

(2022) 11 KL CK 0344

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petitions No. 4828 Of 2020, 1250 Of 2021

BMW India Financial Services Private Limited

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 29-11-2022

Acts Referred:

Constitution of India 1950 — Article 226

Code of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Indian Penal Code, 1860 — Section 22, 34, 405, 406, 409, 145, 420, 463, 464, 465, 467, 470, 471

Citation : (2022) 11 KL CK 0344

Hon'ble Judges : Dr. Kauser Edappagath, J

Bench : Single Bench

Advocate : S.Sreekumar, P.Martin Jose, Thomas P.Kuruvilla, P.Prijith, Harikrishnan S., Sruthy N Bhat, V.Vinay, K.Anand, P.M.Rafiq, M.Revikrishnan, Ajeesh K.Sasi, Rahul Sunil, Sruthy K.K, Mitha Sudhindran, P.Vijaya Bhanu, P.Narayanan, Sajju.S., Diljit Singh Ahluwalia

Final Decision : Allowed

Judgement

Dr. Kauser Edappagath, J

1. Both these Crl.M.Cs have been filed to quash Annexure A FIR in Crime No.51/2020 of Vellayil Police Station u/s 482 of Cr.P.C.
2. The petitioners in Crl. M.C.No.1250/2021 are the accused Nos.1 to 4, 6, 7, 9 and 12. The petitioners in Crl. M.C. No. 4828/2020 are the accused Nos.10 and 13. The 2nd respondent in both Crl.M.Cs is the de facto complainant.
3. The offences alleged are punishable under Sections 406, 420, 465, and 471 r/w 34 of IPC.
4. Annexure A FIR was registered based on Annexure C complaint given by the 2nd respondent to the State Police Chief.
5. The 4th accused, BMW India Private Limited, a company registered under the

Indian Companies Act, is the manufacturer of vehicles under the brand name BMW. The 1st accused is the Global Chairman of the BMW group. The 2nd accused is the General Director of the 4th accused company in charge of Asia-Pacific and Australian countries. The 3rd accused was the previous Managing Director of the 4th accused company and is currently the Chairman of Indian Operations. The 5th accused is the present President and CEO of the 4th accused company. The 6th accused is the acting president of the 4th accused company, who was the president and CEO during the year 2018-2019. The 7th accused is the Director who deals with the dealers, including their appointment. The 8th accused was the Managing Director and CEO of BMW India Financial Services Pvt. Ltd, a financial institution of the 4th accused company. The 9th accused is the Company Secretary and Legal Administration of the 4th accused company. The 10th accused is the Head-Risk and Controlling, BMW India Financial Services Pvt. Ltd. The 12th accused was the Former President of the 4th accused company. The 13th accused is BMW India Financial Services Pvt. Ltd.

6. M/s Platino Classic Motors (India) Pvt. Ltd, a company incorporated under the Indian Companies Act, 1956 (for short, M/s Platino), was appointed as the dealer of the 4th accused company for the sales and service of the vehicles manufactured by it. The 2nd respondent is the Managing Director of M/s Platino. A dealership agreement was executed between M/s Platino and the 4th accused. Annexure D is a copy of the dealership agreement. The said agreement was extended periodically from the year 2007 till the end of 2018. The dealership was started without any term loans. A Deferred Payment Agreement (DPA) was executed between M/s Platino, the 4th accused, and the 13th accused. As per the DPA, a credit line was given to M/s Platino by the 13th accused, against which the dealer has to purchase BMW vehicles from the 4th accused for sales. The agreement stipulates that M/s Platino has to pay interest to the 13th accused for the amount utilized. The above-mentioned credit line to M/s Platino was agreed to be determined from time to time based on the estimated sales of the vehicles manufactured by the 4th accused and based on the risk classification determined by the 4th accused and 13th accused periodically.

7. The 2nd respondent in Annexure C complaint alleged that as per the terms of the DPA, before increasing the credit line, the confirmation, acceptance and acknowledgement are to be obtained from M/s Platino, but the 4th accused company kept on changing the credit line based on the sales achievement without its request. It is further alleged that even though this was objected to by the 2nd respondent at several meetings with various representatives of the 4th accused, there was no change in the attitude of the 4th accused, including the accused Nos.3 and 5 to 11. Consequently, a huge number of vehicles were unnecessarily invoiced to M/s Platino against the allocated credit line, which is not intended by the DPA. It is also alleged that the dumping of vehicles by misutilising and misappropriating the credit line limits mentioned in the DPA resulted in unwarranted pressure in the sales of vehicles besides causing unnecessary accrual of bank interest on M/s Platino due to tough competition in

the automobile industry.

8. The 2nd respondent in Annexure C complaint further alleged that contrary to the words of assurance and promises to M/s Platino at the time of appointing it as a dealer, the 4th accused appointed one more dealer by the name 'EVM' in Kerala and allowed it to operate all over Kerala. According to the 2nd respondent, it was purposefully directed and done to deplete the development of M/s Platino as there was no occasion or necessity prevailing in the industry or in the market to permit a new dealership in such a way to limit its services at a time when the market share of BMW was very low. It is also alleged that the 4th accused supported the new dealer more to sell in the territory previously earmarked for M/s Platino, which eroded its customer base and market share. This was done fraudulently and dishonestly to restrict economic growth and diminish the development of M/s Platino in the business, it was alleged.

9. The dealership agreement between the 2nd respondent and the 4th accused expired on 31st December 2018. The 4th accused refused to renew the same mainly on the ground that M/s Platino defaulted the payment of outstanding dues to the tune of `10,95,95,573/-. The 4th accused made several requests to the 2nd respondent to clear all outstanding dues. M/s Platino inter alia raised a claim for compensation for the non-renewal of the dealership agreement. Consequent thereto, a meeting was held on 26/7/2019 at the office of the 4th accused, which was attended by the 2nd respondent and the representatives of the 4th accused. Thereafter, minutes of the meeting were forwarded to the 2nd respondent by the 4th and 6th accused by e-mail on 31/7/2019. According to the 2nd respondent, the said minutes contained certain points which were never discussed, much less agreed upon. It is alleged that the e-mail showed that the accused created false documents and electronic records with the intent to cause damage and injury to M/s Platino to support their contentions to make a claim against it. It is further alleged that though in the meeting held on 26/7/2019, the 4th accused agreed to compensate M/s Platino for the damages sustained by it, the compensation part was absent in the minutes. In the minutes, it was also agreed that a formal deed of settlement would be executed in terms of the settlement. Thereafter, a deed of settlement was entered on 4/9/2019, which is marked as Annexure AD. The 2nd respondent in Annexure C complaint alleged that the accused, Nos.4, 6, 9 in a clandestine manner, made him sign the already prepared and typed agreement fraudulently and intentionally, and he was forced to sign the agreement without going through its contents. It is further alleged that the 2nd respondent was persuaded to come to a settlement and sign the agreement on the firm belief that the accused would make arrangements to pay the compensation, which was agreed upon.

10. The 2nd respondent in Annexure C complaint further alleged that all the accused acted in furtherance of their common intention to make unlawful and illegal gain to the 4th accused company and the 13th accused by dishonest and fraudulent means and thereby cheated M/s Platino and caused huge financial loss

to it. It is further alleged that M/s Platino suffered a loss of ` 100 crores, and the accused have made an unlawful and illegal gain to that extent. Moreover, the accused have created false and fabricated documents, such as minutes of the meeting, agreement etc., with the dishonest intention of making use of the same to make unlawful gain and cause an unlawful loss to M/s Platino by making use of those fabricated documents to their advantage. It is also alleged that the accused created forged documents for the purpose of cheating M/s Platino.

11. The petitioners seek to quash Annexure C and all further proceedings pursuant to the same, mainly on the ground that no offence is made out in the averments in the complaint as it stands and the subject matter of the dispute is mainly of a civil nature.

12. I have heard Sri.S.Sreekumar, the learned Senior counsel for the petitioners, Sri.Diljit Singh Ahluwalia, the learned counsel for the 2nd respondent and Sri.S.Sajju, the learned Senior Public Prosecutor.

13. The learned senior counsel for the petitioners Sri.S.Sreekumar submitted that the allegations made in Annexure C complaint, even if taken at their face value, do not prima facie constitute any offence or make out any case against the petitioners. Reliance was placed on the decisions of the Apex Court in *Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandojirao Angre and Others* [(1988) 1 SCC 692], *State of Haryana and Others v. Bhajan Lal and Others* (1992 Supp (1) SCC 335), *Ajay Mitra v. State of Madhya Pradesh and Others* [(2003) 3 SCC 11], and of this court in *Sreekanth Sasidharan v. State of Kerala* (2022 SCC OnLine Ker. 4907). The learned senior counsel further submitted that all the allegations in Annexure C complaint are false, baseless, incorrect, afterthought, contrary to admitted records and malafide account of counterblast to wriggle out of the liability to pay admitted default amount to the 4th accused. The learned senior counsel also submitted that Annexure A FIR is nothing but an attempt to convert an issue which is purely civil and contractual in nature into a criminal case. Since Annexure A FIR is perverse and an abuse of the process of law, it is liable to be quashed, submitted the counsel. In support of the said submission, the learned counsel relied on the decision of the Apex Court in *Sharon Michael and Others v. State of Tamil Nadu and Another* [(2009) 3 SCC 375]. Per contra, Sri.Diljit Singh Ahluwalia, the learned counsel for the 2nd respondent, submitted that Annexure C complaint discloses serious allegations of criminal breach of trust, cheating and forgery against the petitioners, and it is impermissible to quash criminal proceedings under Section 482 of Cr. P.C when there are serious triable allegations in the complaint. The truthfulness and falsity of allegations are questions of fact and matters of evidence to be led at a trial and cannot be prejudged at this stage, submitted the counsel. The learned counsel relied on the following decisions of the Apex Court in support of his submission. *M.N.Ojha and Others v. Alok Kumar Srivastav and Another* [(2009) 9 SCC 682], *HMT Watches Ltd. v. M.A.Abida and Another* [(2015) 11 SCC 776] and *Bhajan Lal* (supra). The learned Public Prosecutor Sri. Sajju submitted that the

ingredients of the offences being prima facie made out, on a bare reading of Annexure C complaint, Annexure A FIR does not deserve to be quashed at this stage. The learned Public Prosecutor further submitted that the investigation is in the preliminary stage.

14. The scope and ambit of the power of the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/ investigation has been expounded by the Apex Court in a catena of decisions. In *Kurukshetra University v. State of Haryana* (1977 KHC 711), the Apex Court observed and held that inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. In *State of Karnataka v. L. Muniswamy and Others* [(1977) 2 SCC 699], considering the scope of the inherent power of quashing under Section 482, the Apex Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it concludes that ends of justice so require. It was observed that 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 and that 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. In *Madhavrao Jiwajirao Scindia* (supra), it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where in the opinion of the Court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings. In the celebrated decision *Bhajan Lal* (supra), the Apex Court considered in detail the scope of the High Court's powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, the Court identified the following cases in which FIR/complaint can be quashed:

“(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 Act concerned (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 Act concerned, 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.”

In *Ajay Mitra* (supra), the Apex Court held that where the complaint or FIR does not disclose the commission of any cognizable offence against the accused, the same would be liable to be quashed. In *Rukmini Narvekar v. Vijaya Satardekar and Others* (2009 KHC 240), it was observed that the width of the powers of the High Court under Section 482 of the Cr. P.C and under Article 226 of the Constitution of India was unlimited, and that the High Court could make such orders as may be necessary to prevent abuse of the process of any Court, or otherwise to secure the ends of justice. It was further observed that under Section 482 of the Cr.P.C, the High Court was free to consider even material that may be produced on behalf of the accused to arrive at a decision. In *M.N.Ojha* (supra), the Apex Court held that where the allegations made in the FIR or complaint are so absurd and inherently improbable, the High Court cannot refuse to exercise its jurisdiction under Section 482 of Cr.P.C. It was observed thus:

“It is true that the Court in exercise of its jurisdiction under section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending. Interference by the High Court in exercise of its jurisdiction under section 482 of Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot

refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the Complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended 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. If such power is not conceded, it may even lead to injustice'".

In HMT Watches Ltd. (supra), it was held that the defence of the accused, even though appearing plausible, cannot be considered to quash the criminal prosecution invoking inherent powers. Recently in M/s.Neeharika Infrastructure Pvt. Ltd v. State of Maharashtra (AIR 2021 SC 1918), it was held that when a prayer for quashing the FIR is made by the alleged accused, the court, when it exercises power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose the commission of a cognizable offence or not. It was further observed that the court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

15. A careful reading of the above-noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution. However, when it is convinced beyond any manner of doubt that FIR does not disclose the commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or where a criminal proceeding is manifestly attended with malafides or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance or that it is necessary to interfere to prevent abuse of the process of the Court, the High Court is entitled to quash the FIR/ investigation under the exercise of its wholesome power under Section 482 of Cr.P.C.

