



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

% ***Pronounced on: 25th September, 2025***

+ **CRL.M.C. 436/2020, CRL.M.A. 1799/2020 (stay)**

BRIGHTSTAR TELECOMMUNICATIONS INDIA LTD.

Having its registered office at
U Floor, B Wing, Plot No. 16,
Udyog Vihar, Phase IV,
Gurgaon-122015

Through A.R.

Sh. Neeraj Manchanda

.....Petitioner

Through: Mr. Siddharth Aggarwal, Senior
Advocate with Mr. Aditya Wadhwa,
Mr. Siddharth Sunil, Mr. Karan
Dhalla, Ms. Shivani Pegatraju and
Mr. Arunav Sarma, Advocates.

Versus

1. STATE OF NCT OF DELHI

PS EOW,
Mandir Marg
New Delhi 110008

.....Respondent No. 1

2. iWORLD BUSINESS SOLUTIONS PVT. LTD.

Having Registered office at
30/1, East Patel Nagar,
New Delhi 110008

.....Respondent No. 2

Through: Mr. Utkarsh, APP for the State with
Inspector Rakesh Raushan, EOW.

+ **W.P.(CRL) 2834/2019**

1. HARJEET SINGH KOHLI

S/o Sh. Kulwant Singh Kohli



R/o A5805, Sahara Grace, Sector 28,
M.G. Road, Gurgaon – 122001

.....Petitioner No. 1

2. SMT. GEETHA MATHUR,
W/o Sh. Yogeshwar Datt Sardana,
R/o B-1/8, Vasant Vihar,
New Delhi-110057

....Petitioner No. 2

3. SH. RAJESH MADAN,
S/o Sh. Cm Prakash Madan,
R/o D6/20, DLF 1,
Gurgaon – 122002

.....Petitioner No. 3

Through: Mr. Siddharth Aggarwal, Senior
Advocate with Mr. Aditya Wadhwa,
Mr. Siddharth Sunil, Mr. Karan
Dhalla, Ms. Shivani Pegatraju and
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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

1. Aforesaid Petitions have been filed under Section 482 of Criminal Procedure Code, 1973 read with Article 226 & 227 of Constitution of India, 1950, by the petitioners seeking quashing of ***FIR No. 193/2019 registered under Sections 420, 406, 465, 468, 471, and 120B*** of Indian Penal Code, 1860 at P.S. Economic Offences Wing registered on the Complaint of *iWorld Business Solutions Ltd./Respondent No. 2* and the Order dated 24.09.2019.

2. ***Briefly stated***, Petitioner/Brightstar Telecommunications India Limited (*hereinafter “BTIL”*) is a Company incorporated under the Companies Act, 1956, and is engaged in the business of distribution of *lifestyle accessories, communication devices, IT infrastructure products (including mobile broadband devices and memory products) and provision of enterprise solutions*. It is associated with various global brands in the original equipment manufacturer (OEM) space like Harman Kardon, JBL, Polycom, Huawei, Samsung amongst others.

3. Respondent No. 2, iWorld Business Solutions Ltd. (*hereinafter “IBS”*), is a private Company and part of a Group (*hereinafter “iWorld Group”*) of related Companies including iWorld Digital Solutions Pvt. Ltd. (*hereinafter “IDS”*) and Good Marketing and Sales Pvt. Ltd. (*hereinafter “GMS”*). It is primarily engaged in the business of retail of Apple products and other related accessories.

4. The Respondent No.2 had an outstanding amount of Rs. 45,86,63,392/- as in August, 2017 payable to BTIL/petitioner, against which three cheques bearing No. 682864, 682865 and 682872, were issued by it for



a total sum of Rs.5,49,00,330/- in favour of Petitioner/BTIL, which on presentation, were dishonoured on account of “*insufficiency of funds*” vide Return Memo dated 04.09.2017. *Petitioner filed a Complaint under Section 138 N.I. Act, 1881* in respect of the aforementioned three cheques.

5. IBS/Respondent No. 2, on the other hand, filed a Complaint with PS EOW on 06.12.2017 on the allegations that the Respondent No. 2 had given certain cheques under an Agreement dated 12.02.2015 to BTIL/Petitioner, which pertained to sale / purchase of ‘*Landline phones*’ which have been utilized by Petitioner towards other independent transactions in relation to sale / purchase of ‘*Apple products*’, thereby committing offence under S. **Sections 420, 406, 465, 468, 471, 107, 109, 34 and 120B**. However, no action was taken by the Police.

6. Respondent No.2/IBS filed a Complaint bearing **CC NO. 6622/2018**, under Section 200 Cr.P.C. along with an Application under Section 156(3) Cr.P.C, on 05.01.2018 before the CMM, Patiala House Courts. EOW submitted its first ATR on 12.02.2018 stating “*the matter is absolutely civil in nature and doesn’t constitute any cognizable offence.*”

7. During Preliminary inquiry, Petitioner/BTIL filed several representations including representation dated 19.07.2018, to the IO which categorically demonstrates that the entire proceedings were false. The documents, including emails, submitted by Petitioner categorically demonstrate that the said cheques had been given in relation to the work done for the ‘*Apple Products*’. **EOW submitted its Second ATR** on 24.07.2018 stating that “*the matter is civil in nature and do not constitute a Cognizable Offence.*”



8. The Application under Section 156(3) Cr.P.C. filed by Respondent No.2/IBS was allowed by Ld. CMM Order vide dated 24.09.2019 resulting in registration of ***FIR No. 193/2019 on 27.09.2019 against BTIL/Petitioner and its 12 Directors/ Employees and unknown persons, who are as under:***

