

(2022-3)207 PLRIJ 030 (Del.)

HIGH COURT OF DELHI

Before : Justice Asha Menon.

RAVI VANSHA NARAYAN MATHUR & Anr. – Petitioners

Versus

STATE & ANR.- Respondents.

W.P. (CRL) 2488/2016, CRL. M.A. 13135/2016 (for stay)

(i) Criminal Procedure Code, 1973 (II of 1974) Section 401, 482 - Revision - Maintainability - Petition is maintainable whether titled as one under Section 482 Cr.P.C. or whether treated to be one under Section 401 Cr.P.C. - Availability of an alternate remedy in the form of a revision would not limit or effect the inherent powers of the High Court under Section 482 Cr.P.C. - Even if a second revision before the High Court was barred under Section 397(3) Cr.P.C. after the dismissal of the first one by the Court of Sessions, the inherent powers of the High Court would still be available under Section 482 Cr.P.C. - The reason being that under Section 401 Cr.P.C., every High Court has suo moto powers of revision which was in addition and apart from the express power under Section 397(1) Cr.P.C. - High Court was invested with continuous supervisory jurisdiction to prevent miscarriage of justice or to correct irregularities of procedure or to meet out the justice or to prevent abuse of process, to be exercised either under Section 401 read with Section 397 Cr.P.C. or under Section 482 Cr.P.C. *Prabhu Chawla, Krishnan v. Krishnaveni, (1997) 4 SCC 241, relied.* [Para 19, 20]

(ii) Criminal Procedure Code, 1973 (II of 1974) Section 156(1), 177, 179, 2(j) - Jurisdiction to investigate - What constitutes the local jurisdiction of a court? - Section 2(j) makes it clear that the local area specified in relation to a Court or Magistrate is the area notified by the State Government within which such Court or Magistrate can exercise all or any of its powers - It is that court which can try an offence in whose local area the offence in entirety or part thereof has been committed - When a cognizable offence takes place, the complainant may approach a local Police Station to complain about it - The police would be bound to record that information and in usual course transfer it to the local Police Station where the offence was committed, even if an initial inquiry has been conducted - Sometimes two parts of the offences being committed in different local areas result in two different FIRs but they are subsequently merged being of the same transaction - Thus, when it is held that the police of the local area of the Court where the offence or part of the offence has occurred is the authorized Police Station to investigate, it will not dilute these obligations of the police in general. [Para 25, 26]

(iii) Criminal Procedure Code, 1973 (II of 1974) Section 156(1), 177, 179, 2(j) - Terms of a [contract](#) cannot confer a criminal court with jurisdiction as no contract is for the purposes of violating the law, or for the commission of offences - The criminal courts would be bound by the vesting of jurisdiction in accordance with the Criminal Procedure Code and not the Civil Procedure Code. [Para 29]

(iv) Criminal Procedure Code, 1973 (II of 1974) Section 482 - An FIR already stood registered at Mumbai by the petitioner - Present FIR has been lodged at Delhi almost a year thereafter by the complainant/respondent - Complainant approached the courts at Delhi under Section 156(3) Cr.P.C. after hearing of the FIR registered at Mumbai - The police of Mumbai have investigated the matter on the basis of a complaint filed by the petitioners alleging that they have been cheated, and the charge-sheet has also been submitted - The present FIR has

now been registered in which the Delhi Police is called upon to investigate whether the Complainant has been cheated or not - Police of two cities would then be engaged in investigating the same transaction to determine whether an offence has been committed and if so by whom - This would indeed be a factor that would weigh with the court while determining whether or not to let this FIR continue.

