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

% *Date of Judgment: 03rd November, 2020*

+ **W.P.(CRL) 1230/2020 & CRL.M.A. 10902/2020**

SEEMA KUKREJA

..... Petitioner

Through: Mr Siddharth Luthra, Senior Advocate, Mr N. Hariharan, Senior Advocate with Mr Manik Dogra, Mr Gautam Khazanchi, Mrs Sonali Jaitley Bakhshi, Mr Jaiyesh Bakhshi, Mr Palash Singhai, Mr Pallav Pandey, Ms Rini Badoni, Ms Radhika Malik, Mr Sheezan Hashmi, Mr Anmol Kheta, Mr Kumar Vaibhaw, Mr Samarth K Luthra, Mr Vaibhav Dubey, Mr Siddharth S Yadav, Advocates.

versus

STATE OF NCT & ANR.

..... Respondents

Through: Mr Rahul Mehra, Standing Counsel for State.
Mr Sandeep Sethi, Senior Advocate and Mr Vikas Pahwa, Senior Advocate with Mr Abhimanyu Mahajan, Mr Dhruva Bhagat and Anubha Goel, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that the FIR bearing No. 339/2020 under Sections 420/468/471 & 34 of the Indian Penal Code, 1860 (hereinafter ‘IPC’) registered with PS Hauz Khas be quashed.
2. The said FIR was registered at the instance of respondent no.2, who is the father of the petitioner.
3. The FIR in question was registered on 05.08.2020. This was pursuant to several complaints made by respondent no.2. The first such complaint was made on 31.10.2019. In his complaint, respondent no.2 stated that he owned 25% shares in Hotel Colonia Santa Maria, Calangute, Goa [*Sic Rect.* Colonia Santa Maria Hotels Pvt. Ltd. – hereafter ‘CSM’]. He alleged that the said shares had been forcibly taken away by his daughter – Mrs Seema Kukreja (the petitioner herein). He alleged that his daughter had “*coercively, aggressively and deceitfully obtained my [his] signature on blank sheets of papers / printed sheets of papers and taken away my [his] shares*”. He alleged that the petitioner used to come to his residence and his office and forcefully take away his share certificates, documents and other valuable papers. He stated that he was going to file a case for recovery of his share certificates in respect of 25% of the total equity of CSM. He also stated that he had a flat in London and the same had been coercively taken away from him by his daughter by forcing him to sign a gift deed. In addition, he stated that the petitioner had also taken away by force and deceit his ancestral jewellery including several diamond sets; twenty-five ancient silver

coins and a rare Indian Dollar coin. He stated that he had a bank account with Coutts Bank Ltd. in London which had over 20 lacs GBP but the account had been frozen due to wrong and wilfully misleading representation made by his daughter.

4. Respondent no.2 sent another letter dated 01.02.2020 to the SHO, PS Hauz Khas, in furtherance of his complaints made earlier. He alleged that he was being harassed and tortured by his daughter, her husband and his wife, who he claimed had been brain washed by his daughter and son-in-law. He alleged that they had illegally grabbed his assets and were making further efforts to fraudulently grab more of his assets. He alleged that the petitioner had a history of forging his signatures and she had *“forcibly/ coercively/ stealthily”* taken away his shares in CSM in active connivance with her husband. He stated that his wife (Mrs Daya Prakash) had keys to all the cupboards of the house, where the valuables and documents are kept. He stated that *“on basis of forged and fabricated signatures my [his] shares were forcibly/ deceitfully transferred in the name of Mrs Seema Kukreja”*. He also alleged that they had grabbed his other assets in London and elsewhere.

5. Respondent no.2 states that on 04.02.2020, he filed yet another complaint alleging that the petitioner had forged documents to transfer his shares in CSM in her name. He alleged that he had become aware that his signatures were forged on (i) the gift deed; (ii) the rear side of the share certificates bearing no. 2524, 2526, 2503, 2505, 2504, 2506 and 2507 endorsing the transfer of the said share certificates in favour

of the petitioner; and (iii) the share transfer forms.

