IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1489 OF 2024

Dr. Akhtar Hasan Rizvi .. Petitioner

Versus

State of Maharashtra and Anr. .. Respondents

WITH

WRIT PETITION NO. 502 OF 2024

Reshma Rizvi and Anr. .. Petitioners

Versus

State of Maharashtra and Anr. .. Respondents

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- Mr. Aabad Ponda, Senior Advocate a/w. Mr. Prashant Relekar, Ms.Rubina Akhtar Rizvi, Mr. Prasad Arun Komthe and Mr. Sujit Lahoti, Advocates for Petitioner in Writ Petition No.1489 of 2024.
- Mr. Niranjan Mundargi a/w. Ms. Keral Mehta, Mr. Dinesh Pednekar, Mr. C. Keswani, Mr. Tanmay Bhave, Mr. Rayan Badheka and Ms. Chandrama Raje Advocates i/by Economic Laws Practice for Petitioners in Writ Petition No.502 of 2024.
- Mr. Yogesh M. Nakhwa, APP for Respondent – State.
- Mr. Mandar Soman a/w. Mr. S.R. Page and Ms. Janhavi Kolge, Advocate for Respondent No.2 in both Petitions.
- PI – Ms. Anita Varade, EOW, Mumbai present.

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CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 18, 2026.

JUDGEMENT:

1. Heard Mr. Ponda, learned Senior Advocate alongwith Mr. Relekar, Advocate for Petitioner in Writ Petition No.1489 of 2024; Mr. Mundargi along with Ms. Mehta, learned Advocates for Petitioners in Writ Petition No.502 of 2024; Mr. Soman learned Advocate for

Respondent No.2 in both Petitions and Mr. Nakhwa, learned APP for Respondent No.1– State.

2. Writ Petition No. 1489 of 2024 is filed by Petitioner Dr. Akhtar Hasan Rizvi under Article 226 of the Constitution of India read with Section 482 of Criminal Procedure Code, 1973 seeking to quash and set aside FIR being CR No.786 of 2022 subsequently transferred to Economic Offences Wing (for short "**EOW**") as CR No.121 of 2022 and Criminal Case No.769/PW/2023 pending before the 47th Metropolitan Magistrate Court, Esplanade, Mumbai pending against the Petitioner. Petitioner is charged for cheating and criminal breach of trust under Section 409, 420, 34 of Indian Penal Code (for short "**IPC**") and under Section 3,4,8 and 13 of Maharashtra Ownership of Flats Act (for short "**MOFA**").

3. Writ Petition No. 502 of 2024 is filed by Reshma Rizvi and Meena Rizvi under Article 226 of the Constitution of India read with Section 482 of Criminal Procedure Code, 1973 seeking to quash and set aside FIR being CR No.0915 of 2022 subsequently transferred to Economic Offences Wing as CR No.121 of 2022 and Criminal Case No.769/PW/2023 pending before the 47th Metropolitan Magistrate Court, Esplanade, Mumbai pending against the Petitioners. Petitioners are charged under Section 409, 420 and 34 of IPC and under Section 3,4,8 and 13 of MOFA.

4. Briefly stated, there are 5 accused persons in the present crime registered vide FIR No.786 of 2022 dated 28.07.2022 with Vakola Police Station under Section 409 and 420 of IPC and Sections 3,4,8 and 13 of Maharashtra Ownership of Flats Act. This FIR is later transferred to EOW and registered vide FIR No.121 of 2022. Accused No.1 is Rizvi Land Development Pvt. Ltd, a company. Accused No.2 Is Akhtar Hasan Rizvi, 85 years old, director of the Company who is Petitioner in Writ Petition No.1489 of 2024. Accused No.3 is Meena Akhtar Hasan Rizvi daughter of Accused No.2 and 4 and sister of Accused No.5. Accused No.4 is the ex - wife of Accused No.2, she is 84 years old. Accused No.5 is Abis Rizvi son of Accused No.2 who expired on 01.01.2017.

4.1. According to prosecution's case FIR is lodged by one Junaid Ebrahim Khan alleging that he and his 3 brothers were introduced to deceased Accused No.5 by one estate agent Mr. Suhas Vengulekar in the year 2013 as they were looking for purchasing commercial premises. According to prosecution's case, the 4 brothers executed MOU rather 4 separate MOU all dated 22.04.2013 with Accused No.1 – Company which was executed by decased Accused No.5 on behalf of Accused No.1. Under the said MOUs all 4 brothers paid 50% (Rs.70 lakhs each) of the total sale consideration for purchase of 4 commercial premises in a prospective development undertaken by Accused No.1 – Company. Record show that all dealings were done by

the First Informant and his 3 brothers with deceased Accused No.5 Abis Akhtar Rizvi on behalf of Accused No.1 – Company. In fact, MOU of First Informant is appended to page No.87 of the Petition and according to prosecution case, all 4 MOUs were signed and executed by Accused No.5 on behalf of Accused No.1 – Company. There are certain facts emanating from the record namely that Accused No.5 was not authorised by any resolution of the company to execute the said MOU on behalf of the Company and that Accused No.5 was the sole person who executed and signed the 4 MOUs which was not to the knowledge of the other directors since Accused No.5 was looking after the Company in 2013.

4.2. On 01.01.2017 Accused No.5 met an unfortunate and untimely demise. Record clearly shows that First Informant and his 3 brothers entered into further negotiations with the Petitioner namely Accused No.2 i.e. father of Accused No.5 thereafter for allotment of 4 residential premises in lieu of the originally contemplated 4 commercial premises under the 4 MOUs. Insofar as Accused No.3 is concerned, though she was a director, she was a director, she was living in the US for the past 20 years and similarly Accused No.4 was a home maker and not concerned with running of the Company. Record clearly shows that on request made by First Informant - Complainant and his 3 brothers, four 3 BHK flats in one of the properties developed by Accused No.2 were reserved and allotted to them pursuant to

negotiations between the parties. Reliance is placed on a letter dated 29.03.2018 copy of which is placed at page No.370 of the Petition issued by Petitioner namely Accused No.2 which specifically states that the amounts paid by Complainant and his 3 brothers would stand forfeited in the event of failure to pay the balance consideration. Substantial correspondence between the parties was exchanged during this time. Respondent No.2 being aggrieved filed a complaint against the Petitioner – Accused No.2 in MahaRERA on 15.11.2017 however the authority was about to dismiss the said Complaint and hence on 11.01.2018 the Complaint was withdrawn by Respondent No.2 unconditionally.

4.3. Record shows that Respondent No.2 First Informant lodged written Complaint on 25.10.2017 against Petitioner (Accused No.2) with Bandra Police Station. He filed the same Complaint on 08.11.2017 against Petitioner (Accused No.2) in Vakola Police Station in Santacruz East. He also filed the same complaint dated 05.04.2018 with DCP Zone VIII, BKC Bandra East. These 3 complaints were filed for cheating against the Petitioner (Accused No.2). Record shows that after conducting enquiry and scrutiny of all relevant documents the Senior Police Inspector of Vakola Police Station addressed letter dated 31.05.2018 to Respondent No.2 First Informant informing that since he was not remaining present for pursuing the said complaint, no cognizable offence was detected and therefore the complaint was

consigned to record.

4.4. Record shows that on 05.07.2022, the First Informant Complainant filed Commercial Suit in this Court against Petitioner and others including the Company (Accused No.1) alleging that fraud was committed and terms and conditions of MOU dated 22.04.2013 were breached. In the said Suit proceedings by order dated 22.012.2022, ad-interim relief was rejected. Record shows that Respondent No.2's brother Mr. Faizal Ebrahim Khan separately filed another Commercial Suit No.279 of 2022 in this Court against Accused Nos. 1 to 4 claiming Rs.5.57 crores together with profit at the rate of 24% per annum as a money claim on the basis of his MOU under which Rs.70 lakhs was paid by him. By order dated 22.12.2022 ad-interim relief was rejected. The said suit is transferred to City Civil Court, Mumbai and is pending. The other two brothers namely Afzal and Imran did not file any Suit for recovery or even any complaint against the Company or the Petitioners' herein. Petitioner i.e. Accused No.2 has been protected by this Court in Anticipatory Bail Application filed by him and it is directed that no coercive steps shall be taken against him and the said ad-interim relief was continued and extended. Record shows that when ABA No.309 of 2023 was finally heard by this Court on 28.03.2023, order was passed on the request by the respective parties to keep the matter for settlement. A further order was then passed on 05.04.2023 which is crucial and which records that Respondent No.2 Complainant