(v) Criminal Procedure Code, 1973 (II of 1974) Section 406, 420 - Offence of cheating would occur only when it is prima facie shown that there was mal intention from the very beginning - Admittedly, the petitioner had paid Rs.90 lacs as security to the complainant - Furthermore, 7 months rent has also admittedly been paid - Subsequent non-payment was subject matter of arbitration and rent control proceedings - It is more than apparent that the non-payment of rent does not disclose a mal intent from the time the lease was entered into by the petitioners with the complainant nor does it disclose the offence of mis-appropriation - The FIR itself has made a grievance of non-adherence by the petitioner to promises of payment and the filing of "false and frivolous case against the complainant/company" and the criminal complaint at Mumbai - These averments on the face of it do not disclose either criminal breach of trust, criminal mis-appropriation, criminal conspiracy, criminal intimidation or cheating. [Para 32]

(vi) Criminal Procedure Code, 1973 (II of 1974) - Investigation - Ordinarily the High Court would not stop investigation as that would trench upon the lawful power of the police to investigate into cognizable offences as the police have a statutory right and duty to investigate commission of a cognizable offence and the court would not thwart any investigation into such cognizable offences - Yet, where no cognizable offence or offence of any kind is disclosed in the FIR, the court would not permit an investigation to go on - In other words, while the High Court would be loathe to interfere in the investigations, especially at a nascent stage, where it becomes one of paramount necessity the court would not hesitate to use its inherent powers to quash the FIR and even restrain investigation in appropriate cases. [Para 33]

(vii) Criminal Procedure Code, 1973 (II of 1974) - Complainant has been involving the petitioners in multifarious litigation, both civil and criminal- Present complaint under Section 156(3) Cr.P.C. was filed by the Complainant only after the FIR was registered at instance of the petitioners at Mumbai, the connection cannot be ignored - All proceedings including investigations arising therefrom shall also stand quashed. [Para 34]

Facts:

FIR - Property in question owned by the complainant/respondent No.2 is situated at Jaisalmer, Rajasthan - Parties exchanged some emails and letter of intent and Telephonic discussions also took place - Lease Deed was registered at Jaisalmer - Though in the FIR, it is alleged that the petitioner No.2 had confirmed that the security deposit and the contract would be signed at Delhi, in the subsequent sentences, it is further recorded that she would collect the security deposit receipt when all the parties were to meet at Jaisalmer - Alleged that petitioners had promised and assured the complainant/respondent No.2 that they would take the hotel on lease and run and operate/manage the hotel in lieu of the monthly rent - Lease Deed was executed - Petitioners had paid the security deposit but the 36 PDCs demanded by the complainant were not agreed to by the petitioner No.2 on the assurance that they would set up an ECS system with the bank - Possession of the hotel was handed over at Jaisalmer - Lease Deed was registered with the Sub-Registrar, Jaisalmer - Rent

become erratic and irregular – Allegation that the accused never intended to set up any ECS and eventually never did so and therefore there was mal intention from very first day and thus, the offence of cheating had been committed – Apart from discussions taking place in Delhi, no part of the offence has occurred in Delhi as the lease was registered in Jaisalmer and there is no clarity regarding the place where the Lease Deed was signed – Possession was handed over at Jaisalmer – Terms of a contract cannot confer a criminal court with jurisdiction as no contract is for the purposes of violating the law, or for the commission of offences.

Mr.Vinay Kumar Garg, Sr. Adv. with Mr.Rajendra Singhvi, Mr.Parv Garg, Mr.K.S. Rekhi, and Mr. Pawas Kulshrestha for petitioners. Mr.Piyush Singhal, for Mr.Ashish Aggarwal, ASC for State with SI Dharam Singh, Mr.A.M.Dar, Sr.Adv. with Mr. J.S. Lamba, Mr.Danish Majid Dar and Mr. Anant Vikram, Advs. for R-2 with R-2 in person.

JUDGMENT

Asha Menon, J. – (17th August, 2022) – This petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for quashing the order dated 14th March, 2016 passed by the learned Metropolitan Magistrate-03 (for short, “MM”), South District, Saket, Delhi.