16. It is not in dispute that M/s Platino, of which the 2nd respondent was the Managing Director, was appointed as a dealer of the 4th accused company for the sales and service of BMW vehicles manufactured by it in the State of Kerala by executing a dealership agreement in the year 2007 which was extended periodically till 31/12/2018. It is also not in dispute that in the year 2018, the 4th accused appointed one more dealer by the name 'EVM' in Kerala in addition to M/s Platino and the dealership agreement with M/s Platino was not renewed w.e.f. 31/12/2018. Thereafter, dispute arose between M/s Platino and the 4th

accused company when the latter asked the former to clear the outstanding dues, and the former raised a counterclaim for compensation for the damages allegedly sustained by it due to abrupt non-renewal of the dealership agreement. Admittedly there was settlement talk on 26/7/2019, and the terms of the settlement were reduced into writing in an agreement dated 4/9/2019, the execution of which is, of course, under challenge. The main allegations in Annexure C complaint against the accused are summarized as follows:

(i). The accused, in furtherance of their common intention, enhanced the credit limit without the concurrence of M/s Platino and started dumping cars without any prior purchase order, thus, misusing the credit line, with M/s Platino being saddled with interests on unsold dumped cars.

(ii). The accused, contrary to the terms of the dealership agreement executed with M/s Platino, gave the dealership to a dealer named EVM, which resulted in the loss of market share of M/s Platino.

(iii). A meeting was held between the 2nd respondent and the representatives of the 4th accused on 26/7/2019 to compensate for the loss of business of M/s Platino, and thereafter a fraudulent minutes was prepared. It was sent to the 2nd respondent on 31/7/2019 by e-mail as if it were the original minutes and caused a loss of around ` 100 crores to M/s Platino.

(iv). The accused forged the signature on the document to signify acceptance of an enhanced credit line to pass the audit.

(v). The second respondent was induced to sign the agreement dated 4/9/2019 by the accused Nos. 3 and 5 to 11 on the promise that compensation for non-renewal of the dealership agreement would be paid.

17. With the above specific allegations, the 2nd respondent alleges that the accused have committed offences punishable under Sections 406, 420, 465 and 471 r/w 34 of IPC. Let me examine whether these allegations made in the complaint, read on their face, attract those offences.

18. Section 405 of IPC deals with criminal breach of trust, and Section 406 of IPC provides punishment for criminal breach of trust. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows: -

(i) A person should have been entrusted with the property or dominion over the property.

(ii) That person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and

(iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, which the person has made, touching the discharge of such trust.

19. Two distinct parts are involved in the commission of the offence of criminal breach of trust. The first part consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is the misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. A trust contemplated by Section 405 would arise only when there is the entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section 405.

20. A reading of the complaint would show that to facilitate the smooth business operation of its dealers; the 4th accused provided its authorized dealerships with an option to defer the payment on the cars purchased from them in terms of a Deferred Payment Facility Agreement which provided certain credit period in accordance with the terms contained therein. A Deferred Payment Agreement was executed between M/s Platino and the 4th and 13th accused on 24/9/2010, as evidenced by Annexure E. As per Annexure E, the 4th accused agreed to grant, and M/s Platino agreed to avail of the revolving credit line under the deferred payment facility to enable M/s Platino to purchase vehicles from the 4th accused up to the maximum amount of credit line. It was agreed that M/s Platino may purchase vehicles under the deferred payment facility in excess of the credit line subject to the condition that all amounts exceeding the credit line may be called upon by the 4th accused to be paid at any time. It was further agreed that M/s Platino has to pay interest to the 13th accused for the amount utilized. The above-mentioned credit line to M/s Platino was agreed to be determined from time to time based on the estimated sales of the vehicles manufactured by the 4th accused and based on the risk classification determined by the 4th accused and 13th accused periodically. In Annexure C complaint, it is alleged that the 4th accused was entrusted with a credit limit and had dominion over it and the 4th accused, in furtherance of the common intention of the accused, misappropriated and misused it to their own use dishonestly enhancing it in violation of the procedure wherein such enhancement was to be accepted and acknowledged by the dealer and consequently a huge number of vehicles were invoiced to M/s Platino against the allocated credit line. This is the allegation raised in the complaint to constitute the offence under S.406 of IPC.

