



2025:DHC:5150



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

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*Reserved on: 28<sup>th</sup> April, 2025  
Pronounced on: 30<sup>th</sup> June, 2025*

+ **W.P.(CRL) 3572/2017, CRL.M.A. Nos. 21134/2017, 5126/2018,  
3706/2025 and 12663/2025.**

**Prakash Radheyshyam Mishra**

S/o Radheyshyam Paras Mishra,

R/o 235A, Jijaji Apartments,

Chatarpati Nagar, Ring Road,

Nagpur, Maharashtra - 440015

.....Petitioner

Through: Mr. Aditya Wadhwa & Mr. Siddharth  
Sunil, Advocates.

versus

**1. STATE (GOVT OF NCT OF DELHI)**

Through Standing Counsel

**2. MR. SANJIV GUPTA**

S/o Mr. Kalyan Singh Gupta,

R/o 907A, Aralias, DLF Golf Course Road,

Gurgaon, Haryana- 122002.

.....Respondents

Through: Mr. Amol Sinha, Ld. ASC for State  
with Mr. Kshitiz Garg, Mr. Ashvini  
Kumar, M.r Nitish Dhawan and  
Ms. Sanskriti Nimbekar, Advocates  
and SI Harendra Singh P.S. EOW.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. Petition under Article 226 of the Constitution of India read with Section 482 Code of Criminal Procedure, 1973 (Cr.P.C.) has been filed by



the Petitioner, Prakash Radheyshyam Mishra for quashing of FIR No.0108/2017 dated 19.07.2017 under Section 420 IPC registered at PS: Barakhamba Road.

2. **Briefly stated**, a Complaint under Section 200 Cr.P.C. was filed by Complainant/Mr. Sanjiv Gupta/Respondent No.2 for the offences under Sections 406/409/420/467/468/506 read with Sections 34/107/109 and 120B IPC against 10 Accused person including Prakash Radheyshyam Mishra, Petitioner.

3. The averments made in the Complaint were that Accused No.1/M/s *Astro Overseas Ltd. ('AOL')* through its 100% subsidiary Accused No.2/M/s *Astro Entertainment Networks Limited ('AENL')*, invested about 20 million Dollars in Accused No.3/*Getit Infoservices Private Limited ('GIPL')* and purchased its 28,23,747 Equity Shares @ Rs.90 per share and 70,58,000 CCPS @ Rs.100 per share (as Subscription Consideration Amount) of GIPL. The Subscription and Shareholder Agreement (SHA) was executed on 28.08.2010 and AENL obtained vast management rights including rights to appoint Key Management Position, majority representatives on the Board and Transfer Restriction Rights.

4. Accused No.1/AOL through Accused No.2/AENL was managing the day-to-day affairs of Accused No.3/GIPL and had full control of over 98.3% shareholding.

5. The Complainant averred that Mr. Ralph Marshall (Accused No.8) contacted him and called him for a meeting at Oberoi Hotel, New Delhi, as he wanted to introduce him to Mr. Grant Ferguson (Accused No.6), Director of AOL (Accused No.1). wherein he was offered not only the position of Consultant but also that he would be made Managing Director of GIPL.



(Accused No.3) and offered him a salary of USD 25,000 per month and perks. He was also offered shareholding in GIPL. It was further assured that the initial appointment would be for a minimum period of three years by AOL (Accused No.1) and AENL (Accused No.2) and promised incentives in case the threshold of more than 15% of internal rate of return on its investment in GIPL (Accused No.3) is realised in cash over a period of three years from April, 2012, he would be entitled to incentive payment of 10% of Return Surplus of AENL (Accused No.2) which would be extended for further period with higher remunerations. Additionally, he was assured to be made Nominee Director to represent AENL (Accused No.2) in GIPL (Accused No.3) and Executive Chairman of GIPL (Accused No.3) for the said terms.