2. The facts as are relevant for the disposal of the present petition are that the petitioners and respondent No.2 entered into a commercial transaction where under the petitioners had leased out a property at Jaisalmer. The petitioner No.1 was a partner in the partnership firm by the name of M/s SRM Heritage Jaisalmer having its registered office at Mumbai. The petitioner No.2 was working as the Chief Development Officer of the partnership firm at the relevant time. The respondent No.2 is the Director of M/s JAH Developers Pvt. Ltd. (“company”) alongwith two other Directors, Mrs. Jaswanti Panwar (wife of respondent No.2) and their son Mr. Anuj Panwar. This company had constructed a hotel situated at Plot Nos.14, 15 & 16, Barmer Road, Jaisalmer known as Hotel Jaisal Villas in the year 2009, apparently taking a huge loan from the State Bank of India. It is this property that was taken on lease by the petitioners through Lease Deed dated 6th September, 2013.

3. It is the contention of the petitioner that this Lease Deed was executed on 6th September, 2013 by the respondent No.2 despite being aware of a restraint order upon them issued by the Debt Recovery Tribunal (“DRT”) on a plea of the State Bank of India (“Bank”) from whom the company had borrowed a heavy amount and after its account had become a Non Performing Asset (NPA). Apparently, the loan was taken on a mortgage of the land on which the hotel premises were constructed. Thus, according to the petitioners, it was with malafide intentions that the Lease Deed (Annexure P-1) was executed by the respondent no.2 and his company, for a period of 9 years, with a “lock-in period” of three years.

4. As the account of the company had become NPA, the Bank issued a notice on 17th December, 2013 alongwith the legal notice dated 20th May, 2013 setting out these facts, as also that the company had borrowed Rs.17 Crores from the Bank and the hotel was on a mortgage with it. A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short, “SARFAESI Act”), 2002 had also been issued. When a clarification was sought from Mr. Anuj Panwar, the petitioner was assured that the matter would be settled with the Bank.

5. However, instead of doing that, they referred the matter to a Sole Arbitrator. It was at that juncture that the petitioners filed a case under the Rajasthan Rent Control Act before the Rent Control Authority, Jaisalmer for protection against dispossession. Subsequently, the company filed a complaint under Section 8 of the Arbitration and Conciliation Act (for short, “A&C” Act), 1996 read with Order VII Rule XI [CPC](#) for dismissal of the rent petition. That application was rejected by the Rent Tribunal on 15th July, 2014 while at the same

time, the Sole Arbitrator rejected the objection raised by the petitioner and decided to continue with the arbitral proceedings. The company also filed a petition under Section 9 of the A&C Act, which was still pending. Subsequently, since the Sole Arbitrator withdrew from the arbitration proceedings, the said proceedings stood terminated under Section 25 of the A&C Act. It may be mentioned that a second arbitrator was appointed later, but no award was passed.

6. It is the case of the petitioners that the respondent No.2 and the company had not disclosed about the loan and the existence of an injunction order issued by the DRT in O.A. No.189/2013 filed by the Bank against the company, restraining the company from alienating or leasing or creating any encumbrances qua the said property. Despite which, about 2 ½ months later, the Lease Deed was executed by the company, through its Director, for a period of 9 years. A sum of Rs.90 lacs was paid as security amount which has till date not been refunded by the respondent No.2 and the company. It is also submitted that all action had been taken by the respondent No.2 who had also furnished a personal guarantee to the Bank and was fully in the know of his and the company's obligations to the Bank. He and the company had thus cheated, misled and defrauded the petitioners into signing the Lease Agreement with them. It was submitted that the rent stood paid till March, 2014 @ Rs.15 lacs per month whereafter, the possession was given to the Bank as demanded.

7. In the background of these facts, the petitioners filed a complaint with the police on 17th April, 2015 and the FIR No.37/2016 was registered with the Police Station Amboli, Mumbai and the investigations have resulted in the filing of the chargesheet against the respondent No.2 and his wife. Though the Respondent No.2 and his wife had filed W.P. (CRL) 2916/2015 before the Bombay High Court, seeking the quashing of the complaint dated 17th April, 2015, F.I.R. no interim relief had been granted by the court.

