(2019) 12 CAL CK 0002

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 2342 Of 2018

Sanjay Pandey & Anr	APPELLANT
Vs	
State Of West Bengal & Anr	RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 405, 406, 415, 418, 420
Code Of Criminal Procedure, 1973 — Section 405, 482, 483
Transfer Of Property Act, 1882 — Section 55(4)

Citation : (2019) 12 CAL CK 0002

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Pradip Ghose, Sekhar Basu, Sandipan Ganguly, Sourav Chatterjee, Somopriya Chowdhury, Pushan Kar, Abhishek Banerjee, Sagnik Majumder, Sabyasachi Banerjee, Ayan Bhattacharyya, Atish Ghosh, Anand Keshari, Arindam Chandra, Souvik Ghosh, Sharequl Haque, Rana Mukherjee, Arijit Ganguly

Final Decision : Dismissed

Judgement

Madhumati Mitra, J

This is an application under Section 482 of the Code of Criminal Procedure filed by the petitioners praying for quashing of the criminal proceedings being G.R.Case No.2258 of 2018 arising out of New Town Police Station Case No.271 of 2018 dated 02.07.2018 under Sections 418/420/406/120B of the Indian Penal Code.

The present petitioner no.1 is the Assistant Vice President (Marketing) and the Petitioner no.2 is the Assistant Vice President (Coordination) of DLF Limited.

The facts giving rise to the present application are as follows:

One Sri Sanjay Kumar Sultania, Director of Clarity Sales Pvt.Ltd. lodged one written complaint with New Town Police Station against DLF Ltd. Company and others including the present petitioners for commission of alleged offences punishable under Sections 406/418/420/120B of the Indian Penal Code. On the basis of that written complaint New Town Police Station Case No.271 of 2018 dated 2nd July, 2018 was started against the present petitioners and others.

From the contents of the said First Information Report, it appears that the complainant company is a private company incorporated under the provisions of Companies Act and DLF Limited is a company incorporated under the Companies Act and engaged into the business of development and construction of properties.

In course of its business, the complainant company was in search of a suitable commercial space in New Town, Rajarhat area and in connection thereto the complainant company came to know about the properties in question from ARV Enclave Private Ltd., another company engaged in the similar line of business to that of the complainant company. The complainant company had submitted two applications both dated 12.09.2008 to the accused company along with two cheques bearing nos. 063263 and 063264 dated 12.09.2008 drawn on HDFC Bank Ltd. for Rs.5,00,000/- each as booking amount in respect of a commercial space measuring about 9620 sq.ft being commercial space no.8 and a commercial space measuring about 7905 sq.ft. being commercial space no.9 respectively, for supermarket/departmental store on the ground floor in "New Town Heights Plaza, DLF, Rajarhat", Action Area-III, Plot no.E/5, New Town, Rajarhat, Police Station.

By letters bearing no.DLF/CS/AO6366/NRAN 008/1 and DLF/CS/AO6354/NRAN 009/1 dated 19.11.2008, the accused company informed that it had been allotted Anchor Retail Outlet No.008 on the ground floor of the New Town Height Plaza, DLF, Rajarhat which was numbered as NRAN 008 along with open parking space and Anchor Retail Outlet No.009 on the ground floor at the New Town Heights Plaza, DLF, Rajarhat, which was numbered as NRAN 009 along with open parking space no.NP0002 respectively and forwarded a receipt no.0002-1008 dated 15.10.2008 for Rs.5,00,000/- and a receipt no.0001-1008 dated 15.10.2008 for Rs.5,00,000/- respectively, paid by ARV Enclave Private Limited. ARV Enclave Private Limited made payment to the accused company and after receipt of payment the accused company allotted the said two units in favour of ARV Enclave Private Limited. Complainant company expressed its intention to purchase the said two units from ARV Enclave Private Limited and contacted the accused nos.3 and 4 at their Office at New Town with the representatives of ARV Enclave Private Ltd. Accused nos.3 and 4 advised the complainant company to directly enter into sale agreement with the said ARV Enclave Private Ltd. for purchase of the said two units. Accordingly, two sale agreements were entered into between ARV Enclave Private Limited and the complainant company. By the said agreements ARV Enclave Private Limited agreed to transfer the said spaces to the complainant and complainant company also paid a sum of Rs.9,84,555/- as transfer charges to the accused company for both the units.

