

(2017) 03 BOM CK 0061

In the Bombay High Court

Case No : Criminal Writ Petition No. 170 of 2017

Mr. Sanjay Shrivastava

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 406, Section 420

Citation : (2017) 2 AIRBomRCri 282 : (2017) 3 MhLJCrI 49

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. Amol K. Gawali, Advocate, for the Petitioner; Mr. P.G. Borade, APP, for the Respondent No. 1; Mr. R.P. Mote, Advocate, for the Respondent No. 2; Mrs. R.S. Kulkarni, h/f. Mr. Sanket S. Kulkarni, Advocates, for the Petitioner; Mr. P.G. Borade, APP, for the Respondent No. 1; Mr. R.P. Mote, Advocate, for the Respondent No. 2

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. Both these Writ Petitions are filed praying therein for quashing the First Information Report bearing Crime No.425 of 2016 registered with the M.I.D.C., CIDCO Police Station, Aurangabad, for the offences punishable under Sections 420, 406 read with 34 of the Indian Penal Code, dated 5th November 2016, therefore same are heard together and being disposed of by the common Judgment and Order.

3. Learned counsel appearing for the Petitioner in Criminal Writ Petition No.170 of 2017 submits that, even if the allegations in the First Information Report (for short "FIR") are taken at its face value and read in its entirety, an ingredients of alleged offences have not been attracted. He submits that the allegations in the FIR reflects the issue of civil nature. It is further submitted that the transaction is

a contractual issue, and in fact there is no privity of contract between the Petitioner Sanjay Srivastava and Respondent No.2. The basic elements and ingredients of Section 420 and/or Section 406 of the I.P. Code are not made out by Respondent No.2 against the Petitioner Sanjay Srivastava. The offence is registered against the Petitioner Sanjay Srivastava to avoid the further payment of Rs.75,000/as per agreement dated 4th March 2016. The dispute between the parties is of civil nature and the FIR is filed with ulterior motive to get back the non refundable amount by pressurizing the Petitioner by filing criminal complaint, which is contrary to the terms and conditions of the agreement dated 4th March 2016. It is further submitted that a civil lis is being criminalized by Respondent No.2 by misusing the powers and authority vested under law. A false case and investigation has been commenced against the company and the Petitioner at the instance of said Mr. Raju Lalchand Mankani (Respondent No.2) who wants to illegally extort money from KHR Hospitality India Limited which he is not entitled to. It is submitted that this is an attempt to pressurize the Petitioner and company into refunding the amount of Rs.4,25,000/from the company and impede the process of recovery of Rs.75,000/. It is submitted that Respondent No.2 Raju Lalchand Mankani in an attempt to mislead the police and create undue pressure on the company, has filed the said false complaint/FIR. The FIR is lodged at police station at Aurangabad, which has no jurisdiction to investigate the FIR.

4. Learned counsel appearing for the Petitioner in Criminal Writ Petition No.170 of 2017 further submits that the informant, in order to prove offence of cheating, is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. In support of aforesaid contention, the learned counsel placed reliance on the ratio laid down by the Supreme Court in the case of V.Y. Jose and another v. State of Gujarat and another (2009) 3 S.C.C. 78 and also in the case of Dalip Kaur and others v. Jagnar Singh and another AIR 2009 S.C. 3191. He further pressed into service exposition of law by the Supreme Court in the case of G. Sagar Suri and another v. State of U.P. and others (2000) 2 S.C.C. 636 and submits that jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Therefore, the learned counsel appearing for the Petitioner Sanjay Srivastava, relying upon the pleadings in the Petition, grounds taken therein, annexures thereto and the Judgments referred herein above, submits that the Petition deserves to be allowed.

5. Learned counsel appearing for the Petitioner in Criminal Writ Petition No.101 of 2017 Ashok Lal s/o Gurubaksh Lal, in addition to arguments advanced by the learned counsel appearing for the Petitioner in Criminal Writ Petition No.170 of 2017, submits that the Petitioner Ashok Lal was a mere agent acting on behalf of Respondent No.2 and hence he cannot be held liable for the offences punishable under Section 406 and 420 of the I.P. Code. The case is of a civil nature and there is no criminal intention mentioned in the FIR. The Petitioner has already

deposited the entire amount with the Hotel and hence there is no entrustment of property with the Petitioner. The police station at Aurangabad has no jurisdiction to register the FIR and cause the investigation, since no cause of action has arisen at Aurangabad. It is further submitted that Respondent No.2 was always in receipt of the terms of the agreement right from the beginning. The Petitioner has merely signed the contract acting as an agent of the informant/ Respondent No.2 and this fact has been acknowledged by the informant in several communications made to the Hotel as well as to the Petitioner and hence the Petitioner cannot be prosecuted under Section 420 of the I.P. Code.

6. Learned counsel appearing for the Petitioner in Criminal Writ Petition No.101 of 2017, further submitted that the informant on his own volition decided the dates for the wedding. The said aspect is clear from the receipt dated 3rd February 2016 issued by the Hotel to the informant when the informant had personally visited the Hotel. Even otherwise after the request of the informant to delete the date of 16th April 2016 from the bookings, the Petitioner as an agent, immediately communicated the same to the Hotel and the Hotel also agreed to the same. Thus, the allegations that the dates of the booking were changed by the Petitioner on his own, is false and baseless and does not hold any ground since the revised contract and the tax invoice generated by the Petitioner mentions the period from 17th April 2016 to 19th April 2016.

7. Learned counsel appearing for the Petitioner in Criminal Writ Petition No.101 of 2017 further submitted that the Hotel had generated two contracts and the terms were one and the same in both the contract except for the change of dates. The informant was in possession of both the contracts. In fact, after going through the first contract, the informant had made the payment of Rs.75,000/on 4th February 2016 and Rs.3,60,000/on 11th February 2016 in consonance with the terms of the contract. The allegation of Respondent No.2 in the FIR that the Petitioners have cheated Respondent No.2, is false and baseless.

8. Learned counsel appearing for the Petitioner in Criminal Writ Petition No.101 of 2017 submitted that the Supreme Court, in a recent Judgment in the case of International Advanced Research Centre For Power Metallurgy And New Materials (ARCI) and others v. Nimra Cerglass Technics Private Ltd. (2016) 1 S.C.C. 348 has held that the distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. In the instant case, there are two important aspects which would have to be considered before an offence of cheating and breach of contract is arrayed against the Petitioner. The first aspect is that the Petitioner was an agent of the informant and hence the transaction entered into by the Petitioner was at the behest of the informant, thus the Petitioner cannot be prosecuted for cheating and for breach of contract. The second aspect is that the Petitioner has already transferred the entire amount to the Hotel and thus the Petitioner is not in possession of any property of Respondent No.2 informant. The Petitioner had never made any representation to Respondent No.2. If at all the mere breach of

contract can be considered as a fraudulent act then the representation if any was made by the Hotel to the Petitioner as well as Respondent No.2 informant. It is submitted that the Petitioner was a mere facilitator for arranging Hotel accommodation on commission basis for Respondent No.2. The Petitioner neither has made any fraudulent representation nor has assured nor has convinced Respondent No.2 informant to part with his money and hence the Petitioner cannot be held liable for prosecution under Section 406 of the I.P. Code.

9. Learned counsel appearing for the Petitioner in Criminal Writ Petition No.101 of 2017 further submitted that, to attract the offence of criminal breach of trust, three ingredients are necessary. First ingredient is that a person should have dominion over the property. The Second ingredient is that the person should dishonestly misappropriate or convert the property for his own use. The third ingredient is that such a conversion, misappropriation should be in violation of any direction of law prescribing the mode in which such a trust is to be discharged. All the three ingredients must be satisfied and in the absence of any provisions of Section 405 punishable under Section 406 of the I.P. Code is not attracted. In the present case the Petitioner could not have been said to have any dominion over the property of Respondent No. 2 informant. The FIR does not allege that any amount was dishonestly misappropriated or converted by the Petitioner for his own use. The FIR does not show that there was any violation of any direction of law and hence the offence of criminal breach of trust is not attracted in the case of the Petitioner. In support of her submissions, learned counsel placed reliance on the ratio laid down in the case of *Asoke Basak v. State of Maharashtra and others* 2010 ALL SCR 2494. It is further submitted that the essential ingredients for the offence of cheating punishable under Section 420 of the I.P. Code is the mens rea. The fraudulent intention has to be present at the time of making of promise. This aspect has to be spelt out in the FIR and cannot be left to the scrys and conjectures of the reader of the FIR. In the present matter, the FIR does not show that the Petitioner had induced Respondent No.2 to deliver any property. In fact the bookings of the Hotel were made by the informant personally on 3rd February 2016 and further the entire amount which was deposited with the Petitioner was transferred to the Hotel in furtherance of the contract and hence the offence of cheating cannot be made applicable against the Petitioner.

10. Learned counsel appearing for the Petitioner submitted that the Supreme Court in the case of *S.N. Palnitkar v. State of Bihar* 2001 A.I.R. S.C.W. 4435 has held that intention to deceive should be in existence at the time when inducement was made. Mere failure to keep up the promise subsequently cannot be presumed leading to cheating. When the proceedings are not maintainable for the want of satisfying ingredients of the offences, the proceedings are liable to be quashed under the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure. Essentially the contract came to be terminated by the Hotel only because Respondent No.2/informant did not made the requisite payments as per the contracted schedule. Hence the criminal prosecution could

not have been initiated in the present case.

11. Learned counsel appearing for the Petitioner submitted that there is an undue delay in filing of the present FIR. Respondent No.2/ informant has himself stated that the time of offence was 3rd February 2016 to 11th February 2016, whereas the FIR came to be registered with Respondent No.1 only on 5th November 2016. It shows that Respondent No.2/informant after due deliberation, has registered the FIR merely to coerce the Petitioner and the Hotel to refund his amount so forfeited by the Hotel. It is submitted that Respondent No.1 has no jurisdiction to investigate into the present case as from the recitals of the FIR itself, it can be seen that the place of offence is at Goa and the registration of the crime at Aurangabad is nothing but an abuse of process of law and hence in the interest of justice the FIR ought to be quashed and set aside qua the Petitioner. Even as per Section 177 of the Code of Criminal Procedure the police at Aurangabad had no territorial jurisdiction to register the FIR, therefore filing of the FIR itself is an abuse of process of law. On a bare reading of the FIR, no offence is made and even remotely at Aurangabad.

12. Therefore, the learned counsel appearing for the Petitioner in Criminal Writ Petition No.101 of 2017 relying upon the pleadings in the Petition, grounds taken therein, annexures thereto and the Judgments referred herein above, submits that the Petition deserves to be allowed.

13. Learned A.P.P. appearing for the State, relying upon the investigation papers, submits that the ingredients of alleged offences have been disclosed. The Police Station at Aurangabad has jurisdiction to register the FIR and cause the investigation since the informant is resident of Aurangabad and he has sent the money from his bank account at Aurangabad. He further submits that there are specific allegations of cheating and breach of trust. At the time of considering the prayer for quashing the FIR, this Court is not expected to consider the correctness or falsity of the allegations. It is submitted that upon reading the contents of the FIR if the alleged offences are disclosed, in that case the matter should be left to the Investigating Officer for further investigation. He submits that it is not the law that in every civil matter criminality is excluded. It is apparent from reading an allegations in the FIR that the Petitioners had intention to cheat the informant and they persuaded him to immediately book the rooms in the Hotel and also hurriedly asked him to deposit the amount. Instead of asking to deposit the amount in the account of the concerned Hotel, the Petitioners persuaded the informant to deposit the amount in the account maintained in the name of Planet Hospitality by the Petitioner in Writ Petition No.101 of 2017. He submits that though Respondent No.2 instructed the Petitioners to book the rooms in the Hotel for the period from 17th April, 2016 to 19th April, 2016, the Petitioners, to the surprise of Respondent No.2, shown the booking of the rooms for the period from 16th April 2016 to 18th April 2016. The Petitioners had intention to cheat Respondent No.2 and fraudulently take away the amount deposited by Respondent No.2. It is submitted that there was no

reason for the Petitioners to ask Respondent No. 2 to deposit amount in their own bank account when the amount ought to have been deposited in the account of Hotel Kenilworth Resort and Spa. Learned A.P.P. invites our attention to the observations made by the Supreme Court in the case of Bhaskar Lal Sharma and another v. Monica and others (2014) 3 S.C.C. 383, and submits that the facts, as alleged in the FIR/complaint, will have to be taken as they appear and will have to be proved, which can only be done during the course of regular trial. The appreciation, even in a summary manner of the averments made in a complaint/petition/FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. Learned A.P.P. further invites our attention to the Judgment of the Supreme Court in the case of Chandralekha and others v. State of Rajasthan and another (2013) 14 S.C.C. 374, and submits that, in the facts of that case the Supreme Court held that, if the part of cause of action accrued within the jurisdiction of the concerned police station, since the offence is a continuous one the FIR cannot be quashed on the ground of jurisdiction or delay.

14. Learned counsel appearing for Respondent No.2/ informant submits that the Petitioners without placing on record full text of the FIR, have placed on record only gist of the FIR, and persuaded this Court to issue notice and also obtained an ad interim orders. He submits that the FIR runs in three pages. He invites our attention to the contents of the FIR, copy of which is placed on record with the affidavit in reply, and submits that the Petitioners while filing the Petitions have placed on record only gist of the FIR and not the full text of the FIR. Therefore, he submits that the Petitioners have not approached this Court with clean hands and on that count alone, both the Petitions deserve to be rejected. He submits that the conduct of the Petitioners disentitles them from invoking the extraordinary jurisdiction of this Court and to seek appropriate relief.

15. Learned counsel appearing for Respondent No.2 further submits that since beginning both the Petitioners had intention to cheat and defraud Respondent No.2. There was no reason for the Petitioners to deposit the amount in the account of proprietor of Planet Hospitality. In fact the Petitioners should have asked Respondent No.2 to deposit the amount in the account of Hotel Kenilworth Resort & Spa in which Respondent No.2 intended to book 95 rooms for three days. He submits that in fact Respondent No.2 contacted Petitioner Ashok Lal (Petitioner in Criminal Writ Petition No.101 of 2017). Petitioner Ashok Lal called Respondent No.2 at Mumbai on 2nd February 2016 and informed that Hotel Kenilworth Resort & Spa is a reputed Hotel and insisted Respondent No.2 to proceed towards Goa on the same day for further talks with Hotel Management. On 2nd February 2016, Respondent No.2, his son Ravi Mankani and Petitioner Ashok Lal had been to Goa and visited Hotel Kenilworth Resort & Spa. On reaching at Hotel Kenilworth Resort & Spa, Petitioner Ashok Lal had introduced Respondent No.2 with other 23 persons as owners of the Hotel but their names were not disclosed to Respondent No.2. Respondent No.2 was instructed to talk with Petitioner Sanjay Srivastava (Petitioner in Criminal Writ Petition No.170 of