Sr. No.	Name	Designation
1.	BTIL	Company
2.	Darshan Nanayakkara	Non Executive Director and then Head of Asia Pacific Region of BTIL
3.	Geeta Mathur	then Independent Director of BTIL
4.	Rajesh Madan	Independent Director of BTIL
5.	Paul Andrew Ringrose	then Non-Executive Director of BTIL
6.	Harjeet Singh Kohli	then Non-Executive Director of BTIL
7.	Deval Purushottam Parikh	then CEO and Wholetime Director of BTIL
8.	Alok Shankar	former CEO and Wholetime Director of BTIL
9.	Jitan Anand	former Manager-Finance of BTIL
10.	Rohit Kumar Gupta	then CFO of BTIL
11.	Rajiv Ahlawat	then VP – Mobile Division of BTIL
12.	Puneet Narang	former VP – Mobile Division of BTIL
13.	Satyendra Kumar	then Sales Division of BTIL
14.	Other unknown Persons	

9. Aggrieved by the same, the present Petitions have been preferred for ***quashing of FIR on the grounds*** that the findings of the Ld. CMM are patently illegal. No reasons have been given as to why police investigation was required especially since the entire case is based on documentary evidence, which is either in possession of the Complainant or can be summoned in Court.

10. Furthermore, even if the allegations made in the FIR or the Complaint are taken at face value and accepted in their entirety, *no prima facie* offence



of cheating is made out. It is clear that the transaction between BTIL and the Respondent No.2 was purely *civil in nature* and there was never an intention to cheat at the inception of the transaction, which is an essential ingredient to constitute the offence of cheating. Furthermore, there is neither a wrongful gain to BTIL nor a wrongful loss caused to the Complainant as the said cheques were dishonoured on account of “*insufficiency of funds*”.

11. It is submitted that the investigating officer in its *ATR dated 24.07.2018* stated that the said dispute relates to *breach of agreement between the parties and as such is a civil dispute*. The Apex Court has time and again, cautioned the Courts against the tendency to maliciously use criminal proceedings to settle business disputes, which are essentially civil in nature.

12. The same has been reiterated in a catena of decisions including *Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Anr.* (2007) 12 SCC 1, *Uma Shankar Gopalika vs. State of Bihar and Anr.* 2005 (10) SCC 336, *G Sagar Suri vs. State of U.P.* 2002 (2) SCC 636.

13. The Apex Court in *Lalita Kumari vs. Govt. of U.P. & Ors.* (2012) 4 SCC 1, has specifically excluded commercial disputes from the category of cases in which preliminary inquiry is required before registration of FIR. Therefore, the Ld. Magistrate should have considered the representations given by BTIL to the Investigating Officer, as referred by the Investigating Officer in his ATRs.

14. It is further submitted that *Sh. Harjeet Singh Kohli, Ms. Geeta Mathur and Sh. Rajesh Madan* who have been named as Accused by the Complainant, have never even met or interacted with any of the officers of IBS and as such, it cannot possibly be alleged that they committed any



offence. Further, *Sh. Darshan Nanayakkara and Sh. Paul Andrew Ringrose* are based outside India and are *Non-Executive Directors*, who had no role to play in the day to day affairs of BTIL and cannot be named as an accused. They cannot be held *vicariously liable* for the alleged offences, as the Petitioners were never *in charge of or responsible for the conduct of the business of BTIL*.

15. The principle of '*alter ego*' of a Company can only be applied in the event of a person or group of persons controlling the affairs of the Company, commit an offence with criminal intent, as has been held in *Sunil Bharti Mittal vs. CBI* (2015 (1) SCALE 140). It is evident that they have been implicated in a *mala fide* manner by the Complainant.

16. Moreover, *Sh. Jitan Anand* joined BTIL only on 31.07.2015 and it is evident that he could not have induced IBS into entering into the Agreement dated 12.02.2015 with BTIL, which was executed 5 months prior to his appointment in BTIL.

17. Moreover, the Petitioners cannot be said to have committed any offence or being a part of any conspiracy, as there is no evidence placed on record or even any averment made in the Complaint that there was any consent, connivance or neglect attributable to the Petitioners. The proceedings in such matters are *in personam* and cannot be used to foist an offence on some other person who, under the statute, was not liable for commission of such offence.

18. Therefore, it is evident that the instant Complaint has been filed merely to harass and intimidate BTIL and its officers and extract money from them.



19. It is submitted that there is no basis for the initiation of the instant proceedings as no offence has been committed and they have been falsely implicated. The exercise of jurisdiction under Section 156 (3) by the Ld. Magistrate is in the teeth of the Judgement of the Apex Court in Priyanka Srivastava vs. State of Uttar Pradesh (2015) 6 SCC 287. Reliance has also been placed on K. G. Premshanker vs. Inspector of Police, (2002) 8 SCC 87.

20. Thus, it is prayed that the Order dated 24.09.2019 be set aside and the FIR No. 193/2019 be quashed.

21. ***The State has filed Status Report*** wherein facts narrated above, have been reiterated.

22. It is submitted that the Petitioner Company induced the complainant Company to purchase *Apple products* from it, on the promise and assurance of payments as per Credit Note of Rs. 17.5 Crores, but it refused to make payments and caused a huge wrongful loss to the Complainant Company.

23. That Notices under S. 91/S. 160 Cr.P.C. were issued to the Complainant Mr. Lalit Sharma for joining the investigation with relevant documents.

24. The present petition is not maintainable. However, in the meantime, investigation of the case was stayed by this Court *vide* Order dated 29.01.2020.

25. ***The Respondent No. 2/IBS has filed a Reply*** stating that the Ld. CMM has duly recorded the submissions and the facts, on basis of which the present FIR has been registered. Ld. CMM has relied upon the Agreement dated 12.02.2015, Legal notice sent by the Petitioner dated 27.09.2017 and the Order of this Court dated 12.02.2015 in Arb.P. 662/2017, while making the impugned Order. All the Directors and the Petitioner Company have



rightly been made accused, as per the settled principles of law that every Director is an agent of the Company. Reliance is placed upon Shivnarayan Laxminarayan Joshi vs State of Maharashtra, AIR 1980 SC 439.