By letter dated 06.08.2012 Spencer's Retail Ltd. informed the management of the complainant company that they had decided to open the Spencer's shop in the Unit no. NRAN 0010 and NRAN 0011 on the ground floor of New Town Heights Plaza. A letter of Intent was executed between the complainant company and Spencer's Retail Ltd. On 14.08.2012, the scope of works in respect of said NRAN 0010 and NRAN 0011 had been specified by accused nos.3 and 4 on behalf of the management of the accused company by a letter dated 14.08.2012 addressed to the complainant company. In the said letter dated 14.08.2012 the scope of works including Common Area Maintenance (CAM) charges were asked to be payable by the complainant company to the accused company @ Rs.5.00 per sq.ft. on carpet area measuring 9431 sq.ft. only and for back end common maintenance charges should be @ Rs.1/- per sq.ft. of common area measuring 1000 sq.ft. only with escalation @ 12% on completion of every three years till the completion of every three years till the completion of 18 years. Subsequently by letter dated 12.09.2012 bearing nos. DLF/CS/NRAN 008/NP 0001 NHK and DLF/CS/NRAN 009/NP 002 NHK the accused company welcomed the complainant company to the DLF family in relation to the transfer of Unit nos. NRAN 008 along with Car parking No.NP 001 and NRAN 009 along with parking no.NP 002 respectively. By the letter dated 13.09.2012, the accused nos.3 to 5,7,10 and 18 to 20 representing the accused no.1 company informed the complainant company that the Unit Nos.NRAN 008 and NRAN 009 which had been booked by ARV Enclave Private Limited and transferred by said ARV Enclave Private Limited to the complainant company had been revised to NRAN 0010 and NRAN 0011 with saleable area of 12114 sq.ft. and 8748 sq.ft. respectively. On the request of the accused company the complainant company paid Rs.20,50,424/- inclusive of service tax of Rs.61,459/- and Rs.6,85,377/-inclusive of service tax of Rs.20,543/- in respect of Unit no.NRAN 010/NP 001 and NRAN 011/NP 0002. Company made payment to the accused company from time to time on the basis of demands.

In January, 2016 accused company sent a copy of an unregistered lease deed dated 13th January, 2016 on a non-judicial stamp paper of Rs.100/-purportedly executed by the accused no.1 company and the said Spencer's Retail Ltd. The complainant came to know that the accused company purportedly granted a lease in favour of the said Spencer's Retail Ltd. as 'lessee' for 18 years of Unit Nos.NRAN 010 and NRAN 011 on certain terms and conditions. Complainant company vide e-mail and letter dated 5th February, 2016, informed the accused company that they had no right to encumber the right of the complainant company over the said units. On inspection the officers of the complainant company came to know that the accused company inducted Spencer's Retail Ltd. into the said units of the complainant company without any intimation to the complainant company. The complainant company by e-mail dated 18th January, 2017 and 20th February, 2017 asked the statement of accounts from the accused no.1 company to enable the complainant company to make payment and to complete registration process to get the actual physical possession of Unit nos.NRAN 010 and NRAN 011. Thereafter, the complainant company had issued a legal notice dated 12.06.2017 calling upon the accused company to forthwith convey the said units to the complainant after receipt of balance consideration amount and also called upon the Spencer's Retail Ltd. to forthwith desist from carrying on any commercial or other activities from the said two units till execution of a formal agreement in time with the letter of intent dated 06.08.2012 issued by them in favour of the complainant company. Accused company gave reply wherein they took the plea that on account of non-payment of the total consideration amount, they could not execute the conveyance registering the name of the complainant as owner of the said two units. Accused company through the said reply for the first time informed the complainant company that the accused company had out-sourced the maintenance job to an out source agent, namely, JLL Group for maintenance of common arears, driveways, lifts, escalators, housekeeping, STP maintenance, electrical and fire fighting maintenance, etc, and as such Common Area Maintenance (CAM) charges are dependent upon the bill of the said JLL Group who had been charging Rs.10/- per sq.ft. on the super built up area instead of Rs.5/- per sq.ft. on the carpet area and the said enhanced maintenance cost would have to be paid by the complainant company.