21. As stated already, the condition necessary for an act to constitute an offence under Section 405 of IPC is that the accused must be entrusted with some property or dominion over property and that there must be dishonest misappropriation, conversion, or use of that property. The case of the complainant is that the 4th accused was entrusted with the credit limit, and they have misappropriated and misutilised it for their own use. The first and foremost question is whether credit limit is a property. Section 22 of IPC defines 'movable property'. According to the section, the word 'movable property' is intended to include corporeal property of every description except land and things attached to the earth or permanently fastened to anything which is attached to the earth. The definition is of the expression 'movable property and not of 'property'. It is

thus clear that the word 'property' used in Section 405 is wider than the expression 'movable property' defined in Section 22. It takes in all corporeal property, movable as well as immovable, but not non-corporeal or intangible. The Apex Court in *R.K. Dalmia v. Delhi Administration* (AIR 1962 SC 1821) considered the meaning of the word 'property' used in Section 405 and Section 409 of IPC. It was observed that the word 'property' is used in the Penal Code in a much wider sense than the expression 'movable property'. The court held that whether the offence defined in a particular section of the Indian Penal Code can be committed in respect of any particular kind of property will depend not on the interpretation of the word 'property' but on the fact whether that particular kind of property can be subject to the acts covered by that section. The Bombay High Court in *Sunilkumar and Others v. State of Maharashtra* (2009 KHC 5617) has held that non-corporeal property cannot be treated as 'property' for the purpose of Section 405 or Section 420 of IPC. It was further held that it would have to be either movable or immovable property or property which is transferable, consumable, or capable of being spent. The credit limit is something agreed upon between the dealer and the manufacturer of the car as per the agreement, which is intangible and non-transferable. It cannot be treated as a 'property' that falls within the ambit of Section 405 of IPC. That apart, the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused, or the beneficial interest in or ownership of it must be in the other person, and the offender should hold such property in trust for such other person or for his benefit (See *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, AIR 1996 SC 2452). Here, the 2nd respondent has absolutely no case that the alleged 'property' in question, i.e., the credit limit belongs to some person other than the accused, and they were entrusted with the same in trust for such other person or for his benefit. The only allegation in the complaint is that the accused increased the credit limit without the concurrence of the 2nd respondent. Therefore, there is no entrustment of the property either. Moreover, there is no clause in Annexure E that before increasing the credit line, the confirmation and concurrence of M/s Platino must be obtained. Till the filing of Annexure C complaint, the 2nd respondent did not raise any objection that the credit line was increased by the 4th accused unilaterally without the confirmation, acceptance, or acknowledgement of M/s Platino and cars were dumped consequent to the unilateral increase of the credit line. Even in the meeting held on 26/7/2019, such a grievance was not raised at all. It is seen from the records that from 2010 to 2017, the credit line was enhanced periodically without any objection whatsoever. The 2nd respondent has no case that the cars allegedly dumped consequent to the unilateral increase of credit line was not sold. Thus, the uncontroverted allegations made in Annexure C complaint do not disclose the ingredients of the offence u/s 406 of IPC against the accused.

22. Next is the offence of cheating. The allegations in Annexure C complaint regarding the offence of cheating are as follows:

(i) The accused had fraudulent and dishonest intention at the inception when they enhanced the credit limit without consent. Thereafter, they dumped cars available in their stock without any prior purchase orders. The accused compelled the 2nd respondent to retain dumped cars under threat of non-extension of the dealership. Adopting this modus operandi, the accused, through the 13th accused, made an unlawful gain of lakhs on accrual of interest on unsold inventory.

(ii) The copy of the final agreement was shown on 4/9/2019 on the way to the airport in the presence of the 6th, 9th and 10th accused, with no opportunity to go through it. The 2nd respondent signed it on the false belief that compensation would be paid subsequent to this and that the accused would stand by their promises made personally also. This was done fraudulently and dishonestly with no intention of settling.

(iii) The 4th accused with dishonest intention of cheating M/s Platino, contrary to the words of assurance and promise made at the time of appointing them as a dealer, appointed one more dealer by the name 'EVM' in Kerala and allowed them also to operate all over Kerala and further 4th accused refused to renew the dealership agreement with M/s Platino from 31st December 2018.

(iv) The minutes dated 26/7/2019, as well as the agreement dated 4/9/2019, were prepared by the accused fraudulently for the purpose of obtaining unlawful gain for them and causing wrongful loss to M/s Platino. The said minutes is a certificate and is considered a legal statement, and the accused used the same for the purpose of claiming money from M/s Platino. The minutes would show that the accused, Nos.2 to 5, have dishonestly concealed what actually transpired and decided during the meeting with the sole intention of cheating M/s Platino.

23. The essential ingredients of the offence of 'cheating' as described under Section 415 of IPC are as follows:

(i) The deception of a person either by making a false or misleading representation or by dishonest concealment, or by any other act or omission.

(ii) The fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) Such act or omission and causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

24. To constitute an offence under Section 420, there should not only be cheating but, as a consequence of such cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security or anything signed or sealed and which is capable of being converted into a valuable

security.

25. It is not the case of the 2nd respondent that any of the accused offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce them to do or omit to do anything which he would not do or omit if he were not so deceived. No action on the part of the accused has been alleged that discloses the intention to induce the delivery of any property to them by the 2nd respondent. There is no case for the 2nd respondent that the accused induced M/s Platino to enhance the credit limit. On the contrary, his case is that the accused enhanced the credit limit unilaterally without the concurrence of M/s Platino and dumped cars without any purchase order. There is also no case that there was any inducement in the matter of giving dealership to the new dealer 'EVM'. The dealership agreement does not prohibit the appointment of another dealer. Even though it is alleged in Annexure C complaint that the 2nd respondent was forced to sign the Annexure AD agreement by the accused Nos. 3 and 5 to 11 on the promise that compensation for non-renewal of the dealership agreement would be paid, in Annexure AE mail dated 30/10/2009, the 2nd respondent unequivocally admitted the execution of the Annexure AD agreement and agreed to honour its terms, reserving the right of M/s Platino to claim for compensation at the appropriate legal forum. So far as the minutes dated 26/7/2019 is concerned, the only case of the 2nd respondent is that the minutes did not contain the compensation agreed to be paid by the accused, and it contained certain points which were never discussed and agreed upon in the meeting. There is no case that the accused induced M/s Platino to make or alter the contents of the minutes. There is, thus, nothing on the face of the Annexure C complaint to suggest that the accused dishonestly induced the 2nd respondent to deliver any property to them. Hence, no offence under Section 420 of IPC is made out.

26. Now, let me consider whether averments in the complaint make out the ingredients of the offence punishable under Sections 465 and 471 of IPC. Section 465 provides that whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, with fine, or with both. Section 471 provides that, whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. The offence of forgery is defined in Sections 463 and 464 of IPC. Under Section 463, the making of a false document with any of the intents therein mentioned is forgery and Section 464 sets forth when a person is said to make a false document within the meaning of the word. Section 470 defines a 'forged document' as a false document made by forgery. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document or false electronic record or part thereof. An analysis of Section 464 of IPC shows that a person is said to have made a false document if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered with a document; or

(iii) he obtained a document by practising deception, or from a person not in control of his senses.

27. The allegations regarding forgery in Annexure C complaint are twofold:

(i) In the meeting held on 26/7/2019 attended by the 2nd respondent and the representative of the 4th accused, though the 4th and 6th accused agreed to compensate M/s Platino for the damages sustained by them, the minutes of the meeting prepared and forwarded by the 4th and 6th accused to the 2nd respondent by way of e-mail did not contain such a clause. On the other hand, it contained certain points which were never discussed or agreed upon by the parties. It is alleged that the accused have created such false minutes with the intention to cause damage and injury to M/s Platino, and it amounts to forgery.

(ii) As per policy of BMW, the credit limit, whenever enhanced or updated, had to be acknowledged by the dealer. The 2nd respondent has never signed a letter of enhancement of credit limit. Hence, he suspects that accused might have forged his signature in the letter of enhancement of credit limit and fraudulently and dishonestly used it as genuine.