8. It is the further case of the petitioners that though during the pendency of O.M.P. No.1692/2014 before the Delhi High Court, the petitioners had expressed their readiness to handover the possession of the suit property, the company did not accept this offer, as recorded in the order of this court dated 15th January, 2016. A theft was also reported at the hotel at Jaisalmer and Ram Chandra Panwar /respondent no. 2 lodged an FIR on 24th December, 2016 at Police Station Jaisalmer against the petitioner No.1 alleging the commission of offences under Sections 406/420 IPC, alleging that he and the company had been cheated as the accused had taken the materials lying in the hotel and abandoned the property and thus had committed criminal breach of trust and other offences.

9. In the meantime, the respondent no.2 also filed a complaint before the Magistrate at Delhi alongwith an application under Section 156(3) Cr.P.C. Vide the impugned order dated 14th March, 2016, the learned MM after considering the contents of the complaint, that the company was induced into entering into a Lease Agreement by the accused No.1 and 5 (petitioners herein) who had no intention to honour obligations from the very beginning and had cheated the complainant of Rs.4 Crores and more and considering the Action Taken Report (ATR) submitted by the police, concluded that the matter needed thorough investigation by the police as a cognizable offence had been committed and assistance of the police would be required for the recovery of the cheated amount, and hence directed the SHO to register an FIR. As a result, the FIR in question bearing No.270/2016 was registered by the Police Station Hauz Khas, Delhi. The petitioner No.1 is stated to be on bail.

10. This order has been challenged by means of the present petition. The primary contention of Mr. Vinay Kumar Garg, learned senior counsel for the petitioners, is that the courts at Delhi had no jurisdiction to entertain the application or direct the registration of an FIR in the light of the provisions of Section 156(1) Cr.P.C. The learned senior counsel submitted that when an information is given to the police that a cognizable offence had

been committed, it is an officer of that Police Station alone who could investigate such a cognizable offence, which police station was located in a local area within the jurisdiction of the court having such jurisdiction over such area. In the instant case, the complaint is based on the Lease Deed which, as is evident from the FIR, had been executed and registered at Jaisalmer and nothing had taken place in Delhi. As such, the direction to register the FIR at Delhi was without jurisdiction and was liable to be quashed.

11. Additionally, it was submitted that the petitioners had themselves registered an FIR with the Mumbai Police which had investigated the matter and submitted the final report. As such a parallel investigation by the Delhi Police was uncalled for. Lastly, it was submitted that at best the issues raised by the complainant/respondent No.2 in the FIR registered by him, were in the nature of breach of contract and the respondent No.2 and his company had also initiated various civil litigations in Jaisalmer claiming civil reliefs. Therefore, the instant FIR was a result of malafides intended only to harass the petitioners. In these circumstances, the learned senior counsel submitted that the impugned order be quashed.

12. Mr. A.M. Dar, learned senior counsel for the respondent No.2, on the other hand, raised a preliminary objection as to the maintainability of the present petition. It was his submission that the learned MM had exercised his jurisdiction under Section 156(3) Cr.P.C. because the police had refused to register an FIR. The petitioners could only have filed a revision under Section 397 Cr.P.C., but the present petition filed under Section 482 Cr.P.C. was not maintainable. Reliance was placed on the judgment of *Nishu Wadhwa v. Siddharth Wadhwa*, 2017 SCC OnLine Del 6444. It was also urged that the case did not qualify as the rarest of the rare case as enlisted in the judgment of *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, para 102 and there was no ground to quash the FIR.

