpose of securing loan and the loan secured have been invested to some other purpose. Based upon the said complaint, a crime comes to be registered in Crime No.163 of 2020 for offences punishable under Sections as afore-quoted. After registration of the crime, the petitioners knock at the doors of this Court in the subject petition. This Court grants an interim order of stay of further investigation against the petitioners. The said interim order of stay is in subsistence even as on date.

4. Heard the learned senior counsel Sri.C.V.Nagesh appearing for the petitioners, learned High Court Government Pleader appearing for respondent No.1 and Sri.Dhananjaya, 2<sup>nd</sup> respondent/party-in- person.

5. The learned senior counsel by taking Court through the documents appended to the petition and several other documents

either by the petitioners or by the 2<sup>nd</sup> respondent-complainant would seek to demonstrate that the entire issue arises out of a contract between the developers and builders of "Mantri Serenity" and the complainant or any other homebuyer/home investor. It is his emphatic submission that there is no element of cheating, criminal breach of trust or any other offence so alleged against the petitioners present by way of ingredients in the complaint so registered. The allegation of the complainant is that the flats have not been delivered in time. Owing to certain delay when the flats were not delivered, the complainant/homebuyer is everywhere. He has knocked at the doors of every Authority. The impugned complaint narrates several circumstances which are not even necessary for consideration of the issue in the complaint. It is the allegation that the apartments that are allotted to the complainant and the like are already mortgaged to several Banks and therefore, there is fraud and misappropriation or misutilisation of the funds that the homebuyers have invested. He would submit that this is a permissible exercise in the construction of apartments, as if finance has to be raised from financial institutions the properties will have to be mortgaged. It is his contention that the complainant is not a



novice, he is aware of all the nuances of buying a house in an apartment complex and has therefore, signed several agreements. The learned senior counsel would seek to place reliance upon the following judgments of the Apex Court contending that in a matter that is purely contractual between the victim and the accused, criminal law is sought to be set into motion.

- (i) *SARABJIT KAUR V. STATE OF PUNJAB - 2023(2) RCR (CRIMINAL) 52-MANU/SC/0193/2023*
- (ii) *PRAKASH AGGARWAL V. GANSH BENZOPLAST LTD., - MANU/SC/0470/2023*
- (iii) *RAMESH CHANDRA GUPTA V. STATE OF U.P. - 2022(4) CRIMES 573 (SC) - MANU/SC/1551/2022*
- (iv) *SMART OWNERS SERVICES INDIA PVT. LTD., V. STATE OF KARNATAKA - CRLP.6199 OF 2020*
- (v) *GOVINDARAJA V. STATE OF KARNATAKA - W.P.NO.101203 OF 2021 - MANU/KA/0703/2022.*

6. On the other hand, the complainant/2<sup>nd</sup> respondent-in-person by elaborating the complaint and plethora documents placed

before this Court seeks to contend that the Directors of the Company have indulged in money laundering, they have invested the funds received by the homebuyers in several Banks by mortgaging the property that the homebuyers is entitled to hold on to. He would seek to contend that if this is not cheating, nothing else can be termed to be cheating at the hands of the developers *qua* the poor homebuyers. He would submit that the matter is still at the stage of investigation and even the Enforcement Directorate has initiated several proceedings against the petitioners, therefore, the proceedings must be permitted to be continued against these petitioners, as there are several issues that would spring up if investigation is permitted. The respondent-in-person would seek to rely on several interlocutory orders passed by the co-ordinate benches of this Court seeking to contend that this Court had directed to resolve the issue amicably by executing sale deeds in favour of every aggrieved homebuyer, but the petitioners have not adhered to it and have thus committed contempt.

7. In reply, the learned senior counsel would submit that every aggrieved homebuyer today has come forward and a sale

deed is executed in their favour, nobody has grievance whatsoever, it is only the complainant who wants to project himself as messiah of the homebuyers, wanting to continue litigation and not come forward to execute the sale deed. He would submit that the demand of the complainant is something that 800 homebuyers have not demanded and all the 800 homebuyers have come forward to get the sale deeds registered in terms of the agreements entered into between the developer and the homebuyers. It is only the complainant who is wanting to throw a spanner in the spoke.

**W.P.No.7855 of 2023:**

8. The subject petition calls in question proceedings instituted by the Enforcement Directorate. The facts that led to registration of an Enforcement Case Information Report (ECIR) is the same as is found in the companion petition. The Enforcement Directorate takes queue from crime No.163 of 2020 registered on 30-08-2020. Therefore, the offence in the ECIR is an offshoot of the complaint so registered by the respondent-in-person in the companion petition, so to say, that the predicate offence for the offence under the Prevention of Money Laundering Act is the FIR in Crime No.163 of

2020. Therefore, the right of the Enforcement Directorate to continue against the petitioners would be subject to the result of the proceedings in W.P.No.10258 of 2020 wherein Crime No.163 of 2020 registered against the petitioners is called in question. Therefore, I deem it appropriate to notice the facts and contentions after arriving at a decision on the challenge to the crime in Crime No.163 of 2020.

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

10. The afore-narrated facts are not in dispute. The 2<sup>nd</sup> respondent is the complainant and his status of being the homebuyer is not in dispute. He along with others claims to have invested money as a homebuyer to the tune of Rs.69 lakhs and there is delay in the project of the petitioners. Since the entire issue has sprung from the complaint so registered under Section 154 of the Cr.P.C., I deem it appropriate to notice the complaint in its entirety. The complaint reads as follows:

**"FIRST INFORMATION REPORT (FIR)**

To,

Sub-Inspector of Police,  
Subramanyapura, Bengaluru

**Subject:** Criminal Complaint for failed delivery and possession of flats against the depositors (Home buyers) moneys and /Information u/s 154 Cr.P.C. against Mantri Developers Pvt Ltd, its promoters /founders, erstwhile directors and the Mantri Castles Pvt Ltd, its directors, erstwhile directors and key managerial personnel associated with the above two companies

Complainant's Name. Mr Dhananjaya and other home buyers as listed in the annexure herein under Mr Dhananjaya S/o Sri Late Padmanabhachar aged 38 and presently in employment with Pvt sector in IT Services in Bangalore residing at #306, VS Cozy Apartment, AR Layout, 28th A Main Road, JP Nagar 6<sup>th</sup> Phase, Bengaluru-560078

**Name of Accused....**

1. Mr. Sushil Pandurang Mantri, Erstwhile Managing Director, Founder and Promoter director of Mantri Developers Pvt. Ltd., having Director (DIN 00188967) aged around 60 years Mantri House, No. 41, Vittal Mallya Road, Bangalore-560001.
2. Mr. Pratik Sushil Mantri, Son of Promoter director, aged 30 Years Mantri Developers Pvt. Ltd., Mantri House, No. 41, Vittal Mallya Road, Bangalore-560001 and now the current position is unknown.
3. Mrs Snehal Mantri - Wife of Mr Sushil Pandurang Mantri, Promoter director of Mantri Developers Pvt Limited (MDPL) -

*Aged around 52-53 and now the current position is unknown*

4. *Mr Subramanian Bhaskaran Director on Mantri Castles Pvt Ltd (formerly Land Master Realtors Pvt Ltd) having Director (DIN 02078787), Bangalore working at the office of Mantri Developers Pvt. Ltd., Mantri House, No. 41, Vittal Mallya Road, Bangalore-560001*
  
5. *Mr Bharat Dixit Madhukar Director on Mantri Castles Pvt Ltd (formerly Land Masters Realtors Pvt Ltd)/Bangalore and current employment and designation is not known having Director (DIN 08263379) working at the office of Mantri Developers Pvt. Ltd., Mantri House, No. 41. Vittal Mallya Road, Bangalore-560001*

*And other parties associated with the project named and unnamed to the extent known to us.*

- *Parties involved in Joint development agreement:*
  - *Gokulam Shelters Pvt Ltd*
  - *Land Masters Realtors Pvt Ltd*
  - *ISKCON Charities*
  - *India Heritage Trust (India Heritage Foundation)*
  
- *Parties involved in Agreements:*
  - *Mantri Castles Pvt Ltd now knowns as Castle Vistas Pvt Ltd*
  - *Gokulam Shelters Pvt Ltd*

- *Money Paid to Companies:*
  - *Mantri Castles Pvt Ltd*
- *RERA Registration Nos:*
  - *Serenity1: PRM/KA/RERA/1251/310/PR/171019/000494*
  - *Serenity3: PRM/KA/RERA/1251/310/PR/171016/000500*
  - *Serenity4: PRM/KA/RERA/1251/310/PR/171016/000502*
  - *Serenity5: PRM/KA/RERA/1251/310/PR/171019/000504*
- ***Project is at :: (Cause of Action)***
  - ***Mantri Serenity on Kanakapura Road, Bangalore***

***Complaint of Offence under Section 415 & 420 (Cheating) of the I.P.C.***

*The aforementioned complainant(s) begs to state as under: -*

*1. That the complainant(s) are resident of Bangalore at various locations and from other parts of India and overseas.*

*2. That all the accused are resident of Bangalore and working in Mantri Corporate office at Vittala Malya Road, Bangalore*

*3. Brief Facts leading to commission of the offence and allegation against the Promoter/founder directors erstwhile directors and key Managerial Personnel.*

*I am/we are one/some of unfortunate Home buyers in Mantri Serenity promoted by Mantri Castles Pvt Ltd (formerly known as Land Masters Realtors Pvt Ltd), which is an associate company and or subsidiary of Mantri Developers Private Ltd (MDPL) (Holding Company). I myself paid more than Rs 69 Lakhs so far as per construction linked plan. Many of Home buyer have paid Rs 60-70 Lakhs on an average or higher (Including Bank Borrowed in an existing Mantri Serenity project at Kanakapura Road. As per our rough estimate, there are other home buyers of over 1200 families together invested Rs 1350 Crores approximately (Home buyers and Bank/NBFCs (Piramal Finance)).*

*4. Launching various Ponzi schemes and in collusion with the arrangement with Various banks known and in known including PNB Housing, ICICI, HDFC and such other banks and Non banking financial companies (NBFC), window dressing and rosily painted schemes induced many home buyers showing misleading brochures, falsification of delivery time lines under various subvention schemes. Flats are not delivered even after seven to ten years after taking Home buyer deposits. We are ordinary common middle-class citizens and Project is stalled for the last two years. We suspect a big scam of financial bungling, fraud, cheating. funds diversion and money laundering etc. All these are acts of cheating punishable under Section 420 of the Indian Penal Code, 1860-*

*Some of Misrepresentation, Money laundering, Fraud against Home buyers*

- *Misrepresentation of Varying timelines in the same tower and in the same floor*
- *Advance money for 50% flats received in 2013 to 2015 itself even before migrating to RERA when the project is 2-5 years old Booking on 15th at 2013*
- *Window dressing and rosily painted schemes with incentives never honoured as of date*



- *Unilateral and arbitrary documentation with no exit clause except with huge penalty.*
- *Some of flats are registered even before completion from 2012-2018 in violation of BBMP norms and not completed even today*
- *Swapping of non-existent flats from other apartments from developers and within Serenity transfer to other flats at new rates*

*5. Complaint against the Promoters, founders, directors of Mantri Developers Pvt Ltd and or Mantri Castles Pvt Ltd and such other associate group companies and entities and against their key managerial personnel we allege that the Accused no.1, Mr. Sushil Pandurang Mantri, Accused no. 2, Mr. Pratik Sushil Mantri & Accused No. 3. Mrs Snehal Mantri, the erstwhile executive director of MDPL and such other Director(s) of Mantri Developers Pvt. Ltd and known business associates, partners associated with the Project serenity and also unknown Key Managerial personnel who have indulged in cheating, criminal breach of trust with regards to the Home buyers deposits for the project named - **"Mantri Serenity" [hereinafter referred to as "Project"/"Serenity" as the case may be J.***

*6. There is a suspected case of money laundering, diversion of funds and collusion Cheating and diverted our money for their own personal usage or such other fraudulent purposes and thereby depriving the funds for Construction and hence stalled the project for the last two years since 2018-19. Govts and courts to help us to save our money give us our dream homes and investigate Mantri Developer Group misdeeds before they escape to foreign shores (An article published in Jayakirana news paper on 28th August 2020)*