2017) in the capacity of Manager of Hotel. At that time Respondent No.2 requested to hire the Hotel for the pre and post marriage ceremony of his daughter from 17th April 2016 to 19th April 2016 with 95 rooms for three days. Respondent No.2 was quoted with charges of Rs.9500/for per day for each double room for which Respondent No.2 agreed and all the accused were ready to provide early checkin on 17th April 2016, at about 7.00 a.m. While talking with Management of Hotel, Respondent No.2 requested to provide each room with triple occupancy, for which accused claimed extra charges of Rs.3000/for extra bed, which was also agreed by Respondent No.2. Petitioners and hotel owners had agreed for early checkin at 7.00 a.m. but denied to provide complimentary breakfast on 17th April 2016 thereby quoting charges of Rs.615/ against breakfast of per person, which was also agreed by Respondent No.2. On insistence, Respondent No.2 immediately deposited Rs.25000/. The receipt was issued in the name of KHR Hospitality. Respondent No.2 asked as to why the Petitioners are issuing receipt in the name of KHR Hospitality, upon which it was informed to Respondent No.2 that it was technical difficulty of the Bank. It is further submitted that when Respondent No.2 reached at Aurangabad on 3rd February 2016, Petitioners Ashok Lal and Sanjay Srivastava started calling him and informed that on or before 4th February 2016 he has to deposit Rs.1,00000/ so that accommodation can be confirmed. Respondent No.2 was asked to deposit the said amount in the account of Planet Hospitality. That time also Respondent No.2 asked Petitioner Ashok Lal that when the Petitioners are only agent/ mediator, why they are asking him to deposit the amount in their accounts. However the Petitioners insisted to deposit the amount in the account of Planet Hospitality. Accordingly, Respondent No.2 deposited Rs.75,000/in the account of Planet Hospitality on 4th February 2016, from Aurangabad. Learned counsel invites our attention to the affidavit in reply filed by Respondent No.2 and submits that details in respect of total amount deposited by Respondent No.2, are given in Para 4 of the reply. The learned counsel submits that total amount of Rs.4,60,000/was deposited from the account of Respondent No.2 maintained in the banks at Aurangabad. It is further submitted that after depositing total amount of Rs.4,60,000/for Hotel Kenilworth Resort & Spa, Petitioners sent Email/ soft copy of agreement to Respondent No.2, to be executed between Hotel Kenilworth Resort & Spa and Respondent No.2. Respondent No.2 was surprised and shocked to read the agreement wherein it was mentioned that rooms will be given from 16th April 2016 to 18th April 2016 and not on agreed dates of 17th April 2016 to 19th April 2016. There were changes in the Checkin time and providing triple occupancy rooms as agreed on 2nd February 2016. He further submits that though it was agreed and as a matter of fact amount was paid for 95 rooms and 95 extra beds, instead of that it was mentioned in the agreement that Petitioner will provide only 25 beds. Agreement was executed fraudulently by the Petitioners on behalf of Respondent No.2 without his prior permission as well as his consent. When Respondent No.2 realized that Petitioners have fraudulently and with an intention to cheat Respondent No.2 have entered into an agreement with the Hotel by changing the dates and also the number of beds

and checkin time, Respondent No.2 asked the Petitioners to cancel such booking in view of the changes made by the Petitioners in the agreement entered with the said Hotel on behalf of Respondent No.2 without his consent and knowledge.

16. The learned counsel appearing for Respondent No.2 further submits that investigation papers and the documents placed on record by Respondent No.2 would clearly indicate that the Petitioners had dishonest and fraudulent intention since from the inception so as to cheat Respondent No.2. Though Respondent No.2 has deposited an amount of Rs.4,60,000/-, instead of refunding the said amount the Petitioners are asking for further amount of Rs.75,000/-. It is submitted that the allegations in the FIR will have to be taken in its entirety and it is only during trial those allegations can be tested. The Investigating Officer has collected sufficient material during the course of investigation and therefore the filing of charge-sheet and trial is must. He submits that this is not the case of simple agreement or contract. Respondent No.2 wanted the rooms in the Hotel for the invited guests for marriage ceremony of his daughter and the Petitioners by entering into an agreement on behalf of Respondent No.2 without his consent, and with an intention to cheat and defraud the amount deposited by him, have changed the dates and number of beds and checkin time. Therefore, the learned counsel appearing for Respondent No.2 submits that both the Petitions are devoid of any merit and hence the same may be rejected.