26. It is claimed that present Petition is nothing but an attempt to stall the investigation in a case involving commission of a cognizable Offence only on a ground that the dispute is essentially of civil nature. In this regard, reliance is placed on Zandu Pharmaceuticals Works v. Mohd. Sharaful Haque and Anr., 2005 [3] JCC 1583.

27. It is submitted that in a case where forgery is alleged, even the custodial interrogation of the Accused is required, as held by Apex Court in Maruti Nivrutti Navale vs. State of Maharashtra and Another 2013 (9) SCC 235.

28. It is submitted that the Petitioner has concealed true facts in order to give a Civil colour to a Criminal dispute, as the Petitioner had forged the blank cheques issued by petitioner under an Agreement dated 12.02.2015 for an independent transaction without any authority, leading to registration of FIR. The cheques were not for the *Apple iPhone dealings*, as was claimed by the respondent No.2, which is fortified by the Judgement dated 21.12.2018 in *Arbitration Petition bearing Arb. P. No. 662-63/2017*.

29. It is further submitted that the Respondent No.2 has made false allegations in the Complaint that the Agreement dated 12.02.2015 was entered into between the Respondent and Petitioner herein w.r.t. Apple iPhones, which is absolutely contrary to the terms of the Agreement itself. The Agreement was entered into for purchase of for “*landline telephones*” only, as mentioned in Schedule I of the Agreement dated 12.02.2015.



30. The Respondent No.2 has made a false averment that the cheques in question was issued in the *month of June, 2017* by the petitioner Company, when in fact, the Cheques in question were blank signed cheques issued in favour of Respondent No. 2 herein, in terms of Clause 8.4 of the Agreement dated 12.02.2015.

31. It is submitted that the right to fill and deposit the said blank signed Cheques of the Petitioner herein, was conditional and arose only in terms of the conditions mentioned in the Agreement dated 12.02.2015.

32. Moreover, even though a case may be also a commercial transaction, if the ingredients of the Criminal offense are fulfilled, then they same shall be dealt separately, as has been held in the case of Arun Bhandari v. State of Uttar Pradesh and ors., (2013) 2 SCC 801.

33. It is submitted that the Apex Court in King Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18 observed that in India there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities. It is settled law that for every cognizable offence an FIR should be registered, as held in Lalita Kumari v. Government of Uttar Pradesh, (2014) 2 SCC 1.

34. Further, the Apex Court in State of Orissa v. Ujjal Kumar Burdhan (2012) 4 SCC 547, has observed that unless case of gross abuse of power is made out against those in-charge of investigation, the High Court should be slow to interfere at an early/premature stage of investigation.

35. Reliance has also been placed on Union of India vs. Prakash P. Hinduja, (2003) 6 SCC 195, State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, R.P. Kapur vs. State of Punjab AIR 1960 SC 866, S.M. Datta vs.



State of Gujarat (2001) 7 SCC 659, Sanapareday Maheedhar Seshagiri vs. State of Andhra Pradesh (2007) 13 SCC 165, Dineshbhai Chandubhai Patel vs. State of Gujarat, (2018) 3 SCC 104, and Neeharika Infrastructure Pvt. Ltd Vs State of Maharashtra & Ors 2021 SCC OnLine SC 315.

36. Thus, it is prayed that the Petition be dismissed.

37. The Petitioner by way of **Rejoinder**, has reiterated its averments made in the Petition and has denied the claims and contentions raised by the Respondent No. 2 in the Reply.

Submissions heard and record perused.

38. The First legal objection is: *whether the Petitions under Section 482 Cr.P.C can be dismissed only on the sole ground that the Chargesheet has been filed.*

39. The Apex Court in Shaileshbhai Ranchhodbhai Patel & Another vs. State of Gujarat & Ors., Criminal Appeal No. 1884/2013 decided on 28.08.2024 has categorically held that if upon a reading of the contents of the FIR and the Chargesheet together, the High Court, while exercising jurisdiction under Section 482 Cr.P.C, is satisfied that no offence is disclosed and that the continuation of such proceedings would amount to an abuse of the process of the Court, then the FIR, *even when the Chargesheet stands filed, may be quashed.*

40. The reason for doing so emerges from the observations of the Apex Court in the case of Joseph Salvaraj A. vs. State of Gujarat, (2011) 7 SCC 59, wherein it was held that the power to examine whether a prima facie case is made out or not, still vests with the High Court even after the filing of the filing of the Chargesheet.



41. *Therefore, mere filing of Charge-Sheet is no ground to outrightly state that there can be no quashing of FIR, merely because Charge Sheet has been filed.*

42. *The connected aspect is in what circumstances this extraordinary power under S.482 Cr.P.C. should be exercised.*

43. In the case of Bhajan Lal (supra), the Ld. Apex Court held that the discretion of quashing of FIR in exercise of inherent powers under Section 482 Cr.P.C. may be exercised either to *prevent the abuse of the process of Court or otherwise to secure the interest of justice*. The various other categories of cases were defined which included:

- (i) *where the allegations made in the first information report or the Complaint even if taken on face value and accepted in its entirety, do not prima facie constitute any offence or make out a case against the Accused and*
- (ii) *where the allegations made in the FIR or Complaint are so absurd and inherently improbable on the basis of which, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused; and*
- (iii) *where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

44. In State of A.P. vs. Golconda Linga Swamy, (2004) 6 SCC 522, the Apex Court *discussed the material* that can be assessed by the High Court for quashing an FIR. It was observed that when a Complaint is sought to be quashed, it is permissible to look into material that manifestly fails to prove



the accusation in the FIR. Also, if the allegations are accepted in toto, do not establish even a prima facie criminal case, the FIR may be quashed.

45. The Apex Court in Sampelly Satyanarayan Rao vs Indian Renewable Energy Development Agency Limited, AIR 2016 SC 4364 held that “it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed **on the basis of averments in the complaint**. The defence of the accused cannot be considered at this stage. The court considering the prayer for quashing **does not adjudicate upon a disputed question of fact.**”

46. In Mohd. Wajid vs. State of U.P., 2023 SCC OnLine SC 951, the Apex Court has observed that the Court owes a duty to look into the FIR with care and a little more closely. The Apex Court observed that “the Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the **issue of wreaking vengeance out of private or personal grudge as alleged.**”

47. In Kim Wansoo v. State of U.P., 2025 SCC OnLine SC 17, the Apex Court has quashed the FIR on the ground that the same **does not reveal the commission of offence** and in such circumstances asking the accused to stand the trial would amount “an abuse of process of law and non-



interference by refusing to exercise the power to quash the FIR and further proceedings based thereon, *would result in miscarriage of justice.*”

48. Similar observation was made in the case of Mamta Shailesh Chandra v. State of Uttarakhand, 2024 SCC OnLine SC 136, Anand Kumar Mohatta v. State (NCT of Delhi), (2019) 11 SCC 706, Abhishek v. State of M.P., (2023) 16 SCC 666, where the Apex Court has held that when it comes to the power of the High Court to *prevent the abuse of the process of court or miscarriage of justice*, there is no bar to exercising such power even when the Chargesheet has already been filed. In such cases, where no prima facie case is made out or where there are no specific allegations against the accused, the continuation of proceedings would amount to a travesty of justice.

49. *Therefore, in light of the aforesaid discussion, there is no bar on exercising the jurisdiction under Section 482 Cr.P.C. for quashing of FIR when Chargesheet already stands filed, if it is shown that continuation of same would amount to the abuse of the process of court or miscarriage of justice or such circumstances exist.*

Whether the Case is liable to be Quashed:

50. *The next question* for consideration is whether this is a case where intervention under S.482 Cr.P.C, to quash the FIR based on *the test of the abuse of the process of Court or to secure the interest of justice*, is satisfied.

51. The facts of the present case may now be considered to ascertain whether there exist any valid reasons for **quashing of the FIR**. The **FIR has been registered for Offences under Sections 420, 406, 465, 468, 471, and 120B** of IPC. The contents of the FIR would have to be read in the context



of the necessary ingredients of Sections **420, 406, 465, 468, 471, and 120B** of IPC.

Offence under S.465, 478 & 471 IPC:

52. The Complainant has alleged that the Petitioner committed *forgery by using blank security cheques* given under an Agreement dated 12.02.2015 for the purchase of landline phones. It is claimed that these blank Security Cheques have been forged as the amounts ***have been filled*** by the Petitioner for the alleged amount due for the transaction relating to the purchase of Apple iPhones.

53. The allegations of the Complainant in regards to offence of forgery are reproduced as under:

“It is submitted that the Accused persons have dishonestly and fraudulently altered the blank signed cheques issued by the Complainant Company, as explained above. This in fact is alteration within the meaning of section 464 of I.P.C, 1860. Hence the Accused have committed an offence of forgery under section 465 of 1860 and under Section 468IPC, as the same forgery for the purpose of cheating, from which the Accused have wrongfully gained and have caused consequent wrongful loss of the Complainant.

*It is submitted that the Accused have done forgery of a blank signed cheques, which falls under the definition of “valuable security” as defined under Section 30 of the Indian Penal Code, hence the accused persons have committed a grave **offence of forgery of valuable security under Section 467 IPC.***

54. The Petitioner has been accused of offences under Sections 465, 468, and 471 IPC which fall under Chapter XVIII of the Code and relate to “*offences pertaining to documents and to property marks*”. Sections 465,



468, and 471, are specifically concerned with forgery, forgery for cheating, and using forged documents. For ease of reference, the provisions are extracted as under:

“463. Forgery -

Whoever makes any false document or false electronic record or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

465. Punishment for forgery -

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

468. Forgery for purpose of cheating -

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged document -

Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.”

55. The Apex Court in Sushil Suri vs. Central Bureau of Investigation, (2011) 5 SCC 708 in regards to the ingredients for an Offence of forgery, has held as under:

“There are two primary components that need to be fulfilled in order to establish the offence of ‘forgery’, namely: (i)



that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged documents would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.”

56. The Apex Court in Mariam Fasihuddin & Anr. Vs. State by. Aduodi Pulice Station & Anr, 2024 INSC 49, in regards to an offence under Section 468 has held as under:

“The offence of ‘forgery’ under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be forged document, shall be punished in the same manner as if he had forged such document.”

The said forged documents have been knowingly, used by the accused persons as genuine, hence the accused persons have committed an offence Under Section 471 IPC.”

57. The basis of these offences, is the act of ‘**forgery**’ as defined in Section 463 of the IPC. **The essential ingredient to establish the offence of forgery is the making of a “false document” with a dishonest intention to cause damage or injury.** As has also been held by the Apex Court in Sushil Suri vs. Central Bureau of Investigation, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.

58. In the present case, **the fundamental question is whether a “false document” was created.** The Complainant’s own case is that they had



provided blank signed cheques to the Petitioner Company *as security* under the terms of the Agreement. The cheques were genuine and the signatures on them are not disputed. The dispute arises from the Petitioner filling in the details and presenting these cheques for a transaction that the Complainant alleges they were not intended for.

59. The act of filling a blank cheque that has been willingly signed and handed over by the drawer does not amount to the creation of a “*false document*” as contemplated under the IPC.

60. Section 16 N.I Act provides such “blank signed cheques” as being valid instruments for discharge of a debt. It provides that “If the endorser signs his name only, the endorsement is said to be “in blank...”.

61. The Apex Court recently in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 held that “when a signed blank cheque is voluntarily given to a payee, towards some payment, the payee may fill up the amount and other particulars, and that will not invalidate the cheque.”

62. The same principle was reiterated most recently in P.K. Uthuppu v. N.J. Varghese, CrI.Rev.P. 1374/2010 in Order dated 07.11.2023, by the Kerala High Court. More, recently the same principle has been reiterated in the case of K. Ramesh vs K. Kothandaraman, 2024 LiveLaw (SC) 145.

63. Further, assistance in this regard can be borrowed from S.20 NI Act which is reproduced as under, for ease of reference:

“20. Inchoate stamped instruments

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be,



upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.”

64. As has been observed by the Coordinate Bench of this Court in Ravi Chopra vs. State, 2008 (102) DRJ 147, section 20 NI Act talks of “inchoate stamped instruments” and states that if a person signs and delivers a paper stamped in accordance with the law and “either wholly blank or have written thereon an incomplete negotiable instrument,” such person thereby gives prima facie authority to the holder thereof “*to make or complete as the case may be upon it, a negotiable instrument for any amount specified therein and not exceeding the amount covered by the stamp.*”

65. This judgement of Ravi Chopra (supra) was later endorsed by another Coordinate Bench of this Court in Rambir Sharma vs. M/s HBN Housing Finance Ltd., in Crl.M.C. 862/2017 decided on 11.10.2017.

66. Therefore, the document is not false; because for it to be fake, either it appeared to be signed by someone who did not actually sign it or to have been made at a time when it was not actually made.

67. In the present case, the signatures are authentic, and the cheques are genuine instruments. S.20 NI Act provides that a when a blank cheque is signed and handed over, it means that person signing it has given an implied authority to any subsequent holder to fill it. Thus, the holder thereof is authorized to complete the incomplete inchoate instrument, and the same would not amount to forgery or making of a ‘false document’. Hence, once



accused has admitted his signature on cheque, he cannot escape his liability on the ground that same has not been filled in by him.

68. In any case, the core of the dispute is not about the authenticity of the document itself, but about the authority of the Petitioner to use it for a transaction other than the one for which it was purportedly given. At best, it may be termed as wrongly used for a transaction other than for which it was given; but definitely it cannot be termed as a forged or a false document.

69. *The primary ingredient for forgery of the making a false document is absent, offence under Section 463 is not prima facie established.*

70. Consequently, the attendant sections must also fail. Section 468 IPC, which pertains to ‘*forgery for the purpose of cheating*’, requires forgery as a precondition. Without establishing forgery, this Section cannot be attracted. Section 471 IPC, which punishes the act of fraudulently using a forged document as genuine, is also not applicable, as for this Section to apply; the user *must know or have reason to believe* that the document is forged. As the cheques were not forged documents to begin with, this offence is also not made out.

71. *Therefore, accepting the allegations in the Complaint at face value, the essential ingredients for the offences of forgery under Sections 465, 468, and 471 IPC are not fulfilled.*

72. This dispute is fundamentally revolving around a breach of contract between the parties. The allegation is of misuse of the cheques; not their fabrication. The dispute is essentially of a commercial *civil* nature concerning the alleged misuse of security cheques, which does not meet the threshold for a criminal offence of forgery.

Offences under S.406 & 420:



73. The Petitioner has been accused of offences under Sections 406 & 420 IPC, thus, the same is extracted as below:

“405. 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 off 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”.

406. Punishment for criminal breach of trust: -

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. ”

420. Cheating and dishonestly inducing delivery of property –

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

74. The Apex Court in Delhi Race Club (1940) Ltd vs The State of Uttar Pradesh, 2024 INSC 626, has reiterated the essential ingredients for Offences under S.406 and 420 IPC. The same are as under:

“In order to constitute a criminal breach of trust (Section 406 IPC):-

- 1) There **must be entrustment** with person **for property** or dominion over the property, and*
- 2) The **person entrusted**: -*



- a) *dishonestly misappropriated or converted property to his own use, or*
- b) *dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:*
 - i. *any direction of law prescribing the method in which the trust is discharged; or*
 - ii. *legal contract touching the discharge of trust.”*

In order to constitute a criminal breach of trust (Section 420 IPC)

- 1) *deception of any person, either by making a false or misleading representation or by other action or by omission;*
- 2) *fraudulently or dishonestly inducing any person to deliver any property, or*
- 3) *the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit”*

75. Furthermore, the Apex Court succinctly explained the distinction between the offence under Section 420 and Section 406, as under:

“28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well.”

Offence under S420 IPC:

76. According to the Complainant, it got cheated as the Cheques given as security for the Contract for supply of Landline Telephones, has been used for alleged liability arising in respect of supply of Apple i-phones.

77. In Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1, while dealing with Section 420 IPC, this Court observed thus:



“42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. **In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person.** The second class of acts 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 inducement must be fraudulent or dishonest. **In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. 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 a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.”

78. Thus, from the aforementioned judgements, it is clear that to prove an offence under S. 420 IPC, **it is necessary to prove the intention** of the alleged person in establishing the commission as well as the omission of an act.

79. As has also been held in the case of Joseph Salvaraj vs. State of Gujarat, AIR 2011 SC 2258, that there has to be *dishonest intention from the very beginning*, which is a *sine qua non* to hold the accused guilty for commission of the offence under S.420 IPC.

80. Further, the Apex Court in Dr. Sharma's Nursing Home v. Delhi Admn. & Ors., (1998) 8 SCC 745 has held that *mere deception by itself* would not constitute cheating unless the other essential intention i.e., *dishonest inducement* is established.

“...both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other



essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement. “Dishonesty” has been defined in Section 24 IPC to mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed...”

81. Thus, for an act to constitute *Cheating under Section 420 IPC*, it is essential to prove that the accused had a *fraudulent or dishonest intention* at the time of making the promise. The Supreme Court has repeatedly held that the intention of the accused is the gist of the offense. A mere subsequent failure to keep a promise cannot be used to presume that a culpable intention existed from the very beginning.

82. It is not disputed that after entering into the Agreement dated 12.02.2015 which as per the Schedule, was for Landline Phones, but no business for Landline phones ever took place; rather the business was for i-Phones since – as is reflected by the Statement of Accounts and this fact has not been disputed.

83. In this case, the key elements of cheating are absent; there is no *Dishonest Intention at Inception* and the parties were engaged in a commercial relationship. The transactions, first for landline phones and later for Apple products, were part of this ongoing business dealing. There is no evidence to suggest that the Petitioner entered into these transactions with an initial intent to deceive the Complainant.

84. The dispute arose later concerning the use of *Security Cheques* for a different set of dues, which is a matter of contractual disagreement. The Complainant alleges that the Petitioner misused cheques given for one



Agreement for another transaction. This is, at its core, an allegation of a breach of contract.

85. As the Apex Court has cautioned, a dispute that is essentially civil should not be given the “*cloak of criminal offence*”. As held in Vesa Holdings (supra) every breach of contract does not give rise to an offense of cheating; it must be shown that the accused had a fraudulent intention when the promise was made.

86. From the circumstances, it cannot be said that there ever existed any dishonest inducement at the time of handing over of the Cheques to them or any dishonest intention in presenting the Cheques for the amounts which were due according to them for the business transactions between the Parties. *No offence under S.420 IPC is made out from the factual matrix of this case.*

87. Given that the dispute arose from a commercial transaction going bad, and there is no prima facie evidence of dishonest inducement from the outset, *the essential ingredients of Section 420 IPC are not satisfied.*

Offence under S.406 IPC:

88. The offense of criminal breach of trust under Section 406 IPC requires two foundational elements: *first*, an “*entrustment*” of property, and *second*, a *dishonest misappropriation* of that property, as has also been reiterated by the Apex Court in the case of Delhi Race Club (supra) which has been referred to with approval in the recent case of Paramjeet Singh vs. State of Himachal Pradesh & Ors., 2025 INSC 1118.

89. The term *entrustment* has been explained by the Apex Court in State of Gujarat v. Jaswantlal Nathalal (1968) 2 SCR 408, to the following effect:-



“The term “entrusted” found in Section 405 IPC governs not only the words “with the property” immediately following it but also the words “or with any dominion over the property” occurring thereafter - see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust - see Jaswantra Manilal Akhaney v. State of Bombay [1956 SCR 483]. The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an “entrustment”.”

90. Similarly, the Apex Court in Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta, (1996) 5 SCC 591 held that the expression **“entrusted with property”** used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed, must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The same has been reiterated by the Apex Court in Delhi Race Club (supra) which is reiterated in the recent case of Apex Court in the case of Paramjeet Singh (supra).

91. Applying these principles the facts of the case, the Complainant has alleged that the Accused was entrusted with the security cheques in a



contract for 'landline telephones', but the same were utilized for dues arising out of an Agreement for 'Apple iphones'. It has misappropriated the Cheques and thus, caused *wrongful loss to the Complainant Company*.

92. The relevant allegations of the Complainant are extracted hereunder:

"The abovementioned facts and circumstances clearly shows that the Accused Persons were entrusted with the blank signed cheques (valuable security within the meaning of section 30 IPC), which could not have been used, otherwise than provided under the Clause 8.4 of the said Agreement date 12.02.2015;

After getting the said entrustment upon them, in the capacity as merchant, the Accused Persons converted the same to their own use dishonestly and in violation of the manner in which the trust reposed on them by Complainant Company was to be discharged, thereby committed offence of "Criminal Breach of trust by public servant, or by banker, merchant or agent" under section 406 and 409 of the Indian Penal Code."

"The Accused Persons had induced, the Complainant Company to purchase, Apple Products from it, on the promise and-assurance payment of the Credit Note, despite having dishonest intention from the beginning of not crediting the entire credit notes to the Complainant Company, and the Complainant Company, on the promises and assurances made got induced to purchase the Apple Products from the Accused No. 1 Company, but dishonestly and fraudulently, the Accused No. 1 refused to make payment of 17.5 crores of Credit Notes to the Complainant; thereby committed offence of cheating under Section 420 IPC."

93. The concept of entrustment implies the creation of a fiduciary relationship where one party holds the property in trust for the other. In the present matter, there is no "entrustment" in the criminal sense. The



Complainant provided blank signed cheques as security in a commercial Agreement. This arrangement does not create a fiduciary relationship in the manner required for a criminal breach of trust. The transaction was purely commercial, creating a creditor-debtor relationship, not one of trust.

94. While the Complainant alleges the cheques were used in violation of the contract, this constitutes a civil wrong. For a breach of trust to become Criminal, it must be accompanied by a *mens rea* (a guilty mind) in the form of fraudulent misappropriation. The facts point towards a contractual dispute over the applicability of security cheques, not a dishonest conversion of entrusted property.

95. Therefore, *since the foundational element of “entrustment” in its criminal sense is missing*, and the dispute pertains to the terms of a commercial contract, the offense under Section 406 IPC is not made out.

Offence under S.120B:

96. Finally, the Petitioner has been accused of an offence under Section 120B IPC, thus, the same is extracted as below:

“120B. Punishment of criminal conspiracy:-

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”



97. The allegations of the Complainant against the accused for an Offence under S.120B have been extracted hereunder:

“The accused persons, along with other unknown accused persons have conspired to commit above mentioned offences and hence have committed offences under Section 120-B IPC.”

98. The offense of Criminal Conspiracy, punishable under Section 120B of the IPC, requires an agreement between two or more persons to commit an illegal act. It is a substantive offense in itself, but it hinges on the existence of a conspiracy to commit a crime.

99. As established in the preceding analysis, the essential ingredients for the substantive offences of Cheating (Section 420), Criminal Breach of Trust (Section 406), and Forgery (Sections 465, 468, 471) are not fulfilled in this case.