It was alleged by the complainant company that the accused company and its officials being accused nos.2 to 20 by their assurance induced the complainant company to part with the consideration money as well as transfer charges and the said amount was misappropriated by the accused company in violation of the terms and conditions of the agreement.

It is the specific allegations of the complainant company that the accused company on the basis of the agreement of sale took Rs.3,41,77,518/- and transfer charges of Rs.9,84,555/- from the complainant company and thereafter leased out the said property to Spencer's Retail Ltd. for the purpose of getting monthly rent from the said Spencer's Retail Private Ltd. It was alleged in the said F.I.R. that the accused persons entered into a deep-rooted criminal conspiracy amongst themselves to cheat the complainant company and commit criminal breach of trust in respect of the advance money as well as the transfer charges and dishonestly transferred or encumbered the said two units in favour of the Spencer's Retail Ltd. causing wrongful gain to the accused persons and wrongful loss to the complainant company. Thereby, accused persons cheated the complainant company from acquiring the said property even after making payment to the tune of Rs.3,41,77,518/- and also a sum of Rs.9,84,555/- and thus committing criminal breach of trust by converting the property to their own use as aforesaid.

On the basis of the First Information Report lodged by the said Sanjoy Kumar Sultania, Director of Clarity Sales Pvt. Ltd., New Town Police Station Case No.271 of 2018 dated 02.07.2018 under Section 420/406/418/120B of the Indian Penal Code was initiated.

Before considering the submission and rival submission of the parties, it would be better to deal with the offences alleged in the First Information Report.

Alleged offences relate to cheating and criminal breach of trust. The concept of cheating has been defined under Section 415 of the Indian Penal Code and Section 405 of the said Code deals with the criminal breach of trust.

Section 415 of the Indian Penal Code runs as under:-

"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".

On the other hand Section 405 of the Indian Penal Code lays down as under:

"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'.

While making his submission in favour of quashing of the criminal proceedings pending against the petitioners, Learned Counsel has forcefully contended that DLF is the owner of the property in question and being the owner of the property DLF had every right to earn profits and rent from the said property in view of the provision contained in Section 55(4) of the Transfer of Property Act. Learned Counsel has further contended that the lease agreement between DLF and the Spencer's Retail Pvt. Ltd. was legal in terms of the provision of Section 55(4) of the Transfer of Property Act as the de facto complainant clarity sales had no legal right to lease out the property in question.

Learned Counsel for the petitioners has further submitted that the de facto complainant had knowledge about the lease of the property to Spencer's from the very beginning as it appeared from the pleadings of the civil suit brought by the de facto complainant. He has contended that the de facto complainant lodged the First Information Report after suppressing the materials facts of filing of civil suit against the DLF and filing of complaint case.

Learned Advocate appearing for the petitioners has further argued that the de facto complainant first approached before the Civil Court on the self same facts and failed to obtain any relief from Civil Court. Thereafter, they filed complaint case on the self-same cause of action and during the pendency of that complaint case, they again lodged an F.I.R. against the petitioners on the same cause of action. It is the specific contention of the Learned Advocate for the petitioners that the de facto complainant initiated the present criminal proceedings only to harass the petitioners.

According to his contention continuance of the criminal proceedings against the accused would be an abuse of the process of law.

Learned Counsel for the petitioners has also contended that the de facto complainant did not make payment of the full conveyance amount to complete the sale transaction and more so failure of the seller to execute the sale deed in terms of sale agreement is neither an offence of cheating nor an offence of criminal breach of trust.