*7. Due to the behaviour and collusive nature of the business transactions with their associates of the Accused, the Complainant has suffered financial loss to the tune of (mention the amount in Rupees). Home buyers are incurring huge EMI costs of Rs 40 000 pm (minimum) and rent on leased homes for stay Rs 20000 (minimum) together coming to Rs 60000 pm or Say 720000 per annum and lost*

*approximately 25 Lakhs on my opportune cost of additional interest and rents even with out delivery of our homes Interest and rent home buyers are all forced to pay due to delayed delivery of homes due to their negligence, inefficiency and failure to do fiduciary responsibility in taking care of public money by Mantri group of companies.*

*8. Many middle class, senior citizens, Housewives have invested their hard-earned life savings and including bank borrowable in spite facing a lot of hardships. Being ordinary citizens, we are not familiar with the detailed verification of their financial dealings and agreements. We sincerely pray to do justice to deliver our homes and also reasonable compensation for the delay period as per the guidelines from Supreme court or consumer forums etc whatever be deemed fit after the detailed investigation of cheating, fraud and collusion.*

*9. Date or period when the offence took place: During 2010-2017 for group. (Vide remittances were made for Rs 70 lakhs to Rs One crore for each flat at varying periods).*

*10. The Complainant has requested the accused several times to reimburse the amount of loss suffered by him/her, in some cases honouring the agreements commitments but to no avail*

*11. We have heard bad news in paper this month related to Mantri Developers which is making us worried and concerned about our home and our invested money: -*

- ICICI Bank takes possession of Mantri Corporate office - on 10th August <https://timesofindia.indiatimes.com/business/india-business/icici-bank-takes-possession-of-mantri-corporate-office/articleshow/77457894.cms>*
- An article came in news paper "Jayakirana" on 28th August 2020 which is little scary for us. The article questions, if Mantri founders planning to escape from the country!! The*

*printed copy of the PDF we received is attached with this complaint.*

*12. That the Complainant submits that no suit has been filed by the following before any other court in territory of India in relation to this complaint.*

*13. The complainant, therefore, prays that-*

*(a) appropriate proceeding be initiated against the accused under Section 415 and 420 of the Cr.P.C..*

*(b) A detailed investigation of the usage of Home buyers deposit funds for the project and on such investigation a proper follow up action by the police.*

*(c) the accused be convicted of the offence under Section 420 of the IPC.*

*(d) the accused be ordered to deliver our homes with in next 6 months along with for delay as per Supreme Court directions or refund of all moneys with bank rate of interest and pay compensation for monetary loss suffered by complainant to the tune of Rs 25,00,000 for each home buyer or flat towards damages and unspecified damages to defray the financial hardships and sufferings.*

*(e) any other relief/(s) or settlement be granted as it may deem fit and proper in the said circumstances."*

What can be gathered from the complaint is, the complainant describes himself to be an unfortunate homebuyer and seeks to demonstrate various aspects of misrepresentation on the part of the petitioners. The crux lies in the 4<sup>th</sup> paragraph. It is alleged that several ponzi schemes are launched in collusion and arrangements

with various Banks and other non-banking financial Companies. Brochures notified by them are misleading, flats are not delivered even after 7-10 years after taking deposits from the homebuyers. A case of suspected money laundering was also sought to be made out by the complainant. A little history to the complaint is required to be noticed.

11. The Mantri Senenity notified calling for expressions of interest from various citizens who were interested to buy homes. The complainant also applied for an allotment. The application for allotment of the complainant is dated 10.10.2013. The details of unit applied for allotment and the other demand of the complainant is depicted in the application for allotment. A sum of Rs.7,18,540/- was deposited towards the booking amount. An agreement is entered into between the parties. The agreement is between one Gokulam Shelters and Mantri Castles Pvt. Ltd., Certain clauses of the agreement which are germane are required to be noticed. Clauses 8 and 1 of the agreement reads as follows:

*"8. The purchaser has also simultaneously entered into a separate Agreement for Construction with the Developer, whereunder he/she/they/it has/have agreed to get constructed,*

*as per the Scheme, a residential apartment described in Annexure B1 to the said Agreement, and both Agreement for sale of undivided interest and Agreement for construction shall be co-terminus and together constitute one contract, whether or not a sale deed in pursuance hereof is executed."*

... ..

*"1.0 That in pursuance of the foregoing and in consideration of the sum set out in Annexure A1 having been agreed to be paid by the Purchaser in installments and the mutual obligation/s undertaken by the Parties hereto, the Owner and Developer agrees to sell and the Purchaser agrees to purchase the undivided right, title and interest within the plinth area of the respective building on which the apartment/building is constructed in the land comprised in Phase-2 which forms a part of the Schedule A Property, more fully described in Annexure A1."*

Clause 11.1 reads as follows:

*"11.1 That the Owner is the absolute owner of the Annexure A1 Property having thereto a legally subsisting and marketable title and its sale to the Purchaser shall be free from all encumbrances, court attachment or acquisition proceedings or charges of any kind. The/Developer may obtain a Project loan for the construction of the residential complex as referred to herein, based on the security of the Schedule Property, which shall be discharged before handing over possession of the Apartment to the Purchaser. The Schedule Property and construction thereon, in so far as it relates to the Purchaser, shall be free from all claims and encumbrances of whatsoever nature;"*

What is depicted in the agreement is seen and accepted by the complainant, as the complainant has also signed the document. Next comes the agreement for construction. These conditions are

also accepted and the complainant signs on the document. Though 6-7 years have passed by, the apartments are not delivered. It is then the complainant seeks to knock at the doors of RERA and several other *fora* and then registers the aforesaid crime. After registration of the crime, the petitioners have preferred the subject petition and this Court has interdicted further investigation. A slew of orders are passed by this Court from time to time. One such order assumes significance and is required to be noticed and the order is dated 01.06.2023 which reads as follows:

*"Heard learned Senior Counsel Sri C.V. Nagesh appearing for the petitioners. There are several orders passed by this Court; two of which assumes significance and therefore, are necessary to be noticed, one which is passed on 20th March, 2023 and the other passed on 29th March, 2023. Order dated 20th March, 2023 reads as under:*

**"ORDER**

*Learned senior counsel representing the petitioners in W.P. Nos.33479/2019, 33485/2019, 33488/2019, 10258/2020 and 10286/2020 (henceforth referred to as the 'Developer') submits that 11 customers, who are the complainants in the F.I.R., are yet to make payments and that sale deed/s conveying their respective flat would be executed within four working days from the date of making such payment. He also assured the Court that in the sale deeds that may be executed, the corresponding undivided interest of each flat shall be mentioned. He also submitted that in respect of those customers who have already made the complete payment and in whose favour, the sale deeds are executed, possession of the flats would be delivered by Monday and in respect of those customers who have already paid full value of the flats, sale*

*deeds would be executed latest by Monday and that in all these sale deeds, the undivided interest corresponding to flats would be mentioned in the sale deeds.*

*It is made clear that the customers who are yet to make payment shall make it as early as possible so that the Developer can execute the sale deeds latest by 27.03.2023. Wherever payments are made, the Developer shall execute the sale deeds as undertaken before the Court. It is needless to mention that the Developer shall circulate copies of the draft sale deeds by 25.03.2023. The Developer shall hand over possession wherever sale deeds are executed.*

*List on 28.03.2023.*

*If interim order is granted in any of these cases and if it is in force, the same shall stand extended, till the next date of hearing.*

*Order dated 29th March, 2023 reads as under:*

**"ORDER**

*In W.P.No.10258/2020, learned Senior Counsel representing the petitioners submits that though the petitioners have a good case on merits, yet the petitioners intend to amicably resolve the issue.*

*Learned counsel for respondent No.2, however contends that respondent No.2 and similarly placed persons were accorded cold reception in the office of the petitioners and therefore, this Court may take suitable decision in the matter. Since the petitioners have expressed their desire to settle the dispute amicably, this Court consider it appropriate to direct the petitioners to hold a meeting with respondent No.2 and the persons named in the complaint in Crime No.163/2020 of Subramanyapura Police Station on 05.04.2023. In order to ensure that the petitioners addresses the concern of respondent No.2 and complainants in Crime No.163/2020, this Court consider it appropriate to direct the Member, Karnataka State Legal Services Authority to be present in the meeting. Hence, the following:*

ORDER

*i) Petitioners are directed to hold a meeting with respondent No.2 and the complainants in Crime No.163/2020 at 11.00 a.m., on 05.04.2023 at the Office of the petitioners at Mantri Developers Pvt. Ltd., Mantri House, No.41, Vittal Mallya Road, Bengaluru - 560 001.*

*ii) The Member, Karnataka State Legal Services Authority shall be present at the meeting and also moderate the discussions and thereafter furnish a report to this Court regarding the proceedings of the meeting. Interim order granted earlier is extended till the next date of hearing.*

*List these petitions on 06.04.2023."*

*In terms of the said orders, the learned Senior Counsel submits that out of seventeen home buyers who had complained of non-registration of sale deeds, fourteen sale deeds have been registered; two of them are abroad and therefore those sale deeds are not registered and the one that remains is the respondent party-in-person. The learned Senior Counsel would submit that insofar as the sale deeds that have not been registered of the remaining complainants, those sale deeds would also be executed forthwith subject to the condition that they would fulfill the criteria of payment as is observed by this Court in the aforesaid order dated 20th March, 2023. Respondent party-in-person would contend that the sale deeds have been executed but without undivided share, which is contrary to law. If that be so, it is contrary to the order passed by this Court.*

*Learned Senior Counsel would submit that the sale deeds have been executed with undivided share and that same would be executed in favour of the respondent party-in-person. Learned Senior Counsel would further submit that in cases where sale deeds are executed, possession is not handed over and it shall be delivered forthwith on the condition that they would clear all the dues of payment, as the case would be. The submission is placed on record.*



*The respondent shall be at the office of the petitioners at 10.30 pm on 05th June, 2023 and without any hindrance, if all payment is made by the respondent party-in-person, the sale deed shall be executed at 3.00 pm on the said date and the same shall be produced before this Court on the next date of hearing.*

*List the matter on 06th June, 2023 at 2.30 p.m. for further hearing.*

*Interim order subsisting as on the date, stands extended till the next date of hearing."*

This Court recorded the earlier orders passed by the co-ordinate Bench and while observing that the petitioners have expressed their desire to settle the dispute amicably, the Court considers it appropriate to direct the petitioners to hold a meeting with the complainant. Therefore, this Court had passed the afore-quoted order that the sale deed would be executed forthwith without any hindrance. Every other aggrieved person like the complainant has come forward and the sale deed is executed, but the complainant refuses to accede to the execution of sale deed. The reason the complainant projects is that they have been not given the undivided share as is necessary in law.

12. The learned senior counsel for the petitioners, on the strength of the documents, has sought to demonstrate that in case of every other person sale deed is already executed. If 1800 homebuyers have executed a sale deed of a particular nature, the complainant, *prima facie*, cannot seem to ask something beyond what the agreement says or beyond what this Court has indicated on 29-03-2023, be those as they may. The question that requires consideration is, whether on these issues can the criminal law that is set into motion be permitted to be continued? Therefore, I deem it appropriate to notice the offences alleged against the petitioners, they are Sections 406, 420, 417 of the IPC. Section 406 of the IPC deals with criminal breach of trust, ingredients of which are found in Section 405 of the IPC and it reads as follows:

*"405. **Criminal breach of trust.**—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

*Explanation 1 — A person, being an employer 3 of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's*

*contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.*

*Explanation 2.— A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."*

Section 405 of the IPC mandates that whoever entrusted with the property, dishonestly misappropriates or converts it to his own use, would become punishable under Section 406 of the IPC for criminal breach of trust. The other allegation is cheating under Section 420 of the IPC. To drive home the offence of cheating under Section 420 of the IPC, the ingredients of Section 415 of the IPC will have to be satisfied. Section 415 of the IPC reads 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."*

Whoever by deceiving any person fraudulently or dishonestly induces the person to deliver any property to the accused, the victim is said to have cheated. Therefore, the soul of the provision is dishonest intention from the inception of the transaction.

13. Beyond Sections 406 and 420 of the IPC, what is alleged is Section 417 of the IPC as well. Section 417 deals with punishment for cheating. Therefore, it need not be separately dealt with, as the ingredients of Section 415 of the IPC are necessary to be present even in an offence alleged under Section 417 of the IPC. Section 415 is the definition and not the offence, therefore, it is wrongly laid in the crime.

14. The complaint is as extracted hereinabove. The allegation is that the petitioners are not adhering to grant of an undivided

share in the property in terms of the agreement. Wherefrom criminal breach of trust or cheating would emerge is ununderstandable. The complainant is also a homebuyer like every other homebuyer. All other homebuyers have got their properties registered on execution of the sale deed. If the execution of the sale deed is not accepted by the complainant, it cannot mean that it would become a criminal breach of trust or cheating, as the case would be, as there is no dishonest intention right from the inception of the transaction by the petitioners.

15. The Apex Court, in plethora of judgments, has considered the aspect of breach of contract and has clearly held that a criminal law cannot be set into motion on mere breach of contract. The Apex Court in the case of **SUSHIL SETHI v. STATE OF ARUNACHAL PRADESH**<sup>1</sup> holds as follows:-

**"8.1. As observed hereinabove, the charge-sheet has been filed against the appellants for the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR and/or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract**

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<sup>1</sup> (2020) 3 SCC 240

***between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning—1996 onwards. If the intention of the company/appellants was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out.”***

*(Emphasis supplied)*

Later, the Apex Court in the case of **MITESH KUMAR J.SHA**

**V. STATE OF KARNATAKA<sup>2</sup>** holds as follows:

*"28. In the instant case, the complaint levelled against the Appellants herein is one which involves commission of offences of criminal breach of trust and cheating. While a criminal breach of trust as postulated under section 405 of the Penal Code, 1860, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand as an offence defined under section 415 of the Penal Code, 1860, involves an ingredient of having a dishonest or fraudulent intention which is aimed at*

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<sup>2</sup> 2021 SCC OnLine SC 976

*inducing the other party to deliver any property to a specific person. Both the sections clearly prescribed 'dishonest intention', as a pre-condition for even prima facie establishing the commission of said offences. Thus, in order to assess the relevant contentions made by the parties herein, the question whether actions of the Appellants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny.*

**29. Coming to the facts of the case at hands, the contested contention between the parties is that the builder company had sold four excess flats beyond its share, in terms of the JDA and supplementary agreement entered into between the parties. Respondent No. 2 contends that builder company which was entitled to sell only 9 flats in its favour, has instead executed sale deed for 13 flats in total. Thus, the company simply could not have sold the flats beyond 9 flats for which it was authorized and resultantly cannot evade criminal liability on a mere premise that a civil dispute is already pending between the parties.**

30. The Appellants on the other hand contend that in terms of a subsequent MoU dated 19.02.15, it was mutually agreed between the parties, that partial payment for a loan amount borrowed by Respondent No. 2 from Religare Finvest Ltd., would be paid out from the sale proceeds of the said development project undertaken by both the parties. Pursuant to this MoU, the Appellants had agreed to get an NOC for 15 flats by making payment of Rs. 40,00,000/- for each flat.

31. The key contention, and also the central point of dispute, made by the Appellants is that, it was specifically agreed between the parties that the Appellants would be entitled to sell additional flats beyond their share, as adjustments for payment made to Religare Finvest Ltd. on behalf of Respondent No. 2. It is further contended that Respondent No. 2 had also agreed to execute a ratification deed to the JDA and GPA eventually, which would have formally authorised the Appellants to sell additional apartments.

.... ....

Whether sale of excess flats even if made amounts to a mere breach of contract?

39. *This Court in the case of Hridaya Ranjan Prasad Verma v. State of Bihar*<sup>6</sup>, has observed:—

**"15. ....that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise..."**

*(Emphasis supplied)*

The Apex Court in the case of **VIJAY KUMAR GHAI v. STATE OF WEST BENGAL**<sup>3</sup> has held as follows:

**"46. This Court in G. Sagar Suri v. State of UP**<sup>21</sup> **observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.**

**47. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corporation (Supra) noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that:—**

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<sup>3</sup>(2022) SCC Online SC 344



**"13. ...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."**

**48. At the outset, Respondent No. 2/Complainant alleged that the Appellants were responsible for the offence punishable under Section 420, 405, 406, 120B IPC. Therefore, it is also imperative to examine the ingredients of the said offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.**

49. Section 405 of IPC defines Criminal Breach of Trust which reads as under:—

*"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

50. The essential ingredients of the offense of criminal breach of trust are:—

(1) The accused must be entrusted with the property or with dominion over it,

(2) The person so entrusted must use that property, or;

(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.

**51. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, 'in any manner entrusted with property'. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of 'trust'. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.**

52. The definition in the section does not restrict the property to movables or immoveable alone. This Court in *R K Dalmia v. Delhi Administration*<sup>22</sup> held that the word 'property' is used in the Code in a much wider sense than the expression 'moveable property'. There is no good reason to restrict the meaning of the word 'property' to moveable property only when it is used without any qualification in Section 405.

53. In *Sudhir Shantilal Mehta v. CBI*<sup>23</sup> it was observed that the act of criminal breach of trust would, *Inter alia* mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

**54. Section 415 of IPC define cheating which reads as under:—**

**"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"."**

55. *The essential ingredients of the offense of cheating are:*

1. *Deception of any person*

2. (a) *Fraudulently or dishonestly inducing that person-*

(i) *to deliver any property to any person : or*

(ii) *to consent that any person shall retain any property; or*

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

56. *A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.*

57. *Section 420 IPC defines cheating and dishonestly inducing delivery of property which reads as under:—*

*"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."*

58. *Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement.*

*Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.*

**59. To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:—**

**1. The representation made by the person was false**

**2. The accused had prior knowledge that the representation he made was false.**

**3. The accused made false representation with dishonest intention in order to deceive the person to whom it was made.**

**4. The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.**

... ..