6. The initial complaint made by respondent no.2 was entered as DD No. 35B, with PS Hauz Khas. On 09.07.2020, the concerned police official from PS Hauz Khas issued a notice to the petitioner calling upon her to provide self-attested copies of (i) share transfer deed from respondent no.2 to her; (ii) gift deed in respect of the share transferred; and (iii) share certificates of respondent No.2 bearing his signatures and endorsement on the rear side. It was stated that the said notice was issued in view of respondent no.2's complaint that the petitioner had committed acts of cheating/forgery causing wrongful loss to the complainant.

7. The petitioner responded to the said notice and forwarded copies of the relevant documents. She alleged that the complaint filed by her father (respondent no.2) was false. In her reply, she further stated that respondent no.2 had executed a gift deed dated 03.02.2016 and out of love and affection, he had gifted her 25 lac equity shares of ₹10 each held by him in CSM. She claimed that pursuant thereto, he had also executed the relevant Securities Transfer Forms. She claimed that his signatures were tallied on the said Securities Transfer Forms by the approving authority and her name was entered in the Register of Shares maintained by the said company (CSM). She stated that after her father had gifted his shares in CSM to her in 2016, her mother (Mrs Daya Prakash) also gifted the shares held by her in CSM. She stated that her father (respondent No. 2) continued to remain the Managing Director *cum* Chairman of CSM till July 2019 and in his

capacity, he had signed all financial documents, bank documents, cheques relating to CSM till 2019. He had also signed the statutory records submitted with the Registrar of Companies till 2019.

8. The status report filed by the SHO, PS Hauz Khas indicates that during the course of investigation, inquiries were made from the complainant (respondent no.2) and he alleged that he had never executed any gift deed in favour of his daughter and that she had forged the gift deed and transferred the subject shares in her favour. In view of the allegations made by respondent no.2 and the inquiries made, the FIR in question was registered on 05.08.2020. Thereafter, the petitioner was issued a notice to join the investigation and produce the original documents. However, in the meanwhile, the petitioner filed the present petition and further investigation proceedings were interdicted.

Submissions

9. Mr Luthra, learned senior counsel appearing for the petitioner assailed the impugned FIR on several fronts. First, he submitted that the FIR did not reveal any cognizable offence and was a blatant attempt on the part of respondent no.2 to maliciously represent civil disputes with regard to the family business as alleged criminal offences. Second, he submitted that the FIR is vexatious and has been filed with a view to arm-twist the petitioner and her mother to coerce them from claiming the value of their shares in the said business. Third, he stated that the allegations made by respondent no.2 in the

FIR were mutually destructive with the averments made by him in different proceedings. Although, there were civil disputes pending between the family members in various fora, respondent no.2 had not made any allegation in any of the pleadings that his signatures had been forged on any of the documents. On the contrary, he had alleged that his signatures were obtained deceitfully and coercively on blank sheets of papers and the same were used to transfer his assets. In certain proceedings, he had alleged that he was emotionally blackmailed by the petitioner into parting with his assets. Fourth, he submitted that respondent no.2 had suppressed various documents. He stated that although, respondent no.2 had alleged that his signatures on the gift deed and other documents used for transferring his shares in CSM to the petitioner had been forged, there is no allegation that his signatures on the final accounts of the company are forged and the annual report of the company, which admittedly bears his signatures, clearly reflects that his shares were transferred to the petitioner.

10. Mr. Luthra relied on the decision of the Supreme Court in ***All Cargo Movers (I) Pvt. Ltd. and Ors. v. Dhanesh Badarmal Jain and Anr.: (2007) 14 SCC 776***. He drew the attention of the this Court to paragraph 16 of the said judgment and on the strength of the same, contended that in cases where civil suit is pending and a complaint is filed subsequently, the Court would take into consideration the averments made in the civil suit and the correspondence exchanged between the parties, in order to ascertain whether the allegations made in the complaint are *prima facie* tenable. He further submitted that a

distinction is required to be drawn between a civil dispute and an allegation of a criminal offence. He submitted that in the present case, respondent no.2 may be desirous of obtaining his shares or contesting the gift made by him, however, it is not open for him to level allegations of any forgery or contest the documents of transfer of shares as false documents, after the same have been acknowledged by him in various other documents and contemporaneous correspondence.

11. Next, Mr Luthra also relied on the decision of the Supreme Court in ***Rajeshbhai Muljibhai Patel and Anr. v. State of Gujarat and Anr: (2020) 3 SCC 794***. He drew the attention of this Court to the observations made by the Court in paragraph 20 of the said decision to the effect that when the issues as to the genuineness of documents are pending in a civil suit, the FIR ought not to be allowed to continue, as the same would prejudice the interest of parties and the stand taken by them in the civil suit. He contended that in the present case, the issue regarding the transfer of shares of CSM by respondent no.2 to the petitioner is pending before the National Company Law Tribunal (NCLT) and the FIR, which questions the documents pertaining to transfer of the equity shares in question, ought not to be permitted to be continued.

12. Mr Hariharan, learned senior counsel supplemented the contentions advanced by Mr Luthra. He referred to the complaint made by respondent no.2 on 31.10.2019 and pointed out that the said complaint did not contain any allegations of forgery. On the contrary,

he alleged that his daughter had deceitfully obtained his signatures on blank sheets of papers/printed sheets of papers and had taken away his shares. He had claimed that the petitioner had come to his residence and had forcefully taken away his share certificates, documents and other valuable papers and he was going to file a case for recovery of his share certificates constituting 25% of the equity in CSM. He submitted that on the basis of the said complaint, an FIR for commission of an offence, under Sections 468/471 of the IPC, could not have been registered.

13. Next, he contended that the FIR in question is *ex facie* vexatious and respondent no.2 had made the allegations of forgery after he had not succeeded to obtain any interim orders regarding the said shareholding of CSM from the NCLT. He further referred to the decision of the Supreme Court in ***State of Haryana And Ors. v. Bhajan Lal And Ors.: 1992 Supp 1 SCC 335*** and contended that an FIR, which has been filed within *mala fide* purpose of harassing the accused, could be quashed by the High Court under Section 482 of the CrPC.

14. Mr Vikas Pahwa, learned senior counsel appearing for respondent no.2 earnestly contested the contention that the FIR did not disclose any cause of action. He submitted that respondent no.2 had made specific allegations that his signatures on the gift deed dated 03.02.2016, purportedly transferring his 25% equity shares of CSM in favour of the petitioner is forged. He submitted that he made similar allegations regarding his signatures being forged on (i) the minutes of

the meeting of the Board of Directors of CSM purportedly held on 25.02.2016; (ii) the rear side of the share certificates endorsing the transfer of the same in favour of the petitioner; and (iii) on the transfer forms. He submitted that the said forgeries came to light only after the said documents were inspected pursuant to an order passed by the NCLT. He stated that prior to that respondent no.2 did not know the manner in which the petitioner had transferred the shares. The petitioner had deceitfully obtained his signatures on several documents and he believed that the same had been used for transferring his shares of CSM and therefore, had contested the transfer on such basis. On inspection of the said documents, he became aware that the signatures on the gift deeds and other documents used by the petitioner to effect the transfer of CSM shares in her favour were not signed by him. He contended that therefore, the contention that the FIR ought to be quashed as the allegations made by the petitioner and the averments made by him in other proceedings are mutually destructive, ought to be rejected. He stated that respondent no.2 had not filed any proceedings after 29.01.2020 (the date on which the inspection of the documents was taken), claiming that his signatures on the documents effecting the transfer of shares had been obtained deceitfully.

15. Mr Pahwa further submitted that respondent no.2 is not disputing his signatures on the final accounts of CSM. The notes to the financial statements for the year ending 31.03.2016 reflect that respondent no 2's shareholding of 25 lac shares constituting 25% of the total outstanding equity capital had reduced to Nil during the said

period and the shareholding of the petitioner had correspondingly increased. He submitted that it is obvious that the said notes to accounts escaped respondent no.2's attention.

16. He stated that while the notes to accounts for the financial year ending after 31.03.2016, reflect that respondent no.2 did not have any shares in CSM, the returns filed with the ROC do not capture any such reduction in his shares. He submitted that it is obvious that the notes to accounts had been deceitfully changed, while respondent no.2's shares continued to be reflected at its current value in other records. In addition, Mr Pahwa referred to the declarations made by the petitioner to the Board of Directors of ANI Media Pvt. Ltd. disclosing her shareholdings in other companies, firms and Association of Individuals. In the said declaration, she had reflected her shareholding in CSM at 5% and further declared that the same has remained unchanged since 27.07.2006. He stated that the petitioner continued to make such declarations till the year 2018.

17. Mr Pahwa referred to the decision in **Bhajan Lal** (*supra*) and contended that none of the grounds as indicated in the said decision, for quashing an FIR, were available in the present case. He earnestly contended that there were several contentious issues between the parties and a writ petition seeking quashing of the FIR in the aforesaid background was not maintainable.

18. He also referred to the decisions of the Supreme Court in **Kamladevi Agarwal v. State of W.B. and Ors.**: (2002) 1 SCC 555;

Mahesh Chaudhary v State of Rajasthan and Anr.: (2009) 4 SCC 439 and ***Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi and Ors.: (1996) 7 SCC 440***, in support of his contention that an FIR or a complaint with regard to forgery cannot be quashed in exercise of jurisdiction under Section 482 of the CrPC.

19. At a hearing held on 22.10.2020, Mr Sethi, learned senior counsel appeared for respondent no.2. He reiterated the contentions advanced earlier. He also referred to the decision of the Supreme Court in ***Kamladevi Agarwal (supra)***. He emphasized in detail, respondent no.2's explanation for not making any allegation of forgery prior to 22.01.2020.

20. Mr Rahul Mehra, learned standing counsel appeared for respondent no.1. He submitted that the investigation was at a nascent stage and there was sufficient material to investigate further whether the documents regarding the transfer of shares had been forged. He submitted that at this stage, it be necessary that the original copies of the said documents be sent for forensic examination. However, the same could not be sent as this Court had interdicted further investigation. He referred to the decision of the Supreme Court in ***Sanapareddy Maheedhar Seshagiri v. State of A.P.: (2007) 13 SCC 165*** and on the strength of the said decision, contended that the Court should be extremely cautious and slow in interfering with the investigation and/or trial of criminal cases. Such investigation can be injuncted only if the Court is convinced beyond any doubt that the FIR does not disclose commission of any offence or the allegations do not

constitute any cognizable offence. He contended that if the allegations contained in the FIR disclose commission of some offence, the investigation agency must be allowed to complete the investigation, without any impediment.

21. In rejoinder to the submissions made by Mr Pahawa and Mr Sethi, Mr Hariharan submitted that the explanation provided by respondent no.2 for not making any allegations of forgery prior to January, 2020, is wholly untenable. He submitted that although the NCLT had directed inspection of documents, the copies of the same were not provided to respondent no.2 and he personally did not undertake any inspection. He stated that the documents were inspected by his son and therefore, the question of respondent no.2 discovering that his signatures had been forged, did not arise. He stated that a comparison of the admitted signatures of respondent no.2 with the allegedly forged signatures indicates that it is not possible to conclude that the allegedly forged signatures are not that of respondent no.2 as they appear to be similar to the naked eye. He contended that this was important because respondent no.2's son could not possibly have concluded that the signatures were forged. He reiterated that the facts clearly established that the FIR is vexatious and filed with the sole purpose of pressurizing the petitioner to surrender her rights.