In support of his contention Learned Counsel has placed his reliance on the following decisions:-

1. Murari Lal Gupta Vs. Gopi Singh reported in (2005) 13 SCC 699,

2. Dalip Kaur & Ors Vs.Jagnar Singh & Anr reported in (2009) 14 SCC 696,

3. The Commissioner of Police & Ors Vs. Devender Anand & Ors. Criminal Appeal No.834 of 2017 (Non-Reportable)

4. Arun Kumar & Anr Vs. State of Punjab & Anr reported in 2006 SCC On line P&H 669,

5. Hridaya Ranjan Prasad Verma & Ors Vs. State of Bihar & Anr reported in (2000) 4 SCC 168,

6. State of Gujarat Vs. Jaswantlal Nathalal reported in (1968)2 SCR 408,

7. Uma Shankar Gopalika Vs. State of Bihar & Anr, reported in (2005)10 Supreme Court Cases 336 : (2006) 2 Supreme Court Cases (Cri)49,

8. State of Haryana & Ors Vs. Ch.Bhajan Lal & Ors. reported in AIR 1992 SC 604,

9. Samar Mondal & Anr Vs. State of West Bengal & Anr reported in (2007) 2 C Cr.L.R. (CAL) 358

On the contrary, Learned Counsel for the opposite party no.2/de facto complainant has contended that the averments of the First Information Report prima facie make out a case of cheating and criminal breach of trust. According to his contention, when the First Information Report discloses the commission of a cognizable offence then the question of quashing of the proceedings on the ground that the alleged facts revealed a commercial or money transaction does not arise at all. He has further contended that as per the agreement the de facto complainant agreed to purchase the property in question on certain terms and condition and the owner of the property i.e. accused company was also under an obligation to transfer the same free from all encumbrances. He has further contended that the accused company after receiving money as part payment of the consideration amount leased out the said property to the Spencer's Retail Pvt. Ltd. He has forcefully contended that the intention of the accused was to cheat the de facto complainant and to misappropriate the amount paid by the de facto complainant as advance for purchase of the two units in question.

In support of his contention he has cited the following decisions:

1. Sau. Kamal Shivaji Pokarnekar V. State of Maharashtra and Others reported in AIR 2019 Supreme Court 847,

2. Rajesh Bajaj Vs. State NCT of Delhi and Others reported in (1999) 3 Supreme Court Cases 259,

3. State of Punjab Through Secretary, Home Vs. Subhash Kumar and Others reported in (2004) 13 Supreme Court Cases 437,

4. State of Orissa Vs. Bhagaban Barik reported in (1987) 2 Supreme Court Cases 498,

5. State of Karnataka Vs. M.Devendrappa and Another reported in (2002) 3 Supreme Court Cases 89,

6. S.M.Datta Vs. State of Gujarat and Another reported in (2001)7 Supreme Court Cases 659,

7. Kamlesh Kumari and Others Vs. State of Uttar Pradesh and Another reported in (2015)13 Supreme Court Cases 689,

8. State of Gujarat Vs. Afroz Mohammed Hasanfatta un-reported in connection with Criminal Appeal.No.224 of 2019,

9. S.P.Gupta Vs. Ashutosh Gupta reported in (2010)6 Supreme Court Cases 562,

10. Dineshbhai Chandubhai Patel Vs. State of Gujarat and Others With Others reported in (2018)3 Supreme Court Cases 104.

It has been forcefully submitted on behalf of the petitioners that non-execution of an agreement for sale or conveyance especially when the full consideration has not been paid does not constitute the ingredients of the offence of cheating or criminal breach of trust and only relief available to the complainant is before the Civil Court which has already been availed of by the complainant company. In support of his contention, Learned Counsel for the petitioners has placed his reliance on the decision reported in Murari Lal Gupta Vs. Gopi Singh reported in (2005)13 SCC 699 and contended that DLF is the absolute owner of the property in question and there is no inherent defect in the title of the said property. He has further contended that the failure of the seller/owner to honour the sale agreement cannot be said to be an offence under Section 420 or under Section 406 of the Indian Penal Code.

The factual matrix would be relevant in the matter of assessment of the situation as to whether the allegations as made by the complainant come within the purview of civil dispute. It is well settled that mere fact that the alleged incident relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

I do not find much force in the submission made by the Learned Counsel for the petitioners. Filing of a civil suit on self same cause of action does not ipso facto operate as a bar to bring a criminal proceeding in respect of the self-same cause of action. An First Information Report lodged during the pendency of a complaint case on the same set of facts may not be a ground to quash the criminal proceedings.

Learned Counsel appearing for the opposite party/de facto complainant has argued that the nature and mode of deception vary from case to case. New modes of cheating are being invented and utilized by the offenders to commit the offence of cheating. The fraudulent and dishonest intention are to be ascertained from the alleged facts. Learned Counsel has contended that in the present case after taking the consideration money in part from the complainant, the accused created lease in favour of third party and enhanced the CAM charge in violation of the sell agreement dishonestly for the purpose of creating a situation so that the de facto complainant would be in a position to purchase the property. According to his contention the accused did everything in a calculated way for the purpose of causing wrongful gain to them and wrongful loss to the de facto complainant. The ultimate intention of the accused was to misappropriate money which had been given in pursuance of the sale agreement. Learned Counsel for the opposite party complainant explained the entire factual aspects.

According to his contention the conduct of the petitioners shows that the accused had dishonest intention to cheat. In support of his contention the Learned Counsel for the opposite party/de facto complainant has submitted that there was an agreement to sell which was executed on 20.06.2012 in between the ARV Enclave Private Ltd. and the de facto complainant. The said ARV Enclave Private Ltd. agreed to transfer/sell the property in question to the de facto complainant on certain terms and conditions as mentioned in the said sell agreement. Learned Counsel has further contended that the said units had been allotted to the ARV Enclave Pvt. Ltd. by DLF Limited. It is the specific contention of the Learned Counsel for the de facto complainant/opposite party that the terms and conditions as settled by the accused company vide their letter dated 14.08.2012 addressed to the de facto complainant for the common area maintenance (CAM) would be Rs.5.00 per sq.ft. on carpet area and for back end common maintenance charges would be Rs.1/- per sq.ft. and thereafter accused company by its letter dated July 6th, 2017 informed the de facto company that the accused company could not convey title unless and until the de facto complainant clear the entire consideration money and enhanced CAM charges from Rs.5/- to Rs.10/- per sq.ft. on the super built up area instead of Rs.5/- per sq.ft on the carpet area. Learned Counsel has vigorously contended that enhancement of CAM charges unilaterally all of a sudden in violation of the sell agreement indicated that the accused had fraudulent as well as dishonest intention right at the time of execution of the sale agreement. Creation of 3rd party interest in the property during the subsistence of the agreement for sell leaves no doubt that the accused company had an intention to cheat at the time of entering into the sell agreement and fraudulently or dishonestly induced the de facto complainant to make payment.

It has been contended on behalf of the petitioners that failure to honour the contract does not give rise to criminal proceeding.

In this connection, I would like to refer to the some important observations of our Apex Court.

In Hridaya Ranjan Prasad Verma and Others Vs. State of Bihar and Another reported in (2000)4 Supreme Court Cases 168 our Hon'ble Apex Court was pleased to hold as under:-

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest."

In paragraph 15 of the said judgment Hon'ble Apex Court was pleased to observe as under:-

"15. In determining the question it has to be kept in mind 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 of 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. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

Placing reliance on the decisions of Dalip Kaur & Ors. Vs. Jagnar Singh & Another reported in (2009)14 SCC 696, the Commissioner of Police & Ors. Vs. Devender Anand & Ors.(Non-reportable) of criminal appeal no.834 of 2017;

Arun Kumar & Another Vs. State of Punjab & Anr. reported in 2006 SCC online P&H 669; State of Gujarat Vs. Jaswantlal Nathalal reported in (1968)2 SCR 408, Learned Advocate for the petitioners has submitted that no fraudulent or dishonest intention existed at the time of execution of the agreement for sell and allegations relating to non-execution of the sale-deed in terms of the agreement cannot be termed as cheating. He has further contended that the allegations contained in the First Information Report only disclosed a civil dispute and the de facto complainant availed of that remedy and failed to obtain the relief from Civil Court.

It cannot be denied that various forms of cheating are committed in the course of commercial and financial transactions. It is true that now a days new methods of cheating are being invented to defraud an individual or organization. The dishonest or fraudulent intention of the accused is to be gathered from the alleged facts. Each case is to be judged on its own merit.

From the materials placed on record, it appears that prior to lodging of the First Information Report, the de facto complainant filed a civil suit and a complaint case before the Learned Civil Judge and the Learned Magistrate respectively. Admittedly, that Civil Suit was not disposed of on merit. Moreover, lodging of an First Information Report. in respect of self-same facts during the pendency of the complaint case on the self-same facts does not operate as a bar to continue the criminal proceedings based on that First Information Report. Moreso, the previous complaint filed before the Magistrate has not been decided upon full consideration of the case of the de facto complainant. Petitioners have approached for quashing of the proceedings pending against them. In this connection, I think it would be appropriate to keep in mind certain important observation of Hon'ble Supreme Court.

In R.Kalyani Vs. Janak C.Mehta and Others reported in (2009)1SCC 516 our Apex Court has pleased to observe as under:-

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the

paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

Now the question comes as to whether the allegations contained in the First Information Report disclose any cognizable offence.

Indisputably, the accused company DLF Limited allotted the units in question to a company ARV Enclave Pvt. Ltd. on 12.09.2008. Thereafter, an assignment agreement was entered into between ARV Enclave Pvt. Ltd. and the de facto complainant on 28.06.2012. By virtue of that agreement both units stood assigned to the de facto complainant. De facto complainant paid Rs.3.5 Crores as advance to the accused company. During the subsistence of the said agreement DLF leased out the said two units to Spencer's Retail on 13.06.2016 and enhanced CAM charges. Sudden change of CAM charges and creation of third party interest in the disputed property during continuance of the sale agreement can be considered a dishonest or fraudulent tactics to defraud the prospective buyer. The allegations made in the First Information Report prima facie show the existence of dishonest or fraudulent intention on the part of the accused to commit cognizable offence.

Learned Counsel for the petitioners has laid emphasis on the decision of Murari Lal Gupta Vs. Gopi Singh reported in (2005)13 Supreme Court Cases 699, and submitted that failure to honour the agreement to sell does not come within the purview of cheating.

The factual scenario of the case cited by the Learned Counsel for the petitioners is not similar to that of the case at hand. In the present case, it has been alleged that accused company created encumbrance by leasing out the property in favour of third party and enhanced CAM charges in violation of the sale agreement.

In the First Information Report the de facto complainant alleged that they were cheated by the accused company as they leased out the two units in question and enhanced the CAM charges in violation of sale agreement. The averments made in the First Information Report clearly disclose the existence of prima facie case for proceedings for commission of an cognizable offence against the present petitioners.

In order to exercise the power under Section 482 of the Code of Criminal Procedure, the only requirement is to see whether continuance of the criminal proceedings would be a total abuse of the process of Court.

Moreover, quashing of the prosecution by the High Court by appreciating evidence is not proper when the allegations made in the petition of complaint and the materials referred to prima facie make out the commission of alleged offences.

The instant case, does not come within the parameters as laid down by the

Hon'ble Supreme Court in State of Haryana and Others Vs. Ch.Bhajan Lal reported in AIR 1992 SC 604, R.Kalyani Vs. Janak C.Mehta and Others (Supra) and others subsequent cases, regarding exercise of inherent power under Section 482 of the Code of Criminal Procedure.

In my opinion, it is not a fit case to exercise discretion under Section 482 of the Code of Criminal Procedure.

Before parting with the case, I would like to clarify that the observations as made in this judgment should not be taken as an expression of any opinion regarding the merit of the criminal proceedings pending before the Learned Magistrate.

The present application is devoid of merits and as a result stands dismissed.

Urgent certified photocopy of this judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

