* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **CRL.M.C. 2859/2023 & CRL.M.A. 10703/2023**

SHRI SHYAM LAL GARG & ANR. .....Petitioners

Through: Mr. Anil Kumar Bhargav and Mr. Bhavesh Sharma, Advs.

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Manoj Pant, APP

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as *'Cr.P.C'*.) seeking quashing of ***FIR No. 272/2023*** dated 23.03.2023 registered at Police Station Model Town, Delhi under Sections 420/406/120-B of the Indian Penal Code, 1860 (hereinafter referred to as the *'IPC'*), which came to be registered pursuant to the order dated 20.03.2023 passed by the learned Metropolitan Magistrate (North), Rohini Courts, Delhi in ***Complaint Case No. 298/2023*** titled '***Prithpal Singh v. Shyam Lal'*** under Section 156(3) Code of Criminal Procedure, 1973 (hereinafter referred to as the '*Cr.P.C.'*). The petitioners also seek quashing of all

consequential proceedings emanating from the aforesaid FIR.

FACTUAL MATRIX

2. Facts giving rise to the present petition are that Petitioner no.1 is the proprietor of M/s Gupta Polymers, a firm engaged in the trade of polymers in Delhi-NCR for more than two decades. Petitioner no.2, aged about 28 years, is the son of petitioner no.1 and is stated to be a Director of M/s Jloves Chem Pvt. Ltd.

3. According to the petitioners, the complainant, Mr. Prithpal Singh, approached M/s Gupta Polymers through one of its regular customers, Mr. Kama Daga. The complainant represented himself to be an importer of EVA raw material and stated that, owing to recession in the footwear market after the COVID period, he intended to clear his stock at an attractive sale price. After discussions between the parties, petitioner no.1 agreed to purchase the goods from the complainant on a credit period of 180 days at the mutually agreed rate/price. Accordingly, petitioner no.1 purchased goods amounting to Rs.29,69,470/- from the complainant.

4. It is the case of the complainant that, after the expiry of the agreed period for payment, he repeatedly approached the petitioners requesting them to clear the outstanding amount. According to the complainant, despite repeated assurances, the petitioners ultimately refused to make any payment and allegedly threatened him with dire consequences.

5. It is the case of the petitioners that, despite the dispute being purely commercial in nature, the complainant instituted ***Complaint Case No.298/2023*** before the learned Metropolitan Magistrate (North), Rohini Courts, Delhi under Section 156(3) Cr.P.C. seeking registration of an

FIR. By order dated 20.03.2023, the learned Metropolitan Magistrate directed registration of an FIR, pursuant to which ***FIR No.272/2023*** dated 23.03.2023 came to be registered at Police Station Model Town under Sections 420/406/120B IPC. The relevant portion of the order dated 20.03.2023 passed by the learned Metropolitan Magistrate is reproduced hereunder:

> ***"Record Perused.***
> *The complainant has made the allegations of cheating to the tune of about Rs. 77 lakhs. The complainant alleged that he supplied the goods but the accused persons did not pay even a single penny to him and closed their office at Trinagar. In support of his allegations, the complainant has filed copies of eight invoices vide which the goods were sold to the accused. The complainant has alleged that he was duped by the accused persons as they induced him by making misrepresentations that not only that they would purchase the EVA from the complainant but also would be paying Rs. 2 per Kg extra and entire payment would be made within one month. The complainant on the faith of the assurances sold the material but after receiving the material, the accused persons not only did not pay for the materials but also closed their office at Trinagar.*
> *The allegations prima facie satisfy all the ingredients of cheating. The present case is a typical example of white collar crimes. Such crimes may appear innocuous but are harmful to the society as it is committed by those who are expected to set high morals and behave responsibly. It is pertinent to mention the observations made by Hon'ble Supreme Court in* ***State of Gujarat Vs. Mohanlal Jitamalji Porawal & Anr., AIR 1987 SC 1321****:*

"The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest."

In the case titled, ***Prem Kumar Parmar Vs. State (CBI), (1989 RLR 131)****, following observation was made by Hon'ble Delhi High Court:*

"The offences such as cheating and forgery bring imbalance in the economy of the country, which has the effect of making the life of majority of people, particularly those belonging to economically weaker sections of the society miserable and that such economic offences are worse than murders."

In ***Ram Naraina Popli Vs. CBI, 2003 1 SCR 119****, Hon'ble Supreme Court made the following observation:*

"Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fibre of the country's economic structure. These cases are nothing but private gain at the cost of the public, and lead to economic disaster."

In ***Trinity Global Enterprises Ltd. Vs. Raj Hiremath & Anr. (Crl. M.C. 4137/2011 dated***

> ***02.07.2012)**, it was observed by Hon'ble Delhi High Court:*
> *"The petitioner, therefore, continues to enjoy the fruits of their crime. Such persons who continue to reap the benefit of their crime after committing the offence of personal gain and preceded by calculated design need to be put under some restriction by imposing a reasonable condition so that it does not send a wrong message to the potential offenders that even after committing the crime, they can continue to enjoy the ill-gotten wealth. This Court is conscious of the fact that criminal Court is not a recovery forum but in the given case, it is the duty of the Court to safeguard the interest of the society as also of the complainant who has been duped of huge amount."*
> *Thus, what appears from the above discussion is that Court should deal with white collar crimes sternly and without any exception.*
> *Facts as alleged by the complainant disclose commission of a cognizable offence which require investigation by police to unearth the conspiracy and discovery of allied facts and evidences. Accordingly, **SHO, PS Model Town** is directed to register an FIR against the accused persons forthwith."*

6. It is the case of the petitioners that in December, 2022, Petitioner no.1 received a telephone call from Police Station Model Town requiring him to appear at the police station. Petitioner no.1, along with his son Shubham, thereafter visited the police station and apprised the SHO of the dispute; however, according to the petitioners, the issue could not be resolved.

7. The petitioners further state that on 29.03.2023, petitioner no.1 received two notices through WhatsApp from SI Kuldeep in connection

with FIR No.272/2023 under Sections 420/406/120B IPC, requiring petitioner nos.1 and 2 to join the investigation on 02.04.2023. Petitioner no.1 could not appear on the said date on account of cold and fever and, through counsel, sent a reply dated 05.04.2023 seeking another date for joining investigation. Petitioner no.2 is also stated to have been unable to appear owing to an appointment with a doctor for his minor daughter and similarly sought another date for joining investigation.

8. Aggrieved by the registration of the aforesaid FIR, the petitioners have preferred the present petition seeking quashing thereof and of all proceedings emanating therefrom.

<u>SUBMISSIONS ON BEHALF OF THE PETITIONERS</u>

9. Learned counsel for the petitioners submits that the dispute between the parties arises out of a commercial transaction concerning the sale and purchase of goods and essentially relates to alleged overbilling and the due date of payment. It is submitted that the dispute is, therefore, civil in nature and has been given the colour of a criminal proceeding.

10. Learned counsel further submits that the essential ingredients of the offence of cheating are not made out inasmuch as there is no allegation of dishonest intention or inducement on the part of the petitioners at the inception of the transaction. It is submitted that the goods worth Rs.29,69,470/- were supplied to petitioner no.1 pursuant to a commercial transaction and that Petitioner no.1 had deposited TDS of Rs.2,517/- in respect thereof. According to the petitioners, the aforesaid circumstance demonstrates absence of any dishonest intention to cheat

the complainant.

11. It is further submitted that Petitioner no.2 had no role in the transaction in question and has been implicated merely on account of being the son of petitioner no.1. According to the petitioners, the transactions were between M/s Gupta Polymers, the proprietary concern of petitioner no.1, and the complainant's firm, and petitioner no.2 had no concern with M/s Gupta Polymers or the transaction forming the subject matter of the FIR.

12. Learned counsel further submits that the FIR does not disclose the ingredients of criminal breach of trust or misappropriation of funds and that the allegations, even if taken at their face value, disclose at best a civil dispute arising from a commercial transaction. It is contended that criminal proceedings ought not to be permitted to be employed as a means for recovery of money or for exerting pressure in a purely commercial dispute.

13. It is also submitted that the FIR was registered by concealing and suppressing material facts and without the Investigating Officer duly verifying the allegations made therein. According to the petitioners, the criminal proceedings have been initiated only to harass them and to expedite recovery of the amount claimed by the complainant.

14. Learned counsel accordingly submits that continuation of the proceedings would amount to an abuse of the process of law and, therefore, ***FIR No.272/2023*** registered at Police Station Model Town

under Sections 420/406/120B IPC, along with all proceedings emanating therefrom, deserves to be quashed.

15. Learned counsel for the petitioners further submits that the complainant has already instituted a commercial suit, before the learned Commercial Court. It is, therefore, contended that by instituting the commercial suit, the complainant has himself acknowledged the commercial nature of the dispute. According to the petitioners, the subsequent initiation of criminal proceedings in respect of the same transaction amounts to an abuse of the process of law, as the criminal machinery has been invoked merely to exert pressure and secure recovery in a purely commercial dispute, which is impermissible in view of the settled law laid down by the Supreme Court.

16. In support of the aforesaid submissions, learned counsel places reliance upon the following cases:

i. ***R. Nagender Yadav v. State of Telangana (2023) 2 SCC 195***
ii. ***G. Sagar Suri v. State of U.P.2000) 2 SCC 636***
iii. ***Inder Mohan Goswami v. State of Uttaranchal (2007) 12 SCC 1***
iv. ***All Cargo Movers (India) Pvt. Ltd. v. Dhanesh Badarmal Jain(2007) 14 SCC 776***
v. ***S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1***
vi. ***Rajinder Singh Katoch v. Chandigarh Administration (2007) 10 SCC 69***
vii. ***Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao***

Angre (1988) 1 SCC 692

viii. ***M/s Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122***

SUBMISSIONS ON BEHALF OF THE RESPONDENT

17. Learned APP for the State, relying upon the status report and the material collected during investigation, contends that the present FIR was registered pursuant to an order passed by the learned Metropolitan Magistrate on a complaint alleging that the petitioners had dishonestly induced the complainant to supply EVA raw material worth approximately ₹77,92,720/- on the assurance that payment would be made within 30 days. However, despite repeated demands, no payment was made, causing wrongful loss to the complainant. It is submitted that the allegations disclose a pre-planned conspiracy inasmuch as the petitioners allegedly arranged vehicles for lifting the material, failed to honour their payment commitments and thereafter disposed of their business premises.

18. It is further contended that during investigation, the complainant produced invoices as well as video recordings wherein petitioner No. 1 allegedly acknowledged his liability and assured payment upon enhancement of his bank limit. The statements of independent witnesses, namely Rajender Singh and Kamal Daga, recorded under Section 161 CrPC, also corroborate the complainant's version that the petitioners had received the material but subsequently refused to make payment.

19. Learned APP submits that although notices were repeatedly issued to the petitioners requiring them to join the investigation, they initially

failed to cooperate and, even after joining the investigation pursuant to notices under Section 91 CrPC, did not extend meaningful cooperation.

20. It is further submitted that the investigating agency obtained verification from the CGST authorities regarding the invoices relied upon by the complainant. The CGST records, including GSTR-2A and GSTR-3B returns, confirmed that all eight invoices were duly reflected in the GST returns of M/s Gupta Polymers and that the corresponding Input Tax Credit had been availed. According to the State, this establishes the genuineness of the invoices and falsifies the petitioners' claim that three of the invoices were forged. It is, therefore, contended that the petitioners have attempted to mislead this Court by disputing documents which stand independently verified by the statutory tax authorities.

21. Learned APP further contends that the investigating agency also examined the owners and drivers of the vehicles allegedly used for transportation of the raw material. These witnesses produced e-invoices and transport documents and stated that the material had been loaded from Jahangirpuri, Delhi, thereby lending further corroboration to the prosecution case regarding delivery of the goods.

ANALYSIS AND FINDINGS

22. I have heard the learned counsel for the petitioner and have gone through the material on record.

23. The issue before this Court is whether the allegations contained in the FIR disclose the commission of cognizable offences or whether the dispute is purely civil in nature, warranting interference under Section

482 Cr.P.C.

24. The law governing the exercise of powers under Section 482 Cr.P.C. is well settled. The inherent jurisdiction of the High Court is to be exercised sparingly and with circumspection. At the stage of considering a prayer for quashing of an FIR, the Court is only required to examine whether the allegations contained in the complaint and the material collected during investigation, if accepted at their face value, disclose the commission of a cognizable offence. The Court is not expected to undertake a meticulous appreciation of evidence, adjudicate disputed questions of fact or conduct a mini-trial.

25. Before adverting to the facts of the present case, this Court considers it appropriate to refer to the principles governing the exercise of jurisdiction under Section 482 Cr.P.C., as succinctly reiterated by the Supreme Court in ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401***. The relevant observations are reproduced hereunder:

> ***"33.12.*** *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate*

report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

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***33.15.** When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR."*

26. In the present case, the complaint alleges that the petitioners induced the complainant to supply EVA raw material worth approximately ₹77,92,720/- upon an assurance that payment would be made within thirty days. It is further alleged that despite repeated demands, no payment was made and that the petitioners acted pursuant to a pre-planned design. Whether these allegations ultimately stand proved is a matter of evidence. However, at this stage, the Court is only required to examine whether the allegations prima facie disclose the commission of cognizable offences.

27. The FIR cannot be read in a truncated manner so as to treat the dispute as one of mere recovery of money. The complainant has specifically alleged that the petitioners induced him to part with goods worth ₹77,92,720/- by representing themselves to be established traders, assuring payment within one month and promising to pay above the prevailing market price. It is further alleged that after obtaining delivery

of the goods, the petitioners failed to honour their assurances and deliberately avoided payment. Whether these allegations are ultimately established is a matter for investigation and trial. However, at this stage, if the allegations are accepted at their face value, they prima facie disclose the commission of cognizable offences. The Court, while exercising jurisdiction under Section 482 Cr.P.C., cannot evaluate the correctness or otherwise of these allegations or determine whether the requisite mens rea actually existed. Such an exercise would amount to conducting a mini-trial, which is impermissible.

28. It is also pertinent to note that the impugned FIR was not registered merely on the basis of a complaint lodged before the police, but pursuant to a reasoned order dated 20.03.2023 passed by the learned Metropolitan Magistrate under Section 156(3) Cr.P.C. The learned Magistrate, upon considering the complaint, the Action Taken Report and the material placed on record, formed a prima facie opinion that the allegations disclosed the commission of cognizable offences warranting investigation by the police. The said circumstance also lends support to the conclusion that the investigation cannot be interdicted at the threshold.

29. The decisions and judgments relied upon by the petitioners are distinguishable on facts and do not advance their case. Learned counsel for the petitioners, in the written submissions, has also placed reliance upon a decision of the Supreme Court in ***Radheyshyam & Ors. v. State of Rajasthan & Anr., Criminal Appeal No. 3020 of 2024*** (arising out of Special Leave Petition (Criminal) No. 13675 of 2023), decided on 20.08.2024., to contend that mere non-performance of a contractual

obligation or an Agreement to Sell does not constitute the offences of cheating or criminal breach of trust.

30. The said decision, however, is clearly distinguishable on facts. In ***Radheyshyam*** *(supra)*, the Supreme Court found that the FIR merely alleged non-performance of an Agreement to Sell and did not disclose any allegation that the complainant had been fraudulently or dishonestly induced at the inception of the transaction. It was in those circumstances that the dispute was held to be purely civil in nature. In the present case, however, the complaint specifically alleges that the petitioners induced the complainant to supply goods worth approximately ₹77.92 lakhs by portraying themselves as established traders, promising payment within one month and assuring payment at a rate higher than the prevailing market price. The complaint further alleges that such representations were false and were made to dishonestly induce the complainant to part with the goods. Whether these allegations are ultimately established is a matter for investigation and trial. At this stage, this Court cannot record a finding that the dispute is purely civil in nature.

CONCLUSION

31. In view of the aforesaid discussion, this Court finds no ground to exercise its inherent jurisdiction under Section 482 Cr.P.C. for quashing ***FIR No.272/2023*** dated 23.03.2023 registered at Police Station Model Town, Delhi under Sections 420/406/120-B IPC or the consequential proceedings arising therefrom.

32. Accordingly, the present petition is dismissed.

33. It is, however, clarified that the observations made herein are

confined solely to the adjudication of the present petition under Section 482 Cr.P.C. and shall not be construed as an expression on the merits of the case.

34. The learned Trial Court shall consider the case independently on its own merits, uninfluenced by any observations made in the present judgment. The investigating agency shall proceed with the investigation in accordance with law, and all rights and contentions of the parties are left open to be urged before the competent court at the appropriate stage.

35. Pending application(s), if any, also stand disposed of in the aforesaid terms.

MADHU JAIN
(JUDGE)

AUGUST 3, 2026/RM