

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Misc. Application No. 135 of 2024

Rakesh Mehra.

.....Applicant.

Versus

State of Uttarakhand
and others.

.....Respondents.

And

Writ Petition (Criminal) No. 159 of 2023

Anushka Arora and another.

.....Petitioner.

Versus

State of Uttarakhand
and others.

.....Respondents.

Present:

Mr. U.K. Uniyal, Mr. T.A. Khan, learned Sr. Advocate assisted by Mr. Mohd. Shafy and Ms. Pinky Anand,
learned senior counsel for the petitioner.

Mr. Himanshu Sain, learned AGA with Ms. Rangoli Purohit, learned Brief Holder for the State.

Mr. Raj Kishore Chaudhary, learned counsel for the complainant.

Hon'ble Mr. