# HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Miscellaneous (Petition) No. 6363/2022

1. Satish Kumar Garg S/o Shri Hanumat Rai, Aged About 62 Years, R/o House No. T-207, Street No. 3, Shivaji Nagar, Narela North, West Delhi, Delhi - 110040
2. Pradeep Kumar S/o Shri Umrao Singh, Aged About 49 Years, R/o House No. T-84, Street No. 3, Indra Colony, Narela, Delhi - 110040
3. Pawan Kumar Garg S/o Shri Hanumat Rai, Aged About 59 Years, R/o House No. T-2136/a, Nai Basti, Near Shaheed Park, Narela North, West Delhi, Delhi - 110040

----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Gulab Chand S/o Shri Hariram, B/c Deora Mali, R/o Tausar, Tehsil And District Nagaur (Rajasthan) (Proprietor M/s Hariram Babulal Devra, F-6, Krishi Upaj Mandi, Nagaur)

----Respondents

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| For Petitioner(s) | : | Mr. Rishabh Tayal, Adv. with<br>Mr. Jitendra Choudhary, Adv. |
| For Respondent(s) | : | Mr. Vikram Singh Rajpurohit, PP<br>Mr. Ajay Kumar Vyas, Adv. |

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**HON'BLE MR. JUSTICE ANIL KUMAR UPMAN**

**Judgment**

**1. Date of conclusion of arguments : 21.04.2026**

**2. Date on which the judgment was reserved : 21.04.2026**

**3. Whether the full judgment or only the operative part is pronounced : Full Judgment**

**4. Date of pronouncement : 28.04.2026**

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1. This Criminal Misc. Petition under Section 482 Cr.P.C. (Now Section 528 of BNSS) has been preferred on behalf of the accused

petitioners with the prayer to quash the FIR No.545/2022, registered at Police Station Kotwali Nagaur, District Nagaur for offences punishable under Sections 420 & 406 of IPC and all consequential proceedings arising out of it.

2. The brief facts in a nutshell are that the complainant–respondent No.2 submitted a written report to the SHO, Police Station Kotwali, Nagaur, inter alia alleging therein that he is the proprietor of M/s Hariram Babulal Devra, Nagaur, which is engaged in the business of sale and purchase of grains. One Ramlal, who is well known to the complainant, is also engaged in the same business, and he used to purchase grains from the complainant's firm as well as other firms situated in Krishi Mandi, Nagaur. It is alleged in the complaint that on 18.06.2022, the said Ramlal, with a fraudulent intention to misappropriate the goods of the complainant, hatched a criminal conspiracy and came to the complainant's firm along with one Imran Khan, who is a resident of Greater Noida (U.P.). Ramlal represented the said Imran Khan as a prominent businessman engaged in the grain trading business. The said Ramlal, by inducing the complainant with the promise of financial gain, persuaded him to enter into business with the said Imran Khan. Imran Khan told the complainant that Anirudh Yadav and Akhilesh Agrawal were his business partners and that the GST registration stood in the name of Akhilesh Agrawal. Relying upon these representations, the complainant agreed to enter into business with Imran Khan and his associates. At that time, Bhinvraj Solanki, Nemaam, and Paras were also present. It is further alleged that, pursuant to the order placed, the complainant supplied 12,800 kgs of mustard packed in 256

bags to Imran Khan and his associates. Ramlal assured payment of the invoice amount of Rs.9,25,835.63/- upon unloading of the said goods. However, despite such assurance, he failed to make the payment. The complainant repeatedly requested Ramlal to release the payment, but he continued to evade the same on one pretext or another. It is further alleged that on 03.08.2022, Ramlal took the complainant to Noida, where he met Akhilesh Agrawal, who confirmed receipt of the goods and again assured payment through RTGS. Thereafter, the accused persons continued to extend false assurances of payment and ultimately refused to discharge the liability. It is further alleged that the accused persons, in furtherance of the criminal conspiracy and with fraudulent intent to cause wrongful loss to the complainant, placed the order for the supply of goods and thereafter unloaded the same at another firm, namely M/s Murli Trading Company, whose partners are Satish Kumar, Pradeep Kumar, and Pawan Kumar (the present petitioners). It is, thus, alleged that the accused persons, including the present petitioners, dishonestly induced the complainant and thereby committed offences relating to cheating and criminal breach of trust.

3. On the basis of the said written report, Police registered the impugned FIR No.545/2022 for offences punishable under Sections 406 and 420 of the IPC against the petitioners and other accused persons and started investigation.

4. Learned counsel for the petitioners submits that the petitioners have been falsely implicated in this case with ulterior motive. Counsel contends that the impugned FIR is based upon false and fabricated facts. He submits that essentially, there is a

civil dispute between the parties arising out of business transactions. However, in order to create pressure and take undue advantage in such dispute, the complainant-respondent No.2 has intentionally given it a colour of criminal conspiracy and thus, the impugned FIR is nothing but an abuse of the process of law. Counsel submits that both petitioners and complainant are engaged in the business of purchase and sale of agricultural produce. Counsel further submits that perusal of the FIR would reveal that omnibus allegations have been levelled against the petitioners by the complainant and as such, no specific allegation/ overt-act has been assigned to the petitioners in the commission of the alleged crime.

5. It is further submitted that petitioner No.1 is the proprietor of the firm M/s Murli Trading Company, Narela Mandi, Delhi, which holds a licence for carrying out the business of purchase and sale of agricultural produce. The firm of petitioner No.1 entered into a transaction for the purchase of mustard with M/s Shri Vinayak Traders, Greater Noida, for which, after deducting the brokerage, it made a payment of Rs.8,07,060/- to Akhilesh Agrawal (Shri Vinayak Traders) on 30.06.2022 itself, which has duly been admitted by the firm M/s Suraj Bhan Rishi Prakash, where, as per the allegations, the subject goods were stated to have been unloaded. Counsel submits that in the said transaction, petitioner No.1 only received the requisite brokerage amount of Rs.8,200/-. The entire payment for the aforesaid goods has already been made to M/s Shri Vinayak Traders, which allegedly purchased the goods from the complainant's firm. In such circumstances, no offences, as alleged, are made out against petitioner No.1.

6. So far as petitioner Nos.2 and 3 are concerned, it is submitted that they have no connection with the firm M/s Murli Trading Company, as they are neither partners nor proprietors of the said firm. Therefore, they have no involvement in the transaction in question or in the alleged cheating of the complainant.

7. It is further submitted that a perusal of the impugned FIR would reveal that the business transaction for the purchase of goods took place between M/s Shri Vinayak Traders and the complainant's firm, whereas no transaction ever took place between the petitioners' firm and the complainant's firm. The goods in question were purchased by M/s Shri Vinayak Traders, which subsequently sold them to M/s Suraj Bhan Rishi Prakash through a broker, i.e., petitioner No.1's firm, after receiving the entire sale consideration. Thus, the dispute, if any, is between the complainant's firm and M/s Shri Vinayak Traders. It is further submitted that, even otherwise, a perusal of the allegations in the FIR itself would reveal that the order for purchasing the subject goods was placed by M/s Shri Vinayak Traders, and if payment for the goods was not made to the complainant by the said firm, the petitioners cannot be held responsible for the same in any manner. Thus, the alleged offences are not made out against the petitioners.

8. Counsel further submits that the alleged transaction took place on 30.06.2022, whereas the impugned FIR was registered on 31.08.2022, indicating an inordinate delay of two months in lodging the FIR, for which no satisfactory explanation whatsoever has been provided by the prosecution.

9. Learned counsel further submits that even if the allegations in the FIR are taken at their face value, no criminal offence is made out against the petitioners. The dispute between the parties arises out of business transaction of supply of goods. The so-called non-payment for supply of goods at best gives rise to a civil liability and does not attract any criminal culpability. Counsel thus, prays that the entire criminal proceedings arising out of the impugned FIR be quashed. It is further contended that the allegations levelled in the FIR at best constitute a breach of contract, and the initiation of criminal proceedings in such circumstances would amount to an abuse of the process of law. Counsel places reliance upon the following judgments:-

(i) Joseph Salvaraj A. Vs. State of Gujarat & Ors., reported in (2011) 7 SCC 59.

(ii) Anand Kumar Mohatta & Anr. Vs. State (NCT of Delhi), Department of Home & Anr., reported in (2019) 11 SCC 706.