62. *There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this court in Hridaya Ranjan Prasad Verma v. State of Bihar<sup>26</sup>, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by the Respondent No. 2 does not disclose dishonest or fraudulent intention of the appellants.*

63. *In Vesa Holdings Pvt. Ltd. v. State of Kerala<sup>27</sup>, this Court made the following observation:—*

*"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the*

*allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any inception on behalf of an accused person to cheat which is a condition precedent for an offence u/s 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the courts. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 Cr.P.C to quash the proceedings."*

**64. Having gone through the complaint/FIR and even the chargesheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 405 & 420 Penal Code, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420 IPC can be said to have been made out. In the instant case, there is no material to indicate that Appellants had any malafide intention against the Respondent which is clearly deductible from the MOU dated 20.08.2009 arrived between the parties.**

... ..

**72. The order of the High Court is seriously flawed due to the fact that in its interim order dated 24.03.2017, it was observed that the contentions put forth by the Appellant vis-à-vis two complaints being filed on the same cause of action at different places but the impugned order overlooks the said aspect and there was no finding on that issue. At the same time, in order to attract the ingredients of Section of 406 and 420 IPC it is imperative on the part of the complainant to prima facie establish that there was an intention on part of the petitioner**

***and/or others to cheat and/or to defraud the complainant right from the inception. Furthermore it has to be prima facie established that due to such alleged act of cheating the complainant (Respondent No. 2 herein) had suffered a wrongful loss and the same had resulted in wrongful gain for the accused (appellant herein). In absence of these elements, no proceeding is permissible in the eyes of law with regard to the commission of the offence punishable u/s 420 IPC. It is apparent that the complaint was lodged at a very belated stage (as the entire transaction took place from January 2008 to August 2009, yet the complaint has been filed in March 2013 i.e., after a delay of almost 4 years) with the objective of causing harassment to the petitioner and is bereft of any truth whatsoever."***

*(Emphasis supplied)*

The Apex Court in the case of **VIJAY KUMAR GHAI** (*supra*) after considering the entire spectrum of law with regard to inter-play between breach of an agreement and criminal breach of trust or cheating and holds that breach of an agreement or recovery of money on such breach of agreement, the criminal law cannot be set into motion, as it would be giving predominantly civil proceeding, a colour of crime. Subsequent to the aforesaid judgment, the Apex Court in the case of **SARABJIT KAUR V. STATE OF PUNJAB**<sup>4</sup> has held as follows:

**"8.** *On the material placed on record by the parties, it is evident that an agreement to sell was executed by the appellant in favour of the wife of Respondent 2, namely, Sarabjit Kaur for*

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<sup>4</sup> **2023 SCC Online SC 210**

*sale of plot measuring 1 (kanal). The agreement to sell specifically mentions the fact that the appellant/the vendor gets entitled to the property on the basis of the agreement to sell executed in her favour by Malkit Kaur on 27-5-2013. The last date fixed for registration of sale deed was 25-6-2014 which was extended to 24-12-2014. There is nothing placed on record by the complainant or the State to show that besides filing of the criminal complaint, Respondent 2 had initiated any civil proceedings for execution of sale deed on the basis of agreement to sell or in the alternative return of the earnest money.*

**9.** *A perusal of the first complaint made by Respondent 2 on 30-9-2015 shows that the prayer was made for return of the amount paid by him with no allegation of cheating. It was filed only against Manmohan Singh and Ranjit Singh, the property dealers. Reference in the aforesaid complaint was made to the agreement to sell executed between the parties. In addition, there was a reference to two other agreements to sell executed in total. A prayer was made for getting an amount of Rs 29,39,500 refunded from the property dealers. Though, in the aforesaid complaint reference was made to the agreement to sell in question, however there was no complaint made against the appellant. The aforesaid complaint was investigated by the Economic Offences Wing and a report was submitted to the Senior Superintendent of Police on 22-3-2016. A report was submitted on the basis of which the legal opinion was sought from the District Attorney who opined that no criminal offence was made out and the complainant shall be at liberty to invoke jurisdiction of the civil court. The aforesaid opinion was accepted by the Senior Superintendent of Police, Ludhiana (Rural) on 18-5-2016.*

**10.** *Thereafter, Darshan Singh (Respondent 2) made another complaint to DIG, Ludhiana on 5-10-2016 which again was enquired into and a finding that earlier identical complaint was filed as no criminal offence was made out and the second complaint was consigned to record. In the second complaint, there was no reference made to the earlier complaint filed by Darshan Singh.*

**11.** *Still not satisfied as the result of the earlier complaint was not to the liking of Respondent 2. He filed another complaint on 23-1-2017. Thereafter, another complaint was filed by Respondent 2 on 15-6-2017 on the basis thereof FIR in question was registered. On the facts of the case in hand, it is evident that the effort of Respondent 2 was merely to put pressure on the appellant while involving her in a criminal case to get his money back whereas there is nothing pleaded that Respondent 2 that he was ever ready and willing to get the sale deed registered. There was no effort made by Respondent 2 or the vendee in the agreement to sell to initiate any civil proceedings to get the sale deed executed on the basis of the agreement to sell. In fact, the last date fixed for execution of the sale deed even after extension was 24-12-2014.*

**12.** *There is nothing on record to suggest that any notice was issued by Respondent 2 or the vendee to the appellant to get the sale deed registered just either before expiry of the last date fixed for execution of sale deed or immediately thereafter. No civil proceedings were also initiated rather Respondent 2 proceeded only by filing complaints with the police two of which were earlier filed. Had there been any civil proceedings initiated, the question of readiness and willingness of the vendee is also an aspect to be examined by the court.*

**13.** *A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal*



*courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court."*

The Apex Court again in the case of **R.NAGENDER YADAV V.**

**STATE OF TELANGANA**<sup>5</sup> has held as follows:

*"16. At this juncture and more particularly in the peculiar facts and circumstances of the case, it will not be proper to permit the criminal prosecution to proceed further on the allegation of the sale deed being forged. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper having regard to what has been highlighted by us to permit the complainant to prosecute the appellant on this allegation when the validity of the sale deed is being tested before the civil court.*