is not ready to accept the flat which according to him was not according to the specification in the original agreement.

4.5. Thereafter it is seen that learned APP was appointed by this Court to help the parties arrive at a settlement in a further order dated 22.05.2023 in the Anticipatory Bail Application No.309 of 2024 wherein this Court observed that learned APP made his best efforts but First Informant did not cooperate to finalise the Consent Terms and therefore the matter was next adjourned to 19.06.2023. The said Anticipatory Bail Application No.309 of 2023 was heard by this Court on 08.08.2023 when this Court passed order directing Petitioner to deposit Rs.6 crores in this Court while observing that the dispute between the parties was over the quantum of sale consideration and the fact that Civil Proceedings before this Court being Commercial Suits for recovery of money along with Complaint in MahaRERA were filed and pending, Accused No.2 deposited Rs.3 crores on 11.08.20233 and another Rs.3 crores on 13.08.2023 in this Court. Despite the aforesaid, chargsheet was filed on 16.10.2023 in the present case. Hence the present Petition.

5. Mr. Ponda, learned Senior Advocate for Petitioner in Writ Petition No.1489 of 2024 would submit that offences of cheating and criminal breach of trust are both distinct and cannot be applied together *qua the* Petitioner (Accused No.2). He would submit that for

the offence of cheating to be fulfilled, dishonest intention has to subsist from the inception whereas for the offence of criminal breach of trust to be fulfilled, initial transaction has to be lawful and dishonest intention has to develop subsequently. He would submit that Petitioner – Dr. Akhtar Hasan Rizvi has neither executed any of the four MOUs with the Complainant nor was there any resolution passed authorising Petitioner's son, Late Mr. Abis Rizvi, to execute the four MOUs with Respondent No.2. He would submit that the aforementioned transactions were entered into between Late Mr. Abis Rizvi (Accused No.5) on behalf of the Company and Respondent No.2 and his brothers with Petitioner playing no role therein. He would submit that this is an admitted fact as the FIR is completely silent on this aspect. He would submit that there is no provision levying vicarious liability upon the Directors of the Company under IPC therefore Petitioner cannot be prosecuted merely because of his association as a Director of the Company.

5.1. He would submit that this Petitioner (Accused No.2) and Respondent No.2 exchanged communications on numerous occasions attempting to address the issues arising out of the aforementioned MOUs and at the request of Respondent No.2, Petitioner reserved and allotted four 3 BHK residential flats before 30.01.2019. He would submit that on 01.07.2022, Respondent No.2 - Complainant and his brothers filed Commercial Suits in this Court and subsequently within

27 days FIR came to be registered against this Petitioner on 28.07.2022, thus civil proceedings preceded the criminal proceedings. He would submit that the MOUs were executed with buy - back option and Respondent No.2 failed to excersise the buy - back option within the stipulated period of time and instead decided to pursue and seek refund of the monies paid by him and his brothers to Accused No.5 - Late Mr. Abis Rizvi. He would submit that in the Suits filed by Respondent No.2, this Court rejected ad - interim relief to Respondent No.2 on the ground that his claim was a simpliciter money claim hence this itself demonstrates the contractual and commercial nature of the dispute between the parties.