17. We have heard learned counsel appearing for the Petitioners, learned A.P.P. appearing for the State and learned counsel appearing for Respondent No.2 at length, with their able assistance we have carefully perused the pleadings and grounds taken in both the Petitions, annexures thereto, more particularly the contents of the FIR, reply filed by Respondent No.2, Judgments cited across the Bar and investigation papers made available by the learned A.P.P.

18. The Petitioners in both the Petitions, have placed on record copy of the First Information Report, which does not contain full text of the First Information Report and an actual contents of the FIR are less than one page. Upon perusal of the copy of the First Information Report from the investigation papers and also copy annexed with the reply filed by Respondent No.2, we find that the actual contents of the First Information Report runs into three pages. Learned counsel appearing for the Petitioner in Writ Petition No.101 of 2017 vehemently submitted that the certified copy of the FIR was applied and therefore the copy which is received from the Police Station, is placed on record of the Petition. We do not wish to enter into said controversy. However, the fact remains that the actual contents of the FIR contains three pages and along with the Petitions the full text of the FIR is not placed on record by the Petitioners. Without attributing any fault on the part of the learned Advocates appearing for the Petitioners, we are constrained to observe that the Petitioners have not approached this Court with clean hands thereby placing on record full text of the FIR.

19. Be that as it may, we have carefully perused the allegations in the FIR. The gist of the FIR, which would attract the provisions of Section 406 and 420 of the

I.P. Code, is as under:

"vkjksih 1 v"kkksdyky ts IyWusV gkWfLiVWyhVh laLFkspk ekyd 2 gkWVsy dsuhy oFkZ fjlkWVZ o Likpk pkyd lat; JhokLro xksok LVsV iw.kZ uko rk0 osG ekghr ukgh xq0?k0o0 fBdk.k fnukad 03-02-2016 rs 11-02-2016 ps njE;ku xksok LVsV o vkSjaxkckn Qlo.kqdhph jDde 4]60]000@& :0 [kqyklk ueqn rk osGh o fBdk.kh ;krhy fQ;kZnhps eqyhps fnukad 18-04-2016 jksthps yXuklkBh fnukad 17-04-2016 rs 19-04-2016 rhu fnolklkBh ;krhy vkjksih dz0 1 ps ekQZrhus Lohdk:u dsuhy oFkZ fjlkWVZ vkf.k Lik xksok gh izR;{k 95 V~hiy vkWD;qiUlH cqdhax dsyh vlrk BjysY;k rkj[ksP;k ,soth vkjksih dz0 1 ;kaauh fnukad 16-04-2016 rs 18-04-2016 v"kh ijLij cqfdax nk[koqu vkjksih dz0 2 o brj vkjksihrkauh 95 V~hiy vkWD;qiUlH ns.;kps ukdk:u fQ;kZnhdMwu osxosxG;k cWdsP;k [kkR;koj dz0 1 ;kps ekQZrhus tek d:u ?ksoqu fQ;kZnhus cqfdax jnn dsY;k uarj fnysY;k iS";kph ekx.kh dsyh vlrk rh ijr dj.;kl ukd:u] vU;k;kus fo"okl? kkr d:u fQ;kZnhph Qlo.kqd d:u jDde gMi dsyh Eg.kuq xqUgk nk[ky d:u ek0iks0fu0lks0 ;kaps vkns"kkus iksmifu flrkjke dsnkjs ;kauk iq<+hy rikldkeh fnys0"