Reasons and conclusion

22. The first and foremost question to be addressed is whether the FIR discloses a cognizable offence. A plain reading of the said FIR

indicates that it does. The FIR in question clearly discloses that respondent no.2 had alleged that his shares in CSM were forcefully/deceitfully transferred in the name of the petitioner “*on the basis of forged and fabricated signatures*”. It is not disputed that CSM was incorporated as a company under the Companies Act, 1956 on 28.06.2006. Thereafter, on 14.08.2006, 49,90,000 equity shares were allotted to various shareholders including 12,45,000 shares to respondent no.2. The said shareholding was, thereafter, increased and as on 31.08.2008, respondent no.2 held 25,00,000 (twenty five lac) equity shares in CSM which constitutes 25% of the issued and paid up equity share capital of the company. Admittedly, respondent no.2’s shares are now being reflected as Nil. According to the petitioner, the same were gifted to her and stand transferred to her in the books of CSM. She also possesses the share certificates with an endorsement on the rear recording her name as the subsequent holder of the said shares. If the allegation made in the FIR that the transfer was effected on the basis of forged and fabricated signatures is accepted to be correct, it would undoubtedly disclose an offence under Sections 468/471/420 of the IPC. Apart from the allegation that the shares had been transferred on the basis of forged and fabricated signatures, respondent no.2 has also alleged that the petitioner had forcibly, coercively and stealthily taken away his shares in CSM in active connivance with her husband. The FIR also indicates that inquiries were made and photocopies of the documents such as the share transfer deeds, gift deeds and share certificates etc. were shown to respondent no.2 and he denied that the signatures appearing on those

documents were his. He reiterated his complaint and his signatures had been forged and fabricated. Mr Hariharan is correct that the complaint dated 31.10.2019 made by respondent no.2 did not contain any allegation that respondent no.2's signatures had been forged. In his complaint, he had alleged that his daughter had coercively, aggressively and deceitfully obtained his signatures on blank sheets of papers/printed sheets of papers and had taken away his shares. However, in his complaint made on 01.02.2020, he had expressly alleged that his daughter had in active connivance with her husband and his wife taken away his shares in CSM. He further alleged that she had on the basis of forged and fabricated signatures forcefully and deceitfully transferred the same in her name. The FIR in question has been registered not only on the basis of the complaint made on 31.10.2019 but also on the subsequent complaint made on 01.02.2020. Thus, this Court is unable to accept the contention that the FIR in question could not have been registered. More so, when subsequent inquiries clearly established that it is respondent no.2's allegation that his signatures on the documents used to transfer his shares in CSM, are forged.

23. The next question to be addressed is whether respondent no.2 has imputed that the petitioner is culpable in respect of on acts, which are essentially disputes of civil nature. It is earnestly contended on behalf of the petitioner that respondent no.2 is attempting to agitate civil family disputes by instituting criminal proceedings. Mr Luthra had contended that the issue whether the petitioner is the subsequent

owner of 25% equity shares of CSM, which were earlier held by respondent no.2, is the subject matter of proceedings before the NCLT.

24. A plain reading of the reliefs sought by respondent no. 2 in his petition filed before the NCLT indicates that he had sought a declaration that the transfer of 25 lac equity shares held by him in CSM to the petitioner is illegal and void *ab initio*. Respondent no.2 had also sought directions for rectification of Register of Members of CSM and to take further steps to update the records of Registrar of Companies.

25. Having stated the above, it is also well settled that causes that have civil remedies do not necessarily exclude commission of criminal offences, which may be subsumed in the said causes. Thus, merely because civil proceedings are pending between the parties does not necessarily exclude an aggrieved party from initiating criminal proceedings. The question whether information discloses commission of a cognizable offence must be viewed solely on the basis of the said information irrespective of whether the same forms a part of cause of action, which is being agitated in any civil proceedings. ***In Trisuns Chemical Industry v. Rajesh Agarwal: (1999) 8 SCC 686***, the Supreme Court had observed as under: -

“7. Time and again this Court has been pointing out that quashing of FIR or a commercial complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide

State of Haryana v. Bhajan Lal and *Rajesh Bajaj v. State NCT of Delhi*).

8. In the last referred case, this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit....”

26. In cases pertaining to commercial transactions, it sometimes becomes difficult to ascertain whether the cause of action arises solely on account of a breach of commercial obligations or it also subsumes a criminal offence of cheating on account of one party intentionally deceiving the other to enter into such a transaction. In the aforesaid context, in ***Rajesh Bajaj v. State (NCT of Delhi): (1999) 3 SCC 259*** the Supreme Court referred to the earlier decision in the case of ***Bhajan Lal (supra)*** and after noting that the Court had struck a note of caution that the power to quash criminal proceedings should be used very sparingly, had held as under:-

“10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code (illustrations f) is worthy of notice now:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that respondent after receiving the goods have sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hyper-technical approach and sieved the complaint through a colander of finest gauzes for testing the ingredients under Section 415 , IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simplicitor wherein no semblance of criminal offence is involved."

27. However, in the facts of the present case, no such difficulty arises as the allegation made by respondent no.2 is that of forgery.

This is not a case where a commercial transaction is being imputed with overtones of culpability. This is a case where the allegation is that signatures on certain documents have been forged to deprive the complainant of his valuable property. There is no commercial transaction involved in this case. Even according to the petitioner, the shares of CSM were transferred out of love and affection. Thus, merely because the respondent no.2 has initiated an action of undoing the alleged transfer and for rectification of the Register of Members of CSM, it certainly does not in any manner preclude him from initiating criminal proceedings alleging that the said transfer was effected on the basis of forging his signatures on relevant documents.

28. There is no rule of law that proscribes that civil and criminal proceedings cannot continue simultaneously. In ***Iqbal Singh Marwah v. Meenakshi Marwah: (2005) 4 SCC 370***, the Constitution Bench of the Supreme Court had held in unambiguous terms that “*there is neither any statutory provision nor any legal principle that the findings recorded in one proceedings may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein*”. In ***M.S. Sheriff v. State of Madras: AIR 1954 SC 397***, the Supreme Court had after observing that as between the civil and criminal proceedings, the criminal matter should be given precedence. However, the Court had also observed that “*no hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration.*” After having stated the same, the Court also

observed that the special circumstances obtaining in a particular case may make one course or the other more expedient. In that case, the Court had stayed the civil suits till the criminal proceedings were completed.

29. Mr Hariharan had in the passing also referred to the decision of the Supreme Court in the case of ***Capt. M. Paul Anthony v. Bharat Goldmines Ltd. and Anr.: AIR 1999 SC 1416*** and contended that in that case, the Court had not permitted parallel proceedings and had held that the departmental proceedings ought to be stayed in cases, where the same was premised on the allegations that were subject matter of the criminal proceedings initiated against the allegedly delinquent employee. This contention is insubstantial. The Supreme Court had not laid down any proposition of law to the effect that departmental proceedings were required to be stayed, if criminal proceedings regarding the same subject matter, were pending. On the contrary, the Supreme Court had referred to various earlier decisions and concluded that departmental proceedings and proceedings in a criminal case could proceed simultaneously and there was no bar in doing so. However, the Court had also stated that in certain cases, where department proceedings and criminal cases are based on identical and similar sets of facts and the criminal case against the delinquent employee is of a grave nature, which involves complicated questions of law and fact, it may be desirable to stay the departmental proceedings till the conclusion of the criminal case. This Court is of the view that the said decision would have no relevance in the facts

and circumstances of this case.

30. The only question that remains to be addressed is whether the FIR in question should be quashed on the ground that the averments made by respondent no.2 in various other fora as well as in the initial complaint and the allegations made in the FIR are mutually destructive. Mr Luthra had referred to the decision of the Supreme Court in ***All Cargo Movers (India) Pvt. Ltd.*** (*supra*) and on the strength of the said decision contended that if civil proceedings had been initiated in respect of the subject disputes, the Courts would not be precluded from examining the material placed in the said proceedings, to determine the question whether the FIR ought to be quashed. Mr Hariharan had also rightly pointed out that mutually destructive pleadings and allegations would also indicate that the allegations are *mala fide* and not for redressing a *bona fide* grievance.

31. Undisputedly, contrary pleadings made by a complainant in other proceedings would require to be considered in determining whether the criminal complaint made subsequently is vexations and malafide. Clearly, a person cannot be permitted to run two mutually exclusive cases simultaneously. In a case, where the court finds that a litigant is running multiple proceedings on inconsistent and mutually destructive averments, the courts may assume that the proceedings initiated subsequently are an abuse of process of law, unless an explanation is provided for it. In such cases where the same is established and the court has no doubt regarding the same, the court may in exercise of its plenary powers quash the said proceedings in

the interest of justice. Thus, the principal question to be addressed in this case is whether the averments made by respondent no.2 in various proceedings are mutually destructive and whether in this case, it is established that the FIR filed by respondent no.2 is *mala fide* and constitutes an abuse of process of law.

32. There is merit in the petitioner's contention that the stands taken by respondent no.2 in pleadings before various forums are not consistent. In the petition filed before the National Company Law Tribunal (NCLT) – which was filed on 25.11.2019 – respondent no.2 had alleged that the petitioner had taken possession of the original share certificates from him and had compelled him to sign few documents and blank and printed sheets. Thereafter, she had on 25.02.2016, illegally effected the transfer of 25 lacs equity shares held by petitioner no.1 in CSM in her favour on the basis of false and fabricated documents.

33. Subsequently, on 18.12.2019, respondent no.2 filed a petition under Maintenance and Welfare of Parents and Senior Citizens Act, 2007 before the Additional District Magistrate, District South, New Delhi. In the said petition, respondent no.2 averred that he owned 25% equity in CSM and the petitioner and her husband had in connivance with the accountants and auditors of that company clandestinely, deceitfully and coercively transferred his equity shares in CSM in favour of the petitioner. He had alleged that the petitioner had *“coercively, deceitfully and forcefully obtained his signature on blank and printed sheets of paper and deprived him of his assets”*.

Respondent no.2 also filed a suit for declaration and permanent injunction (being CS No.8/2020), in the Court of District and Sessions Judge, Saket. *inter alia*, praying for a decree of declaration that he is the real owner of the property bearing no. A-17, Gulmohar Park, New Delhi. In his plaint, he averred that he had been forced by his daughter (the petitioner herein) to transfer his shares in CSM. He alleged that the transfer was made deceitfully, fraudulently by “*exploiting the emotions of the plaintiff*”.

34. Respondent no.2 had sought to explain his varying stands in his counter affidavit. He claims that he was not aware of the documents, on the basis of which the shares of CSM had been transferred in favour of the petitioner and he had assumed that she had used blank/printed papers on which she had deceitfully obtained his signatures. He states that pursuant to the orders passed by the NCLT, the records/documents of CSM were inspected and he became aware that the signatures on the gift deed and share transfer forms for transfer of the said shares were forged and fabricated. He states that thereafter, he filed a complaint before the police on 04.02.2020, clearly stating that the petitioner had forged the documents to transfer his shares in CSM in her name.

35. Respondent no.2 also states that he became aware of the Minutes of the Meeting of the Board of Directors of CSM conducted on 25.02.2016 and claims that he had never signed the said document at any point of time. And, in fact, he was not even present at the registered office of CSM on 25.02.2016.

36. Thus, according to respondent no.2, the following documents have been forged:

- (a) Gift deed dated 03.02.2016 whereby respondent no.2 had purportedly gifted his 25 lac equity shares in CSMHPL in favour of the petitioner;
- (b) Share Transfer Forms for effecting the transfer of the said shares;
- (c) Minutes of the Meeting of the Board of Directors purportedly held on 25.02.2016, where the resolution was purportedly passed for transferring the 25 lac equity shares held by respondent no.2 in favour of the petitioner;
- (d) Signatures on the rear of the share certificates, endorsing the transfer in favour of the petitioner purportedly entered on 25.02.2016; and
- (e) Minutes of the Meeting of the Board of Directors of CSM, purportedly held on 14.10.2015.

37. It is seen from the above that although there can be no dispute that the averments made by respondent no.2 in various pleadings are not consistent with the allegation as articulated in his complaint dated 01.02.2020 (and as stated in the FIR) but respondent no.2 has provided an explanation for the same.

38. At this stage, it would be relevant to examine the scope of this Court's power under Section 482 of the CrPC, in order to ascertain

whether this Court is required to evaluate the said explanation in these proceedings.

39. In ***Bhajan Lal*** (*supra*), the Supreme Court had referred to its earlier decisions – including most notably the decision in ***R.P. Kapur v. State of Punjab: AIR 1960 SC 866*** – and had set out the following circumstances or cases, in which an FIR or a complaint could be quashed:

“102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.”

40. The aforesaid decision has been consistently followed by Courts in subsequent decisions. The Supreme Court has been consistent in its view that the power to quash an FIR or complaint must be exercised in extremely rare cases where there is no possible scope of entertaining any doubt that the case falls within the seven exceptions as set out in ***Bhajan Lal***’s case (*supra*).

41. In ***R. Kalyani v. Janak C. Mehta and Ors.***: (2009) 1 SCC 516, the Supreme Court had noted various earlier decisions and had summarized the position of law as under:

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

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

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

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

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

42. In ***Zandu Pharmaceuticals Works Ltd. v. Mohd. Sharaful Haque***: (2005) 1 SCC 122, the Supreme Court observed as under:

“11.The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule

can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. *When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides*

the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

[Emphasis supplied]

43. The scope of evaluating whether an FIR is *mala fide* is also somewhat restricted and unless the court can conclude beyond reasonable doubt that the FIR is frivolous and vexatious, without undertaking a detailed evaluation regarding the truthfulness or the evidentiary value of the material available on record, it would not be apposite to quash the FIR. It certainly would be not permissible to quash an FIR, which discloses a cognizable offence on the ground that it is *mala fide*, at the threshold, without permitting the investigation agency to coalesce all evidence/material.

44. In ***Sanapareddy Maheedhar Seshagiri and Anr.*** (*supra*), the Supreme Court once took note of its earlier decisions and held as under:

“31. A careful reading of the above noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary

to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges *malus animus* against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of

justice, then it may exercise inherent power under Section 482 CrPC.”

45. In the present case, it was pointed out on behalf of the petitioner that the fact that transfer of shares of respondent no.2 held in CSM had been transferred to the petitioner, had been accepted by all parties and respondent no.2 had also signed the final accounts of CSM for the financial years ending 31.03.2016; 31.03.2017 and 31.03.2018, which clearly reflected the same. Undoubtedly, the fact that the final accounts of CSM Ltd. for the said years admittedly bears the signatures of respondent no.2 would be a vital piece of evidence in support of the petitioner’s claim that respondent no.2 had transferred his shares in CSM to her and was fully aware of the same, however, this is not un-rebuttable and the possibility that respondent no. 2 may be in position to lead evidence to sufficiently explain the same, cannot be ruled out, at this stage. Respondent no.2 has also produced copies of declarations dated 31.3.2016; 31.3.2017; and 31.3.2018 made by the petitioner to the Board of ANI Media Pvt. Ltd. declaring her shareholding in CSM Hotels Pvt. Ltd. to be 5% of its issued equity capital. According to the petitioner, the incorrect declarations had been made on account of inadvertent errors. Some of the returns of CSM Hotels Pvt. Ltd. filed with the ROC also reflect the shareholding of the petitioner as 5% of the total issued equity capital. These are also claimed as *ex facie* erroneous.

46. Clearly, this does present contentious issues. The question as to how respondent no. 2 discovered that his signatures were forged is

also a contentious issue. At this stage, this Court is neither in the position to evaluate the entire evidence that may be led by the parties nor is it apposite for this Court to venture to speculate in this regard.

47. The scope of the present proceedings is extremely limited and unless this Court comes to a conclusion that the FIR is *ex facie* frivolous and vexatious, the same cannot be quashed, more so as it clearly discloses a cognizable offence.

48. In the given facts of this case, this Court is unable to conclude that there is no doubt that the offence as alleged has not been committed; that the allegations made by the respondents are bereft of any substance or merit; and, there is no possibility of any evidence being in existence, which could possibly dilute the said view.

49. In view of the above, this Court cannot accede to the prayers made in this petition.

50. The petition is, accordingly, dismissed. The pending application is also disposed of.

NOVEMBER 03, 2020
RK

VIBHU BAKHRU, J

This is a Print Replica of the raw text of the judgment as appearing on Court website.

Publisher has only added the Page para for convenience in referencing.