5.2. He would submit that the 4 MOU's disclose a claim of Rs.2.80 crores however the Complainant alleged loss of Rs.12 crores without any documentary evidence filed in respect of the same. He would submit that enhancement of the claim was done by Respondent No.2 upto Rs.10 crores to deliberately bring the scope of the criminal dispute under the purview of Economic Offences Wing. He would submit that continuation of the present FIR and criminal proceedings against Petitioner is therefore an abuse of the due process of law and he would urge this Court to quash the present FIR and subsequent criminal proceedings *qua* the Petitioners before the Court.

6. Mr. Mundargi, learned Advocate on behalf of Petitioners in

Writ Petition No.502 of 2024 would adopt the submissions of Mr. Ponda which for brevity sake are not reiterated herein. He would submit that present FIR is filed *qua* present Petitioners on the sole ground that they were Directors in the Company along with Petitioner in Writ Petition No.1489 of 2024. He would submit that there is no case or ground made out to prosecute Petitioners since the FIR and Chargsheet do not attribute any specific act or role to the Petitioners. He would submit that Petitioner No.1 in his Petition was residing in USA for over 20 years and Petitioner No.2 is eighty four years old housewife and both have never been involved in the day - to day management of the Company at any point of time. He would urge this Court to therefore quash the impugned FIR and criminal proceedings against these Petitioners.

7. Mr. Soman, learned Advocate for Respondent No.2 would vehemently oppose both the Petitions. He has filed Written Submissions of his oral arguments dated 17.11.2026 and would submit that Petitioner's son Late Mr. Abis Akhtar Rizvi was Director of Rizvi Land Developments Pvt. Ltd and he executed 4 MOUs all dated 22.04.2013 on behalf of the Company with Respondent No.2 and his 3 brothers for sale of 4 commercial office units in the proposed Rizvi Corporate Park. He would submit that Petitioner No.1 was the founder of the Company and continues to be director of the Company. He would submit that since Late Mr. Abis Akhtar Rizvi executed 4 MOUs

in his capacity of Director of the Company with Respondent No.2 and his brothers, all the Directors falls into the definition of Promoter and Respondent No.2 fall into the definition of Purchaser under MOFA. He would submit that Respondent No.2 and his brothers, after paying Rs.2,80,00,000/- to the Company, came to know that the land upon which the proposed Rizvi Corporate Park was to be developed was reserved for residential purpose and not for commercial expolitation. He would submit that this fact was known to Petitioners but their failure to disclose the same to Respondent No.2 constitutes the offence of cheating.

7.1. He would submit that since the construction of Rizvi Corporate Park did not finish within the stipulated period of 24 months, Respondent No.2 and his 3 brother invoked the buy back option however at that time refused Accused No.5 to comply on the ground that the Company was to be intimated of the same within 21 months from the date of execution of the MOU and the purchases were late in invoking the said option. He would submit that Respondent No.2 therefore filed complaint before MahaRERA to seek reliefs against the Company and Petitioners, however MahaRERA opined that the dispute arose prior to MahaRERA coming into force and therefore, Respondent No.2 withdrew his complaint unconditionally.

7.2. He would submit that on 18.11.2017 Respondent No.2 filed

complaint with Vakola Police Station against Petitioner however on 25.03.2018, Petitioner - Dr. Akhtar Hasan Rizvi as Director of the Company and as Power Attorney holder of Reshma Akhtar Rizvi and Meena Akhtar Rizvi addressed letter to Respondent No.2 demanding payment of the balance amount with a specific threat to forfeit the amounts paid by them in 2013. He would submit that Late Mr. Abis Rizvi was Director of the Company and notwithstanding his demise, all Directors of the Company are jointly and severally liable for the acts of the Company and therefore it is not open for Petitioners to claim that Late Mr. Abis Rizvi is personally liable and other Directors are not liable and responsible for the same.

7.3. He would submit that Respondent No.2 received a letter from Vakola Police Station dated 31.05.2018 stating that they have received the orders from higher authorities to register F.I.R. against all directors of the Company i.e. Accused Nos.2,3 and 4 and Respondent No.2 addressed reply dated 20.06.2018 stating that as Petitioner being Director of the company wished to settle the dispute amicably, however if not done, only then he would proceed with the registration of FIR.