20. We also find considerable force in the argument of the learned counsel appearing for Respondent No.2 that, when Respondent No.2 made his intentions clear to book 95 rooms with triple occupancy with extra beds in Kenilworth Resort & Spa Hotel for the period from 17th April 2017 to 19th April 2017, the Petitioners should have asked Respondent No.2 to deposit the amount directly in the account of Kenilworth Resort & Spa Hotel itself, instead of asking him to deposit the amount in the account of Planet Hospitality. The manner in which the Petitioners proceeded from beginning and also subsequently entered into an agreement with Kenilworth Resort & Spa Hotel on behalf of Respondent No.2 without his consent with fraudulent intention as stated in the FIR, discloses the ingredients of the alleged offences and in particular Section 420 of the I.P. Code. It is admitted position that the entire amount was deposited by Respondent No.2 in the account of Planet Hospitality of which Petitioner Ashok Lal s/o Gurubaksh Lal is proprietor. This is not an agreement or contract for the commercial purpose, but Respondent No.2 wanted accommodation in the Hotel for guests who will be arriving for marriage ceremony of his daughter. There is an allegation in the FIR that though Respondent No.2 instructed/told the Petitioners to book the rooms in the Hotel for the period from 17th April 2016 to 19th April 2016 with specific instructions that checkin time will be at 7.00 a.m. on 17th April, 2016, behind the back of Respondent No.2, the Petitioners entered into agreement with Kenilworth Resort & Spa Hotel and changed the dates to 16th April 2016 to 18th April 2016 and also the checkin time at 3.00 p.m. on 16th April, 2016, and number of rooms and extra beds. Therefore, upon careful reading of an allegations in the FIR, an ingredients of alleged offences have been attracted and alleged offences have been disclosed.

21. Upon careful perusal of the investigation papers, we noticed that an earlier Email received by Respondent No.2 from the proprietor of Planet Hospitality also

confirms the fact that Respondent No.2 booked 95 rooms for the period from 17th April 2016 till 19th April 2016 and also additional 5 rooms, subject to availability and Respondent No.2 deposited the said amount in the bank account of Planet Hospitality. Further, it is apparent from the information collected by the Investigating Officer during the course of an investigation that, Respondent No.2 instructed the Petitioners to book 95 rooms of the said Hotel for the period from 17th April 2016 till 19th April 2016 and amount was also deposited.

22. As already observed, the fact that the amount was entrusted with Ashok Lal s/o Gurubaksh Lal, Petitioner in Writ Petition No.101 of 2016, is not in dispute. As per the allegations in the First Information Report, prima facie it appears that the Petitioners had intentions since from the inception to cheat Respondent No.2 and in collusion with each other they systematically cheated Respondent No.2 and defrauded the amount. It is not necessary for us to elaborate the reasons, since the investigation is in progress, suffice it to say, that the alleged offences are disclosed and needs further investigation and filing of charge-sheet.

23. The Supreme Court in the case of Bhaskar Lal Sharma and another v. Monica and others, supra, in Para 11 and 12 held that:

"11. The facts, as alleged, therefore will have to be proved which can only be done in the course of a regular trial. It is wholly unnecessary for us to embark upon a discourse as regards the scope and ambit of the Court's power to quash a criminal proceeding. The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence.

12. Insofar as the offence under Section 406 of the Penal Code is concerned, it is clear from the averments made in Paras 16, 18, 24 and 29 of the complaint petition that it has been alleged that the appellants were entrusted or had exercised dominion over the property belonging to the respondent and further that the appellants had unlawfully retained the same. The statements made in Para 6 of the complaint also alleges retention of cash and other gifts received by the respondent complainant at the time of her marriage to the Appellant 2 - accused. In the face of the said averments made in the complaint petition, it cannot be said that the complaint filed by the respondent is shorn of the necessary allegations to prima facie sustain the case of commission of the offence under Section 406 by the appellants."

24. In the Case of Chandralekha and others v. State of Rajasthan and another, supra, the Supreme Court has held that, if the part of cause of action accrued within the jurisdiction of the concerned police station, since the offence is a continuous one, the FIR cannot be quashed on the ground of jurisdiction or

delay. In the present case, as already observed, the amount deposited by Respondent No.2 in the bank account of Planet Hospitality was from Aurangabad. Respondent No.2 is resident of Aurangabad.

25. For the reasons afore stated, we are not inclined to entertain the prayer for quashing the First Information Report. Hence both the Writ Petitions stand rejected. Rule stands discharged.

26. However, we make it clear that the observations made herein above are prima facie in nature. This order will not preclude the Petitioners from availing of the remedy of filing the application for discharge.