28. As stated already, the pre-requisite for an offence under Sections 467 and 471 is forgery, and the pre-requisite for forgery is making a false document or false electronic record or part thereof. If what is executed is not a false document, there is no forgery. The minutes dated 26/7/2019, recorded and forwarded by the accused to the 2nd respondent, obviously do not fall under any of these three categories of false documents mentioned above. The only case of the 2nd respondent is that the minutes did not contain the compensation agreed to be paid by the accused, and it contained certain points which were never discussed and agreed upon in the meeting. Thus, it cannot be said that the minutes forwarded by the accused to the complainant is a false document. As it is not a false document, there cannot be any forgery. If there is no forgery, neither Section 467 nor Section 471 of the Code are attracted.

29. In so far as the allegation regarding forgery of the signature of the 2nd respondent in the letter of enhancement of credit limit is concerned, it is so vague, not at all specific and, thus, insufficient to attract the ingredients of either Section 467 or 471. The only allegation in Annexure C complaint is that "the complainant reasonably suspects that his signature might have been forged by the accused since such a document would have had to stand up to scrutiny and audit of BMW Germany". The complainant/2nd respondent only entertains a doubt. There is no case that forgery has been committed. The kind or nature of the document in which the signature was alleged to be forged was not specified. That apart, prior to the Annexure C complaint, there was absolutely no such allegation. In the subsequent documents admittedly executed by the 2nd respondent also, there were no such allegations. In the Annexure AD deed of settlement or in the Annexure AE letter sent by the 2nd respondent after the execution of the Annexure AD agreement, there was no whisper regarding the

enhancement of the credit line without the concurrence of the 2nd respondent.

30. This is a case where the averments and allegations made in the complaint do not disclose the commission of any offence by the accused. The 2nd respondent, in his complaint, simply used the expressions such as "forgery", "cheating", "criminal breach of trust", "conspiracy", "inducement", etc., but did not make any concrete allegations against the accused, suggesting commission of any of the offences. Even if the entire allegations and averments made in the complaint are believed in their entirety, they do not reveal the commission of any of the offences whatsoever.

31. The materials on record would show that M/s Platino defaulted the payment to the 4th accused company, and as per Annexure J letter, the 4th accused requested it to pay the overdue amount of `9,69,08,028/- immediately. Thereafter, at the request of the 2nd respondent, a meeting was held on 1/8/2018 at the office of the 4th accused. In the said meeting, it was decided that M/s Platino would take immediate measures to arrange the necessary funds to clear all pending dues on or before 31/8/2018. Annexure K e-mail would prove the same. Thereafter, there were various e-mail communications between the 4th accused and the 2nd respondent regarding the payment of the outstanding amount. Ultimately, the 4th accused issued Annexure P reminder to the 2nd respondent informing M/s Platino about the dues and demanded payment of the outstanding amount of `10,95,95,573/- by 15/11/2018. Thereafter, as per Annexures Q and R letters, the 4th accused informed the 2nd respondent that the dealership would expire on 31/12/2008 by efflux of time and that since M/s Platino failed to make the payment, the dealership agreement cannot be continued beyond 31/12/2018. By Annexure S reply, the 2nd respondent admitted the outstanding liability as `10,91,05,381/- and suggested various options to resolve the dispute. Thereafter, the 4th accused, as per Annexure T reply, refused to grant renewal of the dealership and requested to clear all outstanding dues. As per Annexure Y e-mail, the 2nd respondent agreed to pay the outstanding liability to the 4th accused. In Annexure AD agreement created thereafter, M/s Platino agreed to make a net payment of `3,76,36,518/- on or before 30/9/2019. But, it failed to clear the said dues as agreed but instead raised a claim for compensation for the non-renewal of the dealership agreement. It was thereafter that Annexure C complaint was preferred. As per Annexure AE e-mail dated 24/10/2019, the 2nd respondent and M/s Platino have, without any dispute, admitted their liability and reserved their right to seek compensation for the alleged contractual breach. Thus, the dispute between the parties is essentially civil in nature. The Apex Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil and contractual in nature {See G.Sagar Suri v. State of U.P. [(2000) 2 SCC 636], Indian Oil Corporation v. NEPC India Ltd. [(2006) 6 SCC 736] and Mohammed Ibrahim and Others v. State of Bihar and Another [(2009) 8 SCC 751]}.

For the reasons stated above, no useful purpose will be served by allowing the criminal prosecution against the petitioners to continue. Hence, all further proceedings in Annexure A FIR in Crime No.51/2020 of Vellayil Police Station against the petitioners are hereby quashed. Both CrI.M.Cs are, accordingly, allowed.