7.4. He would submit that by letter dated 07.05.2019 issued by Petitioner as a Director, he informed Respondent No.2 and his brothers that he had reserved and allotted four 3 BHK flats situated on 4 floors

in the B Wing of Rizvi Utopia at Kalina, Mumbai and possession of the flats would be given within 30 days of issuance of occupation by SRA. He would submit that Petitioners addressed letter dated 04.06.2021, calling upon Respondent No.2 and his brothers to pay Rs.70 Lakhs per flat i.e. the balance amount for the 4 flats and this itself indicated the dishonest intention on the part of Petitioners. He would submit that Petitioners addressed another letter dated 09.08.2021, once again calling on Respondent No.2 to pay Rs.70 lakhs per flat instead of Rs.35 lakhs per flat as earlier agreed and therefore on account of Petitioners demands and failure to handover possession of the flats, Respondent No.2 lodged a Complaint with the Respondent No. I Police Station.

7.5. He would submit that after the FIR was registered, Respondent No.2 and his three brothers filed four Civil Suits before this Court which are now pending in the City Civil Court at Mumbai. He would submit that filing and pendency of the Civil Suits does not in any manner create an embargo on the Respondent No.2 to pursue all available remedies in law and merely because Civil Suits are filed and pending, it cannot be a legal and valid ground for Petitioners to seek quashing of the FIR. He would refer to and rely upon the decision of the Supreme Court in the case of ***Shivkumar Jatia Versus State of NCT of Delhi***[1] to contend that principle of corporate criminal liability and "alter-ego" is widely recognized by the Supreme Court and is squarely

1 (2019) 17 SCC 193

applicable to the facts of the present case as the Accused persons were in joint control of the affairs of the Company ,hence jointly and severally committed offences under the provisions of MOFA Act.

7.6. He would submit that merely because Petitioners are now senior citizens and that Petitioner – Dr. Akhtar Hasan Rizvi deposited Rs.6 crores in this Court, it cannot be a legal and valid ground for quashing of the impugned FIR. He would submit that it is trite law that criminal prosecution is independent of remedies in civil law and the rights and remedies available in law can be exercised by aggrieved parties which admittedly has been done by Respondent No.2 in the present case. He would submit that Petitioners' contention that FIR was registered after filing of Suit cannot be sustained in law since it is clear that Petitioners have no intention to hand over the flats or even repay the amounts. He would submit that intention of Petitioners since inception was to cheat, while inducing the Complainant to invest in a project which was non-est, refusing to accept the buyback offer, not agreeing to hand over the flats which Complainants were ready to accept, complete the offences under IPC and MOFA. He would refer to and rely upon a decision of the Supreme Court in the case of ***The State of Rajasthan Vs. Mst. Vidyawati & Anr.*** [2] in support of his submissions and persuade the Court to dismiss the Petition.

8. I have heard the submissions of the learned advocates at the

2 1962 AIR 933

bar and considered the material placed before me with their able assistance. Submissions made the learned advocates have received due consideration of the Court.

9. It is seen that Petitioner in Writ Petition No.1489 of 2024 is arraigned as accused in FIR No.0786 of 2022 and both Petitioners in Writ Petition No.502 of 2022 are arraigned as accused in FIR No.0915 of 2022. EOW filed Chargesheet being CR No.121 of 2022 and Criminal Case No.769/PW/2023 presently pending before 47th Magistrate Court, Esplanade, Mumbai in both FIRs indicting Petitioners in both Petitions.

10. In the present case it is seen that, much prior to registration of FIR, Respondent No.2 - Complainant along with his 3 brothers instituted four commercial Suits on 01.07.2022 for seeking refund of monies paid in pursuance to execution of MOUs with Late Mr. Abis Rizvi with respect to agreement to purchase commercial spaces in Rizvi Corporate Park. Copy of one of the MOU entered into with Respondent No.2 is appended at page No.87 to 182 of the Petition. I have perused the same. It is seen that Junaid Ebrahim Khan, Faizal Ebrahim Khan, Afzal Ebrahim Khan and Imran Ebrahim Khan entered into 4 MOUs dated 22.04.2013 separately with Late Mr. Abis Rizvi however only Junaid Ebrahim Khan i.e. Respondent No.2 herein registered the present FIR.