(iii) State of Kerala Vs. A. Pareed Pillai & Anr., reported in 1972 SCC (Cri) 705.

(iv) Anil Kohli Vs. State (NCT of Delhi), reported in (2002) 61 DRJ 227 (DB).

(v) Abhishek Vs. State of Madhya Pradesh, reported in (2023) 16 SCC 666.

(vi) Vir Prakash Sharma Vs. Anil Kumar Agarwal & Anr., reported in (2007) 7 SCC 373.

(vii) Ajay Mitra Vs. State of M.P. & Ors., reported in (2003) 3 SCC 11.

(viii) G. Sagar Suri & Anr. Vs. State of U.P. & Ors., reported in (2000) 2 SCC 636.

(ix) Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr., reported in (2000) 4 SCC 168.

(x) Alpic Finance Lts. Vs. P. Sadasivan & Anr., reported in (2001) 3 SC 513.

(xi) Simara Foods Pvt. Ltd. Vs. State of Rajasthan & Anr. reported in {2024:RJ-JP:21592).

(xii) Vijay Kumar Ghai & Ors. Vs. State of West Bengal & Ors., reported in (2022) 7 SCC 124.

(xiii) Usha Chakraborty & Anr. Vs. State of West Bengal & Anr., reported in (2023) 15 SCC 135.

(xiv) Mitesh Kumar J. Sha Vs. State of Karnataka & Ors., reported in 2021 Supreme (SC) 628.

(xv) Syed Yaseer Ibrahim Vs. State of Uttar Pradesh & Anr., Criminal Appeal No.295/2022, decided on 28.02.2022.

(xvi) Sripati Singh (since deceased) through His son Gaurav Singh Vs. State of Jharkhand & Anr., reported in (2021) SCC OnLine SC 1002.

(xvii) Rana Ram Vs. State of Rajasthan & Anr., neutral citation no., 2024:RJ-JD:33404.

10. Per contra, learned State Counsel and learned counsel appearing on behalf of the complainant-respondent No.2 have vehemently and fervently opposed the submissions advanced on behalf of the petitioners. It is submitted that the accused persons, in furtherance of a criminal conspiracy, committed cheating with the complainant. It is submitted that, pursuant to the order placed by the accused persons, the complainant's firm supplied 12,800 kgs of mustard amounting to Rs. 9,25,835.63/-. However, despite assurance and repeated requests made by the complainant, the accused persons did not pay the aforesaid amount, which compelled the complainant to lodge the impugned FIR. It is submitted that the accused persons, including the petitioners, had

no intention from the very inception to make payment for the supplied goods. In response to the contention raised by learned counsel for the petitioners that the dispute is purely civil in nature and that criminal proceedings are not maintainable, it is submitted that even in disputes arising out of contractual obligations, if there exists an element of mens rea and breach of trust, the same may give rise to criminal liability. It is thus contended that merely because the dispute also has civil aspects, the criminality involved therein cannot be disregarded.

11. It is submitted that the Hon'ble Supreme Court has repeatedly cautioned that the inherent powers under Section 528 of the BNSS (Corresponding to Section 482 of the Cr.P.C.) should be exercised sparingly and with circumspection and that too in the rarest of rare cases. Lastly, it is submitted that if this misc. petition is accepted and the proceedings of the impugned FIR are quashed, then, such a course would result in miscarriage of justice and would encourage the accused in repeating the crime. They have placed reliance upon the following judgments:-

(i) Google India Private Ltd. versus Visaka Industries, reported in AIR 2020 SC 350.
(ii) Dr. Lakshman versus State of Karnataka & Ors., reported in (2019) 9 SCC 677.
(iii) Rajesh Bajaj versus State NCT of Delhi & Ors., reported in (1999) 3 SCC 259.
(iv) Sanapareddy Maheedhar Seshagiri & Anr. versus State of Andra Pradesh & Anr., reported in (2007) 13 SCC 165.

12. Learned State Counsel places on record the factual report dated 06.12.2024 received from SHO, Police Station Sadar

Nagaur, District Nagaur. According to the said factual report, the petitioners have not joined the investigation despite specific directions of this Court. Moreover, apart from this, another FIR has also been registered against the petitioners for similar offences, in which the offences have been found proved against them.