13. On facts, it was submitted that the company had its office at Shahpur Jat, specifically J.P. House, 118 Shahpur Jat near Asian Game Village, New Delhi and the Lease Deed had been drafted in Delhi. The agreement specifically provided for jurisdiction vesting in the courts in Delhi. The security was deposited in the bank account of the Company maintained at Green Park, New Delhi. In these circumstances, the Delhi Courts had jurisdiction and the FIR was rightly registered in Delhi.

14. It was further submitted that the offences under Sections 406/420 read with Section 34 IPC were prima-facie made out, inasmuch as during negotiations, the terms of the agreement incorporated the payment of rent by means of 36 Post-Dated Cheques (for short, "PDCs"), but the cheques were refused by petitioner No.2 on the plea that Electronic Clearing Service (ECS) would be effected from Mumbai, but no such payments were actually made. The petitioners continued to be in possession of the property for 5 years without paying rent and without flagging or communicating about any difficulties they were facing to the respondent No.2 or the company. It is also submitted that a mortgage could always be redeemed and therefore, the existence of the mortgage did not preclude the company and the respondent No.2 entering into a Lease Deed with the petitioners. Moreover, the stay order passed by the DRT had been passed ex-parte and therefore, till 6th September, 2013, when the Lease Agreement had been signed, the company and the respondent No.2 were not aware of the issuance of such orders. According to the learned senior counsel for the respondent No.2, the possession was handed over on 24th May, 2018, which was why the OMP was withdrawn. However, since loss had been caused to the property, the FIR had been registered at Jaisalmer in respect of such loss.

15. It was the submission of the learned senior counsel that in fact it was the petitioner who had malafide intentions because they filed an FIR at Mumbai where no cause of action had arisen, merely claiming that the meetings had taken place in Mumbai and payments had been transmitted from Mumbai. It was also informed to this Court that though the respondent No.2 had challenged the registration of the FIR before the Bombay High Court,

it had not stayed the investigations and the charge- sheet was filed. Similarly, there was no occasion for this Court to have stayed the investigations in the present FIR. If after the police investigated the FIR it was of the view that it did not have jurisdiction, the FIR could be transferred to the Police Station having jurisdiction, which was a recognized procedure. Even the MM could have transferred the case.

16. It was submitted that the Bank had not been in possession for 5 years from 2013 till 2018 and huge sums of money were owed by the petitioners to respondent No.2, for instance Rs.30 lacs towards the electricity bills and immense damage caused to the property. On the other hand, the Bank loan has been settled and liquidated. Reliance has been placed on *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra*, (2020) 10 SCC 118, *Satvinder Kaur v. State (Govt. of NCT of Delhi)*, (1999) 8 SCC 728 and *Priti Saraf v. State (NCT of Delhi)*, 2021 SCC OnLine SC 206 to submit that investigations ought not to have been stayed in the present case and on merits as well, the petition was liable to be dismissed.

17. In rejoinder, the learned counsel for the petitioners submitted that *Nishu Wadhwa* (supra) was on different facts. Relying on *Prabhu Chawla v. State of Rajasthan*, (2016) 16 SCC 30, it was submitted that a petition under Section 482 Cr.P.C. could be filed even if a revision was available before the Sessions Court. *Nishu Wadhwa* (supra) only affirms that a revision petition was maintainable before the Sessions Court against an order passed by the learned MM under Section 156(3) Cr.P.C. A clarification was submitted that the possession had been taken on 25th April, 2016 and the Bank had installed guards whereafter the respondent took possession of the premises. The FIR in Jaisalmer was registered on 20th June, 2016 and, therefore, the date when possession was taken has been rendered a non-issue. In any case, that is not a question that can be decided by the police.

18. Relying on the judgment of *Babu Venkatesh v. State of Karnataka*, (2022) 5 SCC 639, it was submitted that the present case was covered by clause 7 of para 102 of *Bhajan Lal* (supra) case, that the dispute was essentially a dispute of civil nature and an FIR had been got registered out of vengeance. Even the counter affidavit filed in the present case admitted the facts that the Lease Deed was registered at Jaisalmer, that a sum of Rs.90 lacs had been received as security and that the Bank had got the petitioners to vacate. Therefore, there was no question of commission of offences under Sections 406/420/34 IPC. It was also submitted that a criminal court cannot be conferred jurisdiction by parties. Moreover, despite the so-called clause subjecting all disputes to the jurisdiction of the Delhi courts, the respondent No.2 and the company had themselves initiated civil and criminal proceedings at Jaisalmer and therefore, they cannot be approbating and reprobating in the same breath. Thus, it was submitted that neither on the preliminary question of jurisdiction nor on merits could the impugned order and the FIR be sustained, as no part of the offence had been committed in Delhi and in fact no essential ingredients of such offences have been made out. In the circumstances, it was prayed that the impugned order as also the FIR be quashed.

DISCUSSION

19. Taking the first issue of maintainability, the Supreme Court in *Prabhu Chawla* (supra) held that the availability of an alternate remedy in the form of a revision would not limit or effect the inherent powers of the High Court under Section 482 Cr.P.C. In fact, the Supreme Court has held in *Krishnan v. Krishnaveni*, (1997) 4 SCC 241 which has been followed in other cases subsequently, that even if a second revision before the High Court was barred under Section 397(3) Cr.P.C. after the dismissal of the first one by the Court of Sessions, the inherent powers of the High Court would still be available under Section 482 Cr.P.C. The reason being that under Section 401 Cr.P.C., every High Court has suo moto powers of

revision which was in addition and apart from the express power under Section 397(1) Cr.P.C. The court recognized that the High Court was invested with continuous supervisory jurisdiction to prevent miscarriage of justice or to correct irregularities of procedure or to meet out the justice or to prevent abuse of process, to be exercised either under Section 401 read with Section 397 Cr.P.C. or under Section 482 Cr.P.C.

20. Thus, it is clear that the present petition is maintainable whether titled as one under Section 482 Cr.P.C. or whether treated to be one under Section 401 Cr.P.C. Therefore, there is no reason to reject the present petition on this ground. The decision of a Coordinate Bench of this Court in *Nishu Wadhwa* (supra) has no applicability as it has only held that a revision petition against an order of the Magistrate under Section 156(3) Cr.P.C. was maintainable before the Additional Sessions Judge. It nowhere provides that apart from a revision no remedy could be availed of before the High Court.

21. The next question is whether the impugned order suffers from irregularity or illegality or perversity, which calls for intervention by this Court.

22. The challenge to the said order by the petitioners are premised on :-

(i) lack of jurisdiction with the learned MM as the offence has been committed beyond its jurisdiction and,

(ii) the essential ingredients of the offence are not made out.

23. Jurisdiction to investigate an offence by the police officer has been provided for under Section 156(1) Cr.P.C. which reads as under:

“(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2)..... (3).....”

In other words, the powers of the incharge of the police station to investigate a cognizable offence depends on whether the police station falls within the area under the jurisdiction of the court/Magistrate.

24. Section 177 Cr.P.C. provides that “every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.” Section 178 Cr.P.C. provides that “(a) when it is uncertain in which of several local areas an offence was committed, or (b) where an

offence is committed, partly in one local area and partly in another, or

(c) where an offence, is a continuing one, and continues to be committed in more local areas than one, or (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.” Section 179 Cr.P.C. provides that “when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.”

25. What constitutes that jurisdiction of the court needs to be considered. To know what constitutes the local jurisdiction of a court, reference may be had to Section 2(j) which makes it abundantly clear that the local area specified in relation to a Court or Magistrate is the area notified by the State Government within which such Court or Magistrate can exercise all or any of its powers. In other words, basically it is that court which can try an offence in whose local area the offence in entirety or part thereof has been committed. In the present case therefore, the Police Station in respect of which the local Magistrate has jurisdiction would be Police Station Hauz Khas, Delhi. The offence alleged must have been committed within such area. Read with Section 156 Cr.P.C., it would mean that the place where the offence was allegedly committed would determine the local area of the Court

and, therefore, the local area of the police station.

26. When a cognizable offence takes place, the complainant may approach a local Police Station to complain about it. The police would be bound to record that information and in usual course transfer it to the local Police Station where the offence was committed, even if an initial inquiry has been conducted. Sometimes two parts of the offences being committed in different local areas result in two different FIRs but they are subsequently merged being of the same transaction. Thus, when it is held that the police of the local area of the Court where the offence or part of the offence has occurred is the authorized Police Station to investigate, it will not dilute these obligations of the police in general.

27. From perusal of the FIR registered pursuant to the directions of the court, copy of which has been placed on the record as Annexure P-9, it is apparent that the property in question owned by the complainant/respondent No.2 in the name and style of Hotel Jaisal Vilas is situated at Jaisalmer, Rajasthan more precisely at Plot Nos.14, 15 & 16, Barmer Road. The parties exchanged some emails and letter of intent. Ms. Saumya Sharma, petitioner No.2, had a site visit on 29th July, 2013 whereafter she expressed to the company an intention to take the property on lease. Telephonic discussions also took place. The Lease Deed was admittedly registered at Jaisalmer. Though in the FIR, it is alleged that the petitioner No.2 had confirmed that the security deposit via RTGS be made by 19th August, 2013 and the contract would be signed at Delhi, in the subsequent sentences, it is further recorded that she would collect the security deposit receipt on 25th August, 2013 when all the parties were to meet at Jaisalmer.

28. It is further alleged in the FIR that on 19th August, 2013, both the petitioners had promised and assured the complainant/respondent No.2 that they would take the hotel on lease and run and operate/manage the hotel in lieu of the monthly rent. It is asserted in the FIR that the Lease Deed dated

1st September, 2013 was reduced into writing and signed by both the parties whereby the hotel was let out to M/s SRM Heritage Jaisalmer at a monthly rent of Rs.15 lacs by way of ECS on or before 7th day of each English calendar month. There was a lock-in period of three years with a sum of Rs.90 lacs as interest free security deposit. The further condition was that the petitioner would maintain the property in the same condition as it was at the start of the lease and all disputes would be subject to the exclusive jurisdiction of New Delhi.

29. The FIR also records that the petitioners had paid the security deposit by way of different cheques of the partners of SRM Heritage Jaisalmer, instead of making RTGS transfer. But the 36 PDCs demanded by the complainant/respondent No.2 were not agreed to by the petitioner No.2 on the assurance that they would set up an ECS system with the bank. It was thereafter the possession of the hotel was handed over at Jaisalmer. The Lease Deed was registered with the Sub-Registrar, Jaisalmer on 6th September, 2013. The alleged accused petitioners started operating and running the said hotel and paid the rent for the first seven months. Thereafter, the rent become erratic and irregular.

30. The allegation is that the accused never intended to set up any ECS and eventually never did so and therefore there was mal intention from very first day and thus, the offence of cheating had been committed. It is clear from these averments that apart from discussions taking place in Delhi, no part of the offence has occurred in Delhi as the lease was registered in Jaisalmer and there is no clarity regarding the place where the Lease Deed was signed. The possession was handed over at Jaisalmer of property located there. An argument was advanced on behalf of the

respondent No.2 that since the money i.e., the security deposit and seven months' rent had been received at Delhi, the Delhi courts would have jurisdiction and moreover the Lease Deed had subjected the disputes to the jurisdiction of New Delhi. This argument does

not hold water. The terms of a contract cannot confer a criminal court with jurisdiction as no contract is for the purposes of violating the law, or for the commission of offences. The criminal courts would be bound by the vesting of jurisdiction in accordance with the Criminal Procedure Code and not the Civil Procedure Code. It is to be noted that even in respect of the civil courts jurisdiction, the respondent No.2 has initiated action in Jaisalmer and Delhi as per convenience.

31.As regards the plea of operation of the bank account, it is to be noted that on a similar plea that the money had been transferred from Mumbai to the respondent No.2/company, an FIR already stood registered at Police Station Amboli, Mumbai bearing No. FIR No.37/2016 dated 17th April, 2015. The present FIR has been lodged almost a year thereafter on 15th March, 2016. It appears that the respondent No.2 approached the courts at Delhi through its complaint alongwith an application under Section 156(3) Cr.P.C. after hearing of the FIR registered at Mumbai. The police of Mumbai have investigated the matter on the basis of a complaint filed by the petitioners alleging that they have been cheated, and the charge-sheet has also been submitted. The present FIR has now been registered in which the Delhi Police is called upon to investigate whether the respondent No.2 has been cheated or not. The police of two cities would then be engaged in investigating the same transaction to determine whether an offence has been committed and if so by whom. This would indeed be a factor that

would weigh with the court while determining whether or not to let this FIR continue.

32.More importantly however, is the consideration whether the averments in the FIR disclose the necessary ingredients of the offences alleged to have been committed. The contents of the FIR have been referred to in the foregoing paragraphs. The offence of cheating would occur only when it is prima facie shown that there was mal intention from the very beginning. Admittedly, the petitioner had paid Rs.90 lacs as security to the respondent No.2. Furthermore, 7 months" rent has also admittedly been paid. The non-payment that occurred subsequently was subject matter of arbitration and rent control proceedings. Thereafter, possession was handed over to the Bank and subsequently to the respondent No.2 in the year 2018 during civil litigation before the High Courts of Delhi and Rajasthan. It is more than apparent that the non- payment of rent does not disclose a mal intent from the time the lease was entered into by the petitioners with the company of the respondent No.2 nor does it disclose the offence of mis-appropriation. The FIR itself has made a grievance of non-adherence by the petitioner to promises of payment and the filing of "false and frivolous case against the complainant/company" and the criminal complaint at Mumbai. These averments on the face of it do not disclose either criminal breach of trust, criminal mis-appropriation, criminal conspiracy, criminal intimidation or cheating.

33.As observed in *Satvinder Kaur (supra)* and in *Neeharika Infrastructure (P) Ltd. (supra)*, ordinarily the High Court would not stop investigation as that would trench upon the lawful power of the police to

investigate into cognizable offences as the police have a statutory right and duty to investigate commission of a cognizable offence and the court would not thwart any investigation into such cognizable offences. Yet, where no cognizable offence or offence of any kind is disclosed in the FIR, the court would not permit an investigation to go on. In other words, while the High Court would be loathe to interfere in the investigations, especially at a nascent stage, where it becomes one of paramount necessity the court would not hesitate to use its inherent powers to quash the FIR and even restrain investigation in appropriate cases.

34.The powers of quashing would no doubt be exercised sparingly but where the continuance of investigation would result in complete miscarriage of justice and appears to be only an exercise in pressure tactics, the court should not hesitate to nip such an exercise

in the bud. The present case is clearly covered in clause 7, as set forth in para 102 of Bhajan Lal (supra) whereby if a criminal proceeding is manifestly attended with malafide 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, the FIR must be quashed. In the present case, the respondent No.2 has been involving the petitioners in multifarious litigation, both civil and criminal, and as borne out from the fact that the present complaint alongwith the application under Section 156(3) Cr.P.C. was filed by the respondent No.2 only after the FIR was registered at instance of the petitioners at Amboli Police Station, Mumbai, the connection cannot be ignored.

35. In the light of the foregoing discussion therefore, the petitioners are entitled to the relief sought. Accordingly, the petition is allowed and the impugned order dated 14th March, 2016 stands quashed and as a result thereof the FIR No. 270/2016 and all proceedings including investigations arising therefrom shall also stand quashed.

36. The judgment be uploaded on the website forthwith.