11. What is intriguing is that Respondent No.2 - Complainant entered into the MOU with Late Mr. Abis Rizvi as Director of Rizvi Land Development Pvt. Ltd. however present Petitioner – Dr. Akhtar Hasan Rizvi who is father of Late Mr. Abis Rizvi is indicted in the present offence despite him having no role and none even being attributed to him with respect to the offences he is charged with and more so in light of subsisting of Commercial Suit proceedings pending before Civil Court for seeking refund of monies paid under the MOUs. It is further seen that Clause Nos.8 and 9 of the MOU allowed Respondent No.2 to avail contractual remedy of specific performance in case of breach of terms of the MOU, further Respondent No.2 was possessed with the option of excersising the buy back option contained therein. It was therefore open for Respondent No.2 to exercise either of these contractual remedies but Respondent No.2 and his 3 brothers adopted civil proceedings by filing Commericial Suits before City Civil Court to seek refund of their monies. These Suits are pending before the City Civil Court. However soon after instituting the Suits on 01.07.2022, Respondent No.2 alone registered FIR dated 28.07.2022 against Petitioners i.e. after merely 27 days. This on its own accord shows the malafides of Respondent No.2 since inspite of pursuing civil remedy available in law by filing a Suit for refund of the monies paid, he registered FIR against Petitioners and therefore this Court is of the view that this was done to badger the Petitioners into settling the Suit

with a demand to handover four 3 BHK flats in Bandra. This action of Respondent No.2 cannot be allowed primarily because in Anticipatory Bail Application proceedings for the same cause of action the Petitioner – Dr. Akhtar Hasan Rizvi has already deposited a sum of Rs.3 crores on 11.08.20233 and Rs.3 crores on 13.08.2023 in this Court.

12. Record *prima facie* shows that each of the four brothers paid Rs.70 lakhs each but investigation and statement of only Respondent No.2 - Complainant is recorded whereas no statement of remaining three brothers were recorded at any stage. There is no material evidence or evidence in the form of bank statements collected to show that Petitioner (Accused No.2) or even Accused Nos.3 or 4 personally received any part of the aforesaid amount of Rs.70 lakhs each from the four brothers. It is equally shocking that EOW has sought to investigate the present offence when according to the circular which is not annexed to the chargsheet it is seen that EOW ordinarily investigates offences in which the amount involved exceeds Rs.10 crores and in any event the amount involved in the present case *qua* all the four brothers or their claim or even by the standard of valuation obtained by the Investigating Officer from the Sub Registrar's office the claim stands well below the threshold of Rs.10 crores. This fact itself shows the malafides on the part of the Respondent No.2 – Complainant.

13. From the above it is seen that in respect of the same 4 MOUs

dated 22.04.2013 and the amounts paid by the four brothers, they approached Bandra Police station on 25.10.2017 thereafter Vakola Police Station 08.05.2017 thereafter MahaRERA on 15.11.2017 thereafter DCP Zone VIII on 05.04.2018 again by 4 complaints filed in August 2022, thereafter by filing the Complaint with EOW on 31.10.2022 and thereafter by filing separate Commercial Suits and thereafter filing perjury application in the City Civil Court on the basis of a Counsel statement and finally the present FIR and chargsheet. In all the aforesaid proceedings namely civil proceedings, Respondent No.2 First Informant or his brothers have not been able to procure any orders against Petitioners and therefore filing of the present FIR and Chargsheet is nothing but a sheer abuse of the due process of law and as seen as clear counterblast to push the Petitioners into submission. This is a classic example of criminal law set into motion to resolve a civil dispute of recovery after so many years and several civil proceedings.