*17. At this stage, we quote the following relevant part of the disputed sale deed dated 29-12-2010:*

*"AND WHEREAS now the above named Vendor herein has offered to sell the abovesaid property to the Vendees for a total sale consideration of Rs 24,08,000 (Rupees twenty-four lakhs eight thousand only), and the Vendee hereby agreed to purchase the same for the said sale consideration, and which is more fully described in the schedule and plan annexed hereto and marked in red colour and hereinafter for the sake of brevity referred to as the "SCHEDULE PROPERTY/SAID PROPERTY"*

*NOW THIS DEED OF SALE WITNESSETH AS UNDER:*

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<sup>5</sup> (2023)2 SCC 195

*The Vendor hereby declares, agrees and acknowledges that he has received the entire sale consideration of Rs 24,08,000 (Rupees twenty-four lakhs eight thousand only), from the Vendee in the manner mentioned hereunder:*

*(1) Rs 24,08,000 (Rupees twenty-four lakhs eight thousand only) financed by Axis Bank Ltd.*

*And the receipt of which sum the Vendor do hereby admit and acknowledge.”*

*(emphasis supplied)*

**18.** *It appears prima facie from the aforesaid that the purchaser (Vendee) might have obtained finance from Axis Bank Ltd. for the purpose of purchasing the plot in question. The police should have investigated whether the amount of Rs 24,08,000 (Rupees twenty-four lakhs eight thousand only) was paid by Axis Bank Ltd. directly to the original complainant (Respondent 2 herein). There is no clarity even in this regard. This aspect shall also be looked into while deciding the civil suit between the parties.*

**19.** *While exercising its jurisdiction under Section 482CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.*

**20.** *We therefore allow this appeal, set aside the impugned order [R. Nagender Yadav v. State of Telangana, 2021 SCC OnLine TS 3598] of the High Court and quash the criminal proceedings of Criminal Complaint No. 1029 of 2015. We clarify that this will not come in the way of instituting*

*appropriate proceedings in future in case the civil court comes to the conclusion that the disputed sale deed dated 29-12-2010 is forged. We refrain ourselves from expressing any opinion as regards the genuineness or otherwise of the sale deed in question as this question is wide open before the civil court. The civil court shall decide the civil suit pending between the parties on its own merits and on the basis of the evidence that may be led by both the sides. It shall be open to the civil court to take the opinion of the handwritings expert as regards the signature of the complainant on the disputed sale deed.*

**21.** *We clarify that we have passed the aforesaid order in the facts and circumstances of the present case and the same shall not be cited as a precedent."*

A little earlier to the aforesaid judgment, the Apex Court in the case of **RAMESH CHANDRA GUPTA V. STATE OF U.P.**<sup>6</sup> has held as follows:

**"15.** *This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar v. State of Uttar Pradesh decided on 31<sup>st</sup> March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

*"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power 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.*

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy, (1977) 2*

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<sup>6</sup> **(2022) SCC Online SC 1634**

*SCC 699 held that the High Court is entitled to quash a proceeding 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. In para 7 of the judgment, the following has been stated:*

*'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding 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. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'*

*41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of*

*Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 which is to the following effect:*

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

*Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."*

**16.** *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in State of Haryana v. Bhajan Lal<sup>2</sup> as under:*

**"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.*

*(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 private and personal grudge."*

**17.** *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra<sup>3</sup>.*

**18.** *The present case is fully covered by categories (1) and (3), as enumerated in State of Haryana v. Bhajan*

*Lal (supra)*. A bare perusal of the complaint on the basis of which FIR came to be registered at the instance of the de-facto complainant/second respondent does not disclose any act of the present appellants or their participation in the commission of crime. They are neither concerned with the registered sale deed dated 4<sup>th</sup> May, 1977 nor the later sale deed executed in favour of the de-facto complainant by Shravan Kumar Gupta dated 22<sup>nd</sup> December, 2018, nor in possession of the subject property nor are parties to the civil proceedings and it is not the case of the complainant that either the appellants have played any active/passive role either in scribing the document or are facilitators or witness to the document in reference to which the complaint has been made for cheating and committing forgery or have played any role in delivery of possession of the subject property in question.

**19.** What it appears is that the de-facto complainant has implicated the present appellants being members of the family to put pressure for obtaining possession of the subject property and to settle the civil dispute which is pending between Vinod Kumar Gupta, Shravan Kumar Gupta and the de-facto complainant in Original Suit No. 91 of 2015.

**20.** We are of the view that in the present facts and circumstances, the High Court ought to have exercised its power under Section 482 CrPC for quashing of the criminal complaint and proceedings in consequence thereof qua the present appellants.

**21.** Before parting with the order, we further like to observe that the observations which has been made are restricted to the three appellants, namely, Ramesh Chandra Gupta, Ashish Gupta and Rinky Sarna before this Court and the learned trial Judge may not be influenced by the observations made above and may proceed with the Criminal Case No. 2200 of 2019 qua the other accused persons independently on its own merits in accordance with law.

**22.** *Needless to say that the Court which is seized of the Original Suit No. 91 of 2015 may decide the same independently on its own merits in accordance with law.*

**23.** *In the result, the appeals are allowed. The judgment impugned of the High Court dated 3<sup>rd</sup> February, 2021 is set aside and FIR numbered as Criminal Case No. 2200 of 2019 registered at PS Navabad, District Jhansi and all the consequential proceedings qua the present appellants stand quashed."*

16. On a coalesce of the afore-quoted law elucidated by the Apex Court what would unmistakably emerge is, that breach of contract may have several hues and forms. Every breach of contract, unless it is shrouded with dishonest intention at the outset, cannot become an offence under Sections 406 or 420 of the IPC. If the facts obtaining in the case at hand are considered on the bedrock of the elucidation by the Apex Court in the afore-quoted judgments, what would unmistakably emerge is, the criminal law that is set in motion on the breach of contract is unsustainable, more so, in the light of the fact that the complainant has knocked at the doors of every *fora* or the remedy for non-delivery of flats within the stipulated time could be agitated before any other *fora* specifically created for the purpose. Criminal law



cannot be set into motion on the said delay in delivery of flats, as those facts arise out of agreements entered into between the parties, at best, it can be breach of agreement. If it is breach of agreement, it cannot be cheating or criminal breach of trust. Therefore, the FIR in Crime No.163 of 2020 is still in the stage of investigation. I do not find any warrant to permit the investigation to continue, as there is no investigation conducted in the case at hand in the light of the interim order granted by this Court.

17. The complainant is at liberty to move any *fora*, on the grievance that he is seeking to vent out in terms of the agreement. The findings or observations made herein will not come in the way of the complainant knocking at the doors of any other *fora*, or if he has already knocked at any other *fora*, the observations in the course of the order will not influence or bind such proceedings.

18. In the light of the preceding analysis, the crime in Crime No.163 of 2020 is rendered unsustainable and its unsustainability would lead to its obliteration. If it is to be obliterated, whether the proceedings instituted by the Enforcement Directorate in

W.P.No.7855 of 2023 for alleged violation of the Prevention of Money Laundering Act ('PMLA' for short), could be permitted to be continued or not, also requires an answer. It is trite law that the offence under the PMLA cannot independently stand. It has to be foundationed on a crime being registered under any penal law. In the case at hand, the penal law is the registration of the impugned crime in Crime No.163 of 2020. It is based upon the said crime, the ECIR was registered and attachments orders have been passed. The ECIR would not stand as the predicate offence is now held to be unsustainable.

19. This Court, while disposing the petition between the parties i.e., the petitioners and the Enforcement Directorate in W.P.No.20713 of 2022 had observed as follows:

*"20. In the result, I pass the following:*

**ORDER**

*(i) The Writ Petition is allowed in part.*

*(ii) The Enforcement Directorate is restrained from proceeding further in ECIR No.ECIR/BGZO/31/ 2022 registered on 11-08-2002, the impugned proceeding, till disposal of Writ Petition No.10258 of 2020 and Crime No.163 of 2020.*

*(iii) As a result of the aforesaid order (clause (ii)), grant of provisional attachment order dated 11-08-2022 shall be kept in abeyance till disposal of Writ Petition No.10258 of 2020 and Crime No.163 of 2020, which would mean the properties subject to attachment cannot be released in favour of the petitioners nor can be confirmed or sold by the Enforcement Directorate.*

*(iv) It is made clear that no particular order from the Court hearing Writ Petition No.10258 of 2020 and Crime No.163 of 2020 is required, to continue these proceedings. Once those proceedings are permitted to continue, the continuation of impugned proceedings then becomes axiomatic.”*

This Court while disposing the petition had clearly observed that in the event the interim order in the subject petition would get vacated, the PMLA proceedings would automatically continue. The interim order is not getting vacated, but the crime itself is held to be unsustainable. If the crime is held to be unsustainable and results in quashment of the proceedings, what would happen to the proceedings under the PMLA again need not detain this Court for long or delve deep into the matter. The Apex Court in the case of **VIJAY MADANLAL CHOUDHARY v. UNION OF INDIA**<sup>7</sup> has held as follows:

**"CONCLUSION**

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<sup>7</sup> 2022 SCC OnLine SC 929

**467.** *In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—*

- (i)** *The question as to whether some of the amendments to the Prevention of Money-laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of Rojer Mathew.*
- (ii)** *The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.*
- (iii)** *The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.*
- (iv)** *The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.*
- (v)(a)** *Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the*

*expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.*

- (b) *Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.*
- (c) *The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.*
- (d) ***The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.***
- (vi) ***Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also***

***ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.***

- (vii)*** *The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove.*
- (viii)*** *The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central Government may take necessary corrective steps to obviate confusion caused in that regard.*
- (ix)*** *The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.*
- (x)*** *The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.*
- (xi)*** *Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.*
- (xii)(a)*** *The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read*

*down to mean that the Special Court may exercise judicial discretion on case-to-case basis.*

- (b)** *We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment.*
- (xiii)(a)** *The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.*
- (b)** *We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country.*
- (c)** *The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.*
- (d)** *As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.*

- (xiv)** *The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.*
- (xv)(a)** *The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.*
- (b)** *The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.*
- (xvi)** *Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.*
- (xvii)** *The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder.*
- (xviii)(a)** *In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.*
- (b)** *Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.*
- (c)** *However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by*



*the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.*

- (xix)** *Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.*
- (xx)** *The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take corrective measures in this regard expeditiously.*
- (xxi)** *The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected."*

*(Emphasis supplied)*

Clause (d) of the aforesaid conclusion the Apex Court considers Section 3 of the Act and later upholds the constitutional validity of Section 5 of the Act in terms of clause (vi) *supra*. Section 5 of the Act is what deals with the attachment of the properties. Clause (v)(d) of paragraph 467 (*supra*) establishes the link between the two. The Apex Court holds that in the event the accused in the PMLA or whose allegations are linked to any persons in the

predicate offence such accused in the predicate offence gets a clean chit on three circumstances – one by acquittal after a full blown trial; two on discharge by the competent Court and three on the proceedings being quashed by the High Court in exercise of its jurisdiction under Section 482 of the Cr.P.C. In all these cases, there can be no offence of money laundering against the accused. The predicate offence in the case at hand is, Crime No.163 of 2020. Crime No.163 of 2020 is held to be unsustainable. If crime No.163 of 2020 is the foundation, and the proceedings under the PMLA are the super structure, the foundation having been obliterated, the super structure would tumble down, so to say, that the proceedings under the PMLA will vanish owing to its sustenance only on the predicate offence.

20. In the light of the judgment of the Apex Court in the case of **VIJAY MADANLAL CHOUDHARY**, the obliteration of the proceedings under the PMLA becomes axiomatic the moment the predicate offence gets obliterated.

21. For the aforesaid reasons, the following:

**ORDER**

- (i) Writ Petition No.10258 of 2020 and Writ Petition No.7855 of 2023 are allowed.
  
- (ii) The impugned proceedings in Crime No.163 of 2020 and Spl.C.C.No.2874 of 2022 stands quashed.

Pending applications, if any, also stand disposed as a consequence.

**Sd/-  
JUDGE**

bkp  
CT:SS