100. The dispute between the parties is fundamentally commercial and civil in nature, stemming from a breach of contractual terms rather than a criminal act.

101. Since no *prima facie* criminal offense has been made out, the charge of conspiring to commit such offenses cannot be sustained. The foundation for a criminal conspiracy is an agreement to do something that is a crime. When the act itself does not constitute a crime, the question of an agreement to commit a crime becomes otiose.

102. *Therefore, the charge under Section 120B IPC is baseless and fails as a matter of law.*

Whether the FIR has been rightly directed to be registered by Ld. MM:



103. The Ld. MM *vide* impugned Order dated 24.09.2019 ordered registration of FIR against the Petitioners for the Offences under 406/420/465/468/471/120B IPC after taking note of the relevant averments made by Respondent No. 2/Complainant in the Complaint that the impugned Cheques were not issued for sale/purchase of *Apple iPhones*; rather they were issued as blank security cheques for the Agreement in relation to purchase of *landline telephones*.

104. It is contended by the Petitioners that the Respondent No. 2 has *Civil Remedies* available and putting the criminal machinery into motion, is nothing but an abuse of the process of law.

105. To appreciate this contention in the context of a quashing Petition, it would be apt to refer to the judgment of Apex Court in Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, wherein the Apex Court has held as under:

*“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious... Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A **complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.**”*

(emphasis supplied)

106. Reference may also be made to Sarabjit Kaur v. State of Punjab and Anr. (2023) 5 SCC 360, wherein it is held that a *mere breach of contract* by



one of the parties, would not attract prosecution for criminal offence in every case.

107. Further, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, the Apex Court has held that *every breach of contract would not give rise to the offence of cheating*, and it is required to be shown that the accused had *fraudulent or dishonest intention* at the time of making the promise.

108. In the case at hand, Respondent No. 2 in the Complaint has alleged that the Petitioner has *forged the Cheques given as security* for transaction pertaining to an Agreement in relation to sale/purchase of landline telephones for a transaction relating to Apple iPhones.

109. The dispute is in relation to presenting a set of Cheques given as security in an Agreement for sale/purchase of landline telephones for the transactions in relation to the sale/purchase of Apple iPhones. The blank Security Cheques do not become due as a matter of course; rather the transaction has to culminate successfully for the occasion to arise for the holder in due course to become eligible to present the said blank Security Cheques. It is apparent from the record that the parties have commercial relations and the instant is also one of the said commercial transactions going bad.

110. The nature of this dispute *does not disclose any criminality as has been considered in detail above*; rather it is evident that the dispute *inter-se* the parties is merely commercial and a criminal colour is being given because of the Cheque dishonour case pending against the Complainant.

111. It is rightly submitted by the Petitioner that the present is a case of breach of Contract and there is nothing criminal about the said transactions.



112. *Thus, the Order, dated 24.09.2019, of Ld. MM directing registration of FIR is not tenable and it is a fit case for quashing of the FIR.*

W.P.(CRL) 2834/2019:Quashing of FIR qua Petitioners Harjeet Singh, Geeta Mathur Kohli Rajesh Madan being Non-Executive Directors:

113. The moot question in this petition is whether the Petitioners, ***Geeta Mathur Kohli Rajesh Madan, Directors who are*** only Professional Non-Executive Additional Directors in the Company and had no role in the conduct of day-to-day affairs of the Company, can be arrayed as an accused in a criminal case against the Company and whether the FIR *qua* them is liable to be quashed for the reason that they had no role in their regard.

114. It may be reiterated that the criminal offense have not been established against the Company itself. As discussed above, the dispute between the Petitioner Company and the Complainant is entirely commercial in nature, arising from a breach of contract. The essential ingredients for the alleged offences of cheating, criminal breach of trust, and forgery are not fulfilled. *Since no prima facie crime has been shown to be committed by the Company, the question of holding its Directors liable for such a non-existent crime does not arise.*

115. In this regard, it would be appropriate to refer to the recent judgment of the Apex Court in *Sanjay Dutt & Ors. vs. The State of Haryana & Anr.*, 2025 INSC 34, wherein the Apex Court observed that “*a director may be vicariously liable only if the company itself is liable in the first place and if such director personally acted in a manner that directly connects their conduct to the company’s liability.*”



116. In this context, it may also be noted that where Company is an accused, it being a juristic person, cannot be arrested or imprisoned. Section 305 CrPC provide for the person to represent the accused Company. The relevant provisions are extracted as under:

“305. Procedure when corporation or registered society is an accused.

(1) In this section, “corporation” means an incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose of the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the



Court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a Court is or is not such representative, the question shall be determined by the Court."

117. The Coordinate Bench of this Court in Puneet Gupta vs. State, 2013 SCC OnLine Del 208, while considering a case of prosecution under Section 20A *Prevention of Food Adulteration Act, 1954*, held in regards to Section 305 Cr.P.C that a Company can be represented through a Representative appointed for this purpose. The Court held to the effect that:

*"Sub-section (3) says that where a representative of a company appears, any requirement of this Code that anything shall be done in the presence of the accused, shall be construed as a requirement that, that thing shall be done in presence of the representative. Sub-section (4) says that if the representative of the corporation does not appear, the requirement as referred in sub-section (3) shall not apply. Thus, simply because there was nobody to represent the Company, the directors could not have been summoned to appear as accused. **The right course to be adopted was to issue summons to the company through its principal officer and it is for the company to decide as to through whom it is to be represented.**"*

118. The proper procedure is to issue a summons to the Company, which can then appoint an Authorized Representative (AR) to represent the accused Company in criminal proceedings. The criminal law does not recognize *the principle of vicarious liability of the Directors*; according to criminal jurisprudence, but there has to be specific averments against each of the Directors, to be made an accused.



Vicarious Liability of the Directors:

119. An incidental question arises as to whether the Directors per say, can be summoned as accused merely on the basis of allegations against the Company.

120. In this regard, it would be appropriate to refer to the decision of the Apex Court in Maharashtra State Electricity Distribution Company Limited and Anr. vs. Datar Switchgear Limited and Ors., (2010) 10 SCC 479, wherein the Chairman of the Maharashtra State Electricity Board was made an accused for the offence under Sections 192 and 199 respectively read with Section 34 of the IPC. It was held as under:

“30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh: (SCC p.667, para 19)

“19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself.”

(emphasis supplied)



121. This judgement of *Datar Switchgear Limited* (supra) was quoted with approval in the recent judgment of the Apex Court in *Sanjay Dutt & Ors.* (supra) wherein it was observed that “*there must exist something to show that such actions of the director stemmed from their personal involvement and arose from actions or conduct falling outside the scope of its routine corporate duties. Thus, where the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect.*” It was further observed that *when a complainant intends to rope in a Managing Director or any officer of a Company, it is essential to make requisite allegations to constitute the vicarious liability.*

122. From the above judgements, it is evident that the Directors of a Company cannot be proceeded against as a matter of routine, for criminal offences committed by the Company. Therefore, summoning individual Directors, especially Non-Executive Directors, to face trial on behalf of the Company, is contrary to the established legal norms.

123. Even if for the sake of arguments it is presumed a Criminal offense were held to be made out against the Company, the proceedings against these specific Petitioners would still be untenable. ***Criminal liability is personal and cannot be vicariously fastened onto Directors merely because of their designation, in the absence of any specific allegations.***

Non-Executive Directors:

124. Another aspect which needs to be considered is the liability of *Independent and Non-Executive Director* who are generally not involved in the day-to-day affairs of the Company.



125. *Petitioner No. 2/Geeta Mathur* has been appointed as ***an Independent Director*** by the Board of the Company *vide* Board Resolution dated 10.09.2015. In support of this contention he has relied on the DIR-12 Form wherein he has been appointed as an ***Additional Professional Director in the class of Non-Executive Directors*** on 30.03.2015.

126. *Petitioner No. 3/Rajesh Madan* has been appointed as an ***Independent Director*** by the Board of the Company *vide* Board Resolution dated 10.09.2015. In support of this contention he has relied on the DIR-12 Form wherein he has been appointed as an ***Additional Independent Director*** in the class of Non-Executive Directors on 31.03.2015.

127. Here, reference may be made to Section 2(47) Companies Act, 2013 which states that an “***Independent Director***” means an independent Director referred to in sub-section (6) of Section 149.

128. It is well defined in Section 149(6) Companies Act, 2013 that an ‘***Independent Director***’ is a Director who is **not** a *Managing Director, Whole-Time Director, or Nominee Director*, and who meets specific criteria related to integrity, expertise, who has / *had no pecuniary relationship, other than remuneration as such Director, and independence from the Company’s promoters and Management. An Independent Director does not hold any security or interest in the Company or its subsidiary or associate company.*

129. Furthermore, **Section 149(12) of the Companies Act, 2013** provides a protective framework for Independent Directors and Non-Executive Directors (not being promoter or key managerial personnel), by *limiting their liability*. It holds them accountable only for acts of omission or commission by the Company that occurred with their knowledge gained



through Board processes and with their consent, connivance, or due to their failure to act diligently.

130. *Petitioner No. 1/Harjeet Singh Kohli* has been appointed as an ***Additional Director*** by the Board of the Company *vide* Board Resolution dated 02.08.2016. In support of this contention, he has relied on the DIR-12 Form wherein he has been appointed as an Additional Professional Director in the class of ***Non-Executive Directors*** on 01.08.2016.

131. The Apex Court in *Sunita Palita v. Panchami Stone Quarry*, (2022) 10 SCC 152 held that a Director who is not in charge of or responsible for the business of the Company at the time of the offence, cannot be held liable under Section 141. The Court observed that it would be unjust to involve Directors who are not connected with the issuance of the dishonoured cheque in criminal proceedings, simply based on their designation. Furthermore, it was held that ***independent, non-executive directors are not involved in the day-to-day operations of the Company*** and therefore, are not responsible for its business conduct.

132. This principle was recently reiterated by the Co-ordinate Bench of this Court in *Sandip Vinodkumar Patel & Ors. Vs STCI Finance Ltd., & Anr.*, 2024 LiveLaw (Del) 94.

133. In the present case, the *Petitioner No. 1/Harjeet Singh Kohli* was ***Additional Director*** and *Petitioners No. 2 & 3* are Non-Executive/Independent Directors. Other than making bald averments against them, the Respondent No. 2 has made no specific allegations against any of the *Petitioners* in the commission of the alleged Offences.

134. The Complaint makes only general allegations against them without attributing any specific role in the commission of the alleged offenses. They



cannot be held liable under the principle of *alter ego*, as they were never in charge of or responsible for the conduct of Company's business.

135. The continuation of criminal proceedings against the Petitioners Harjeet Singh Kohli, Geeta Mathur, and Rajesh Madan is an abuse of the process of law and is not maintainable as no *prima facie* Offense is made out.

136. Therefore, the FIR against these three Directors is not maintainable, both because no offense is established and because they have been implicated without there being any averments of their specific role in the commission of the offence and in disregard to their *Non-executive status* in the Company.

137. *Thus, the summoning Order qua the three Petitioners is liable to be quashed as no allegations of commission of offence are specified against them.*

Conclusion:

138. In the light of the aforesaid discussion, the two Petitions ***CRL.M.C.436/2020 and W.P.(CRL) 2834/2019 are allowed*** and the FIR No. 193/2019 for the offences under Ss. 420, 406, 465, 468, 471, and 120B stands quashed and the Petitioners are discharged.

139. The Petitions are disposed off accordingly, along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 25, 2025

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