14. It is seen from the FIR and Chargesheet that no role, inducement or transaction is attributed to Petitioners in Writ Petition No.502 of 2024 as well. Petitioner No.1 in Writ Petition No.502 of 2024 has been residing in the USA since the past 20 years and Petitioner No.2 is an eighty four year old housewife with absolutely no knowledge or involvement in the day to day operations of the Company therefore no criminal prosecution or vicarious liability can

exist against them. Perusal of the record would show that there is no role attributed to any of these Petitioners either in the Complaint of they having deceived Respondent No.2 or possessed any dishonest intention to commit the crime against Respondent No.2. It is seen that present Petitioners have not made any representations or promises either to Respondent No.2 neither to his 3 brothers rather they have not entered into any communication whatsoever with Respondent No.2 save and except Petitioner in Writ Petition No.1489 of 2024 when he attempted to intervene and settle the issues with Respondent No.2 and his 3 brothers arising out of the MOU after 2017 i.e. after the demise of his son and even those communications do not show any criminal intent by Petitioner in Writ Petition No.1489 of 2024 to deceive Respondent No.2. In fact those communications and some orders passed by the Court *prima facie* show that the intention of the Petitioners was always bonafide and to settle but Respondent No.2 kept protracting the issue for reasons best know to him.

15. It is seen that if Respondent No.2 is aggrieved because he entered into the MOU with Late Mr. Abis Rizvi who expired before fructification of the MOU, he ought to have exercised his substantive right in civil law and under the provisions of the MOU sought appropriate remedies under MOFA, rather than filing a criminal complaint after merely 27 days from the date of filing of the Suit against Petitioners for recovery of monies. This is further reinforced by

Petitioner – Akhtar Hassan Rizvi in Writ Petition No.1489 of 2024 having deposited Rs.6 crores in this Court in the Anticipatory Bail Application proceedings pursuant to order dated 08.08.2023 to show his bonafides. It is in the above background of facts that I come to the unequivocal conclusion that Respondent No.2 has made an unsuccessful attempt to paint the present civil dispute between the parties with the color of criminality for reasons best known to him only since there are clear civil remedies available in law and under the provisions of the MOU for Respondent No.2 to pursue in order to protect and enforce his substantive rights which have already been invoked. Therefore I cannot countenance the submission of Mr. Soman that present Petitioners have *prima facie* committed the offences of cheating and criminal breach of trust and that they are involved in any criminal act inducing and deceiving Respondent No.2 – Complainant.

16. There is no dishonest inducement to deliver any property to complainant by any of the Petitioners before me. Rather there is no nexus between the parties except through the Accused No.1 – Company which was being dealt with by deceased Accused No.5, neither is there any dishonest misappropriation or conversion of the monies by the Petitioners for their for own use or disposal of the property entrusted to them for their own use. Plain and simple the aforesaid facts show that Respondent No.2 has reconciled himself to recovery of a money claim. The aforesaid incidents show that criminal

breach of trust for entrustment of money which was given to Accused No.5 cannot be applied to the present Petitioners. In fact allegations in the FIR and the material placed before me do not disclose a cognizable offence against the 3 Petitioners before me. It is settled law that a Director can be prosecuted only when incriminating material shows his own active role coupled with criminal intent.

17. There is none insofar as the 3 Petitioners before me are concerned. The chargsesheet merely describes Accused No.2 as Director but does not identify any act done by him or the other 2 Petitioners personally in relation to the MOU transactions. There is no fraudulent or dishonest inducement at the very inception of the MOU transactions which are attributable to Accused No.2,3,4 neither is there entrustment of money to Accused Nos.2, 3 and 4. Common intention under Section 34 require a prior meeting of minds and participation in the criminal act and from the above facts no such common intention to commit a criminal act qua the Petitioners is seen. It is seen that Respondent No.2 and his brothers have approached at least 8 forums for complaining about breach of the same MOUs and criminal process is set into motion by them in a clearly disputed civil action only after failing to get any orders. Petitioner's bonafides of offering to refund the entire amount of Rs.2.8 crores as recorded by the Court in one of its orders alluded to hereinabove and his conduct of depositing Rs.6 crores in this Court clearly belies any dishonest intention.