6. Allured by the rosy picture about the growth of the Accused Companies and assurances given by Mr. Ralph Marshall (Accused No.8) that AOL (Accused No.1) and AENL (Accused No.2) would be fully liable for obligations of GIPL (Accused No.3) and that they would provide financial support to GIPL, the Complainant got induced and accepted their offer and entered into two separate Contracts; one with AENL (Accused No.2) and another with GIPL (Accused No.3). The Consultancy Agreement in 2013 was entered into between the Complainant and AENL (Accused No.2) for a period of three years, while Consultancy Agreement dated 29.01.2014 for a period of 03 years was entered into between the Complainant and GIPL (Accused No.3).

7. The Complainant further claimed that Mr. Zainal Mokhtar @ Hisham (Accused No.4), Mr. Grant Ferguson (Accused No.6), Mr. Khadar Merican (Accused No.7) and Mr. Ralph Marshall (Accused No.8) assured him that he



should not be concerned with the financial viability of GIPL (Accused No.3), as the fund for running the Company shall be promptly provided by AOL (Accused No.1) or AENL (Accused No.2) and dues would be paid as has been agreed.

8. He was appointed as Managing Director of GIPL (Accused No.3) and various meetings with accused persons were held in Kuala Lumpur, Singapore and New Delhi and Complainant started honestly providing his exclusive services to GIPL (Accused No.3) being its Managing Director.

9. To further gain the confidence of the Complainant, in a Meeting held on 14.05.2016, the Consultancy fee payable to the him for a period commencing from 01.04.2015 was enhanced and an ***addendum Consultancy Agreement was signed on 01.06.2016***, according to which, long term incentive bonus of USD 450,000 per annum was agreed to be payable to him. After revision of such Consultancy Fees and incentives, Accused Nos.2 and 3 (i.e. AENL & GIPL) were liable to pay the balance amount to the tune of USD 363,806 to the Complainant. However, having used his expertise and honesty, Accused Nos.2 and 3 (i.e. AENL & GIPL) failed to make the payments despite three repeated Reminders and Legal Notice dated 05.08.2016.

10. It is further submitted that Accused No.1 AOL *vide* its Letter dated 15.07.2016, admitted the liability of USD 363,806, but they committed breach of its promise and tried to wriggle out of its obligations to pay the Consultancy Fee. It was informed to the Complainant that the matter of funding of Consultancy fee is to be considered by AENL (Accused No.2),



despite the fact that AENL (Accused No.2) was a Company controlled and funded by AOL (Accused No.1).

11. The Complainant further averred that in order to cause wrongful loss to the Complainant and wrongful gains to AOL & AENL (Accused Nos.1 and 2), their Directors did not infuse any capital into GIPL (Accused No.3) to enable it to pay the dues of the Complainant.

12. In furtherance of dishonest intention, a Meeting was held on 18.07.2016 at the Oberoi Hotel, wherein, accused persons again made a false promise to infuse USD 363,806 in GIPL (Accused No.3). The Meeting was followed by Conference call on 19.07.2016 and 25.07.2016 wherein he was asked to continue his work and provide his services to the Company. The Complainant regularly followed up the matter with the Director, on which he was threatened with dire consequences and was forced to resign from GIPL (Accused No.3) due to the illegal activities of the Company.

13. The Complainant claimed that GIPL (Accused No.3) had no Working Capital or loan facility or cash generated from its Operation, to sustain on its own in the absence of any funding from the majority shareholders. It was claimed that GIPL (Accused No.3) had various subsidiary Companies and was not in a position to pay the salaries of around 4000 employees for the month of July, August and September, 2016. For the purpose of closing the business of GIPL (Accused No.3), AENL (Accused No.2) in most suspicious and surreptitious manner illegally appointed two other Directors namely Mr. Prakash Radheshyam Mishra (Petitioner herein) and Mr. Sandeep Vats, on 23.06.2016.

14. The Complainant asserted that these two newly appointed Directors started making selective payments to the employees, creditors and gave false



assurances to the Suppliers and Vendors to make their payments. Various Complaints by creditors and employees were made to the Commissioner of Police, Economic Offence Wing (EOW) and Central Bureau of Investigation (CBI).

15. The Complainant further alleged that AOL & AENL (Accused Nos.1 and 2) and their Directors in connivance with each other, started maligning and filing Complaints against him for daring to fight them and preventing them from fleeing the country. It is claimed that the accused persons had prepared Vendors like one Mr. Sanjay to file false Criminal Complaint against him. In this direction, they called one Mr. Rahul Tyagi to meet on 03.11.2016 at Meerut, U.P. and Mr. Sanjay asked Mr. Rahul Tyagi to join in filing false FIRs against the Complainant. It clearly reflects that Directors/accused persons were involved in corrupt practices and were trying to file false FIRs against the Complainant.

16. The Complainant further alleged that to achieve their goals, accused persons seemed to have forged various documents through which they managed to allure and induce the Complainant. Hence, the prayer was made for registration of FIR against the accused persons.

17. ***Learned MM vide impugned Order dated 13.07.2017 directed registration of FIR against the accused persons***, consequent to which present ***FIR No.0108/2017***, dated 19.07.2017 under Section 420 IPC PS Barakhamba Road, was registered.

18. Aggrieved by the registration of FIR No.0108/2017, Petitioner Prakash Radheyshyam Mishra has filed present petition for setting aside Order dated 13.07.2017 and quashing of the aforesaid FIR.



19. The **first ground** for impugning the Order of summoning is that due procedure for entertaining the Application under Section 156(3) Cr.P.C. for registration of FIR, has not been followed. It is asserted that no prior communication under Section 154(3) Cr.P.C. was made to Superintendent of Police. Without first approaching the Superior Police Officials, no directions could have been given for registration of FIR under Section 156(3) Cr.P.C., as has been held in the case of Priyanka Srivastava vs. State of Uttar Pradesh, 2015 (6) SCC 287. It is further asserted that a mere bald pleading, that Complaint dated 30.11.2016 has been forwarded to Superior Officials, does not satisfy the requirement under Section 154 Cr.P.C.

20. The **second ground** on which the quashing has been sought is that from the bare perusal of the allegations made in the FIR, it is evident that the dispute emanates from a commercial Agreement and is civil in nature. Reliance has been placed on Lalita Kumari vs. Govt. of U.P. & Ors., (2012) 4 SCC 1, wherein, the commercial disputes have been specifically excluded from the category of cases, in which no preliminary inquiry is required before registration of an FIR. The dispute raised by the Complainant was *purely a commercial dispute* and thus, falls within the exception created by Apex Court.

21. The **third ground** of challenge is that there is no specific role assigned to the Petitioner. As per the submissions made in the Complaint, the Petitioner was appointed only on 16.06.2016, after the Consultancy Agreement executed between the Complainant and GIPL (Accused No.3), had been terminated. He was appointed as Additional Director of GIPL (Accused No.3) only for a period of 45 days and was neither aware nor a party to the arrangement between the Complainant and Accused Nos.2 & 3



(AENL and GIPL). There is no role, either direct or indirect, which has been assigned to the Petitioner in aforesaid FIR.

22. 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. Reference has been made to the judgment of Apex Court in Sunil Bharti Mittal vs. CBI, (2015 (1) SCALE 140), wherein, it has been elucidated that in the absence of any specific legal provision, the aforesaid principle cannot be applied vice versa where an offence is alleged to have been committed by the Company.

23. It is therefore, submitted that *prima facie* no case of cheating is made out against the Petitioner. The Petitioner has referred to the Co. Pet. 985/2016 titled J Walter Thompson vs. Getit Infoservices Pvt. Ltd., wherein this Court in its Order dated 03.02.2017 observed that the Company was unable to pay its debts; *prima facie* it was just and equitable that the said Company be wound up.

24. In any case, there was no intention of cheating at the beginning of the Contract, which is necessary ingredient for the offence of cheating. It is therefore, submitted the he is entitled to be discharged and FIR qua him be quashed.

25. **Complainant/Mr. Sanjiv Gupta (Respondent No.2) in his detailed Reply** while denying the averment made in the Petition, reiterated that he had been induced to enter into the Consultancy Agreement under which the payment of USD 363,806 was admittedly to be paid. However, in order to deprive him of his admitted entitlement under the Agreement, the accused persons suspiciously and surreptitiously appointed two new Directors including Petitioner herein, who failed to make payments to the Suppliers,



Vendors and Employees of the Company GIPL (Accused No.3) and thereby cheated all of them including the Complainant. It is submitted that there is no merit in the present petition, which is liable to be dismissed.

**26. Submissions heard and record perused.**

27. It is the case of the *Complainant/Mr. Sanjiv Gupta*, Respondent No.2 that he entered into the Consultancy Agreement dated 29.01.2014 with GIPL (Accused No.3), initially for a period of three years, which was extended in a Meeting held on 14.05.2016. The Addendum Consultancy Agreement was signed on 01.06.2016, wherein long term incentive bonus was enhanced to USD 450,000 per annum w.e.f. 01.04.2015.

28. These averments reflect that there was no dishonest intention on the part of the accused persons to allure the Complainant to enter into the Consultancy Agreement nor was there any fraudulent representation of the status of the Company to the Complainant. The Complainant gave his Consultancy for about two and a half years and was paid the Consultancy charges. The averments that he was lured into taking up the Consultancy Job on false allurements by the respondents, is not made out from the facts of the case.

29. It is further the case of the Complainant himself that the accused persons failed to make the payment of due Consultancy amount of USD 363,806 despite having acknowledged the same *vide* Letter dated 15.07.2016. Further, after his contract was terminated in June, 2016, the Complainant has been pursuing with the accused persons to make payment of his due amount and had even served them with Legal Notice dated 05.08.2016, for recovery of his outstanding dues.



30. From the averments in the Complaint itself, sole grievance of the Complainant is non-payment of outstanding dues, which have not been paid to him. Clearly, it is a commercial dispute in regard to recovery of the due amount and there is no criminal intent decipherable from these averments.

***31. There is no offence under Section 420 IPC whatsoever, made out in the entire Complaint.***

32. The Complainant has further claimed that the accused persons appointed two independent Directors in GIPL (Accused No.3), one of which was Mr. Prakash Radheshyam Mishra, i.e. the Petitioner and the other was Mr. Sandeep Vats. It is evident that these two Directors had been appointed to settle the outstanding dues of the Company to the suppliers, vendors and the employees. There was a sincere effort made as the lists of Suppliers, vendors/merchant and the Employees were also made and a certain amount of money was also mobilised.

33. The Complainant had already resigned from the Company and whatever way the affairs of the Company were being managed, had nothing to do with the Complainant, whose only grudge was only in respect of his outstanding dues. In fact, he made various Complaints against the accused persons in order to prevent them from fleeing the country, which again reflects that his sole endeavour was recovery of his outstanding dues.

34. The Petitioner had been a Director only for 45 days and that too, after the termination of the Consultancy Agreement of the Petitioner. There is not an iota of allegation against him of being a part of allurements or dishonest intention. Merely because he was subsequently appointed to take care of the affairs of the Company GIPL (Accused No.3), he cannot be by any



interpretation, considered as involved in dishonest or fraudulent act constituting the offence of cheating.

35. The entire Complaint fails to even aver any allegation of dishonesty or fraudulent conduct on the part of the Petitioner. ***There is no case made out against the Petitioner.***

***Conclusion:***

36. ***The Summoning Order dated 13.07.2017 is hereby, set aside against the Petitioner Prakash Radhey Shyam, who is hereby discharged.*** It is hereby clarified that it is only Petitioner/Accused No. 10, who has filed the present Petition and consequently the proceedings in the FIR are hereby quashed *qua* him only.

37. The observations made herein are not expression of opinion on the allegations made against the other accused persons.

38. Petition is according allowed and disposed of. Pending Application(s), if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 30, 2025/R**