13. I have heard and considered the submissions advanced at bar and have gone through the material available on record.

14. From a perusal of the FIR and the investigation report, it is evident that the FIR was lodged with the allegation that the accused persons, with criminal intent, took advantage of their acquaintance with the complainant, purchased a large quantity of mustard from him without making payment, and thereafter purportedly sold the said mustard to the applicant-accused's firm, which then sold it further. All these transactions were shown only on paper as cash transactions, and no GST was paid on any of them. Despite being fully aware that cash transactions exceeding Rs. 2 lakhs are not permissible under law, the accused persons carried out the transactions in cash. This clearly indicates that the entire exercise was undertaken only on paper with the sole intention of misappropriating the mustard purchased from the complainant by fictitiously showing purchases and sales. The investigation reveals that the acts were done with criminal intent to cause wrongful loss to the complainant and to gain undue benefit for themselves in furtherance of a conspiracy.

15. Undisputedly, the settled principle of criminal jurisprudence is that the very fact of a business or contractual relationship between the parties involved, or even the existence of some

alternative remedies available in the civil law, does not ipso facto make such grounds good enough for quashing a First Information Report (FIR). This is so as what will determine whether there is an application of the criminal law or otherwise will not depend on the nature of the transaction but on whether the facts alleged clearly show an occurrence of a cognizable offence.

16. In the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, it is imperative that the High Court to undertake a careful and holistic assessment of the allegations contained in the FIR, along with the attendant facts and circumstances of the case in hand. In this context, it must be noted that it is not the function of the Court to examine the evidence meticulously or to decide any question of fact. The limited inquiry is whether the uncontroverted allegations prima facie establish the ingredients of a criminal offence. Where, on examination, the allegations indicate the presence of an element of criminality, such as fraud, dishonesty, misrepresentation, or breach of trust, then it is proper for the High Court not to quash the FIR, even though there may be an existing civil suit. On the other hand, it is in situations where the allegations made are found to be either absurd or inherently improbable, the High Court would be justified in quashing the criminal proceedings to prevent the abuse of the process of law.

17. The primary issue that has been raised by learned counsel appearing on behalf of the petitioners is to the effect that it is a civil nature dispute and that the registration of criminal case is an abuse of the process of law. Invariably, in the case relating to

cheating and fraud, there is generally some element of civil nature. It is well settled by the Hon'ble Supreme Court in the case of **M. Krishnan versus Vijay Singh & Anr.,** reported in **2001 (4) R.C.R. Criminal 405,** that civil and criminal proceedings can be proceeded simultaneously. Both cases are to be decided by adopting separate yardsticks.

18. The offences affecting the rights of a person in respect to his property and more so offences such as Criminal Breach of Trust, Stolen property, Cheating, Fraudulent Deeds and Disposition of Property, etc. a criminal proceeding can be initiated and the accused can be brought to justice. Similarly, in these type of cases a civil suit can also be initiated for recovery of money, property or title dispute as regard to the loss incurred. Regarding the facts and circumstances of the case, the criminal proceedings may be given more significance than the civil proceeding, however there is no hard and fast rule regarding the same. Both civil and criminal proceedings can be initiated by the victim simultaneously with distinct impetus and objective.

19. The issue as to whether criminal proceedings are permissible while civil litigation is pending or decided or as to whether civil and criminal litigation can go simultaneously in regard to same allegations has been decided by the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that civil and criminal cases can go simultaneously, if the allegation of criminality exists in the FIR. Reference of the judgments of Hon'ble Supreme Court in the case of **MS Sheriff v. The State of Madras & Ors.,** reported in **AIR 1954 SC 397** and in the case of **P Swaroopa Rani v. M Hari**

**Harayan @ Hari Babu** reported in **(2008) 5 SCC 765** are relevant. Paras 13 to 17 of the judgment in the case of **P Swaroopa Rani** (supra) are quoted hereunder for ready reference:-

> "13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case. [See M.S. Sheriff v State of Madras AIR 1954 SC 397, Iqbal Singh Marwah v. Meenakshi Marwah (2005) 4 SCC 370 and and Institute of Chartered Accountants of India v. Assn. of Chartered Certified Accountants (2005) 12 SCC 226]
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> 14. It is furthermore trite that Section 195(1) (b) (ii) of the Code of Criminal Procedure would not be attracted where a forged document has been filed. It was so held by a Constitution Bench of this Court in Iqbal Singh Marwah (supra) stating:
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>> "25. An enlarged interpretation to Section 195 (1) (b) (ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.
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>> 26. Judicial notice can be taken of the fact that the courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an

interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in Clause (b)(ii) is either not placed for trial on account of non- filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (3rd Edn.), para 313, the principle has been stated in the following manner:

"The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes, however, there are overriding reasons for applying such a construction, for example, where it appears that Parliament really intended it or the literal meaning is too strong."

In regard to the possible conflict of findings between civil and criminal court, however, it was opined:

32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding 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....

It was concluded:

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195 (1) (b) (ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a

> proceeding in any court i.e. during the time when the document was in custodia legis."

15.Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.
16. The High Court, therefore, in our opinion, was not correct in staying the investigation in the said matter.
Reliance has been placed by Mr. Gupta on Mahar Jahan and Ors. v. State of Delhi and Ors.(2004) 13 SCC 421wherein this Court was dealing with a proceeding under Section 145 of the Code of Criminal Procedure. This Court noticed that a civil dispute was given the colour of a criminal case. As therein a proceeding under Section 145 of the Code of Criminal Procedure was pending, when a civil suit was also pending before a competent court of law, it was opined:

> "4. It is not disputed by the learned Counsel for the parties that this very property which is the subject-matter of these criminal proceedings is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 CrPC may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, we deem it proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit.
> It was furthermore observed:
> 7. We have simply noted the contentions raised by the parties. The civil court, in our opinion, would be the most appropriate forum to take care of such grievances and pass such interim order as would reasonably protect the interests of both the parties. The civil court may issue an ad interim

> injunction, may appoint a Commissioner or Receiver or may make any other interim arrangement as to possession or user of the property which is the subject matter of proceedings in the civil court exercising the power conferred on it by Sections 94 and 151 of the Code of Civil Procedure.
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> It was, therefore, a case where this Court quashed a proceeding under Section 145 of the Code of Criminal Procedure as the matter pending before it arose out of a civil proceedings. Such observations were made keeping in view the fact that possession of the parties over the property in suit was in question."
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> 17. The impugned order, therefore, cannot be sustained which is set aside accordingly. Civil Appeal arising out of SLP (C) No. 15670 of 2006 is allowed."

20. Criminal complaint cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If ingredients of offence alleged against the accused-petitioner prima facie make out in complaint/FIR, then the criminal proceeding shall not be interdicted.

21. Recently, the Hon'ble Supreme Court in the case of **Accamma Sam Jacob v. State of Karnataka & Anr.,** arising out of Diary No(s). 20175 of 2022, has held that mere availability of a civil remedy does not by itself bar criminal proceedings where the allegations prima facie disclose commission of a cognizable offence. Para 56 of the said judgment is reproduced as under:-

> "56. In the facts and circumstances noted above, it was not at all justified for the High Court to have quashed proceedings merely on the ground that the dispute appeared to be civil in nature. It is well settled that the mere existence of a civil remedy does not by itself bar criminal proceedings where the allegations prima facie disclose commission of a cognizable offence. By entering into an evaluation of the dispute

> on merits and proceeding to quash the order directing investigation, the High Court effectively stifled the investigative process at its inception. Such an approach runs contrary to the principles consistently laid down by this Court."

22. It is a well-established principle that civil and criminal cases are distinct in nature, governed by different laws, and have different purposes. The civil suit primarily focuses on the rights and liabilities of the parties involved, whereas the criminal case aims to punish the accused for the commission of a crime. It will depend upon facts of each case and only when criminality does not exist, jurisdiction under section-482 Cr.P.C. can be exercised to quash the FIR or criminal proceedings.

23. In wake of discussions made hereinabove, this Court is of the considered opinion that it is not a fit case, warranting exercise of this Court's inherent powers under Section 482 Cr.P.C for quashing the impugned FIR No.545/2022 registered at Police Station Kotwali Nagaur, District Nagaur for offences punishable under Sections 420 and 406 of the IPC against the petitioners.

24. Accordingly, the Criminal Misc. Petition stands dismissed.

25. The stay application and pending application(s), if any, also stand disposed of.

**(ANIL KUMAR UPMAN),J**

Manoj Solanki/-