18. Respondent No.2 cannot be allowed to set the wheels of criminal law into motion against Petitioners in order to browbeat them into settling his and his brother's monetary claim over the years and meet their demands in the Suit pending before the City Civil Court. An unsuccessful attempt is made even before this Court when at the inception this Court called upon the Respondent No.2 to consider settlement since the monies were deposited in the Suit proceedings in this Court. I need not go into those details since it was without prejudice to the rights and contentions of both the parties and an attempt made to put an end to the entire *lis.* It is seen from a combined reading of the material placed on record that there is not a hint of criminality in the present dispute *qua* the 3 Petitioners before me and that the *lis* is purely civil in nature.

19. Merely because Respondent No.2 has failed to obtain interim relief from this Court or may foresee an unfavorable ending to the civil litigation pending before this Court, he cannot force the Petitioners to settle his claims by filing a criminal case for cheating and breach of trust. Suit filed by Respondent No. 2 is purely for a money claim. Respondent No.2's intention is therefore clear about receiving his monies back. Deposit is made by Petitioner No.1 in this Court in the Anticipatory Bail Application. Respondent No.2 and his brothers can undoubtedly excersice their rights to seeking withdrawal of the same in accordance with law if so entitled to do so. The Suits shall be decided

at trial after parties lead evidence in that respect. Respondent No. 2 should have no fear to go to trial if he is right and positive about his own case in which he seeks a money claim. Filing a criminal case for cheating and breach of trust when no offence is made out from the material placed before Court *qua* the 3 Petitioners before me cannot be sustained. Petitioner No.1 is a person with deep roots in Society. I am therefore not in agreement with the submissions advanced by Mr. Soman at all that there is criminal intent on the part of Petitioners to deceive the Complainant. The facts in the present case are squarely covered by Guideline Nos.(1), (3) and (7) of the guidelines / parameters stipulated by the Supreme Court in paragraph No.102 of the decision in the case of ***State of Haryana Vs. Bhajan Lal*** [3], which apply to the present case enabling the Court to quash the present criminal proceedings. The relevant paragraph No.102 is reproduced below for ease of reference:-

> ***"102.*** *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report*

3 1992 SCC (Cri) 4226

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 concerned Act (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 concerned Act, 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."

20. In view of the above observations and findings, continuation of criminal proceedings against the 3 Petitioners in the light of pending Civil Suits would be a sheer travesty of justice and unnecessary harassment of the Petitioners in a *lis* which is primarily civil in nature and which is infact pending in the Commercial Suit proceedings instituted in the Court.

21. Writ Petition No.1489 of 2024 therefore stands allowed in terms of prayer clause (a) and Writ Petition No.502 of 2024 stands allowed in terms of prayer clause (b) which read thus:-

Writ Petition No.1489 of 2024

a) quash and set aside F.I.R. being No.786/2022, dated 28/07/2022 Vakola -dated 8/7/2022, registered with Wakola Police Station against the petitioner, for the offence punishable under Sections 409 and 420 read with Section 34 of the Indian Penal Code and under Sections 3, 4, 8 and 13 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and subsequently transferred and renumbered as F.I.R. No.121/2022 with the Economic Offences Wing, Unit 5, Bombay and to quash and set aside Chargesheet and further all the consequential proceedings bearing CC No. 769/PW/2023 on the file of the 47th Metropolitan Magistrate's Esplanade Court against petitioner in the interest of justice.

Writ Petition No.502 of 2024

b. That this Hon'ble Court be pleased to quash and set aside the Impugned FIR Beating CR No. 915 of 2022 dated 30 July 2022 registered with Vakola Police Station and the consequential proceedings bearing CC NO. 769/PW/2023 on the file of the 47th Metropolitan Magistrate's Esplanade Court in the interest of justice.

22. Both Writ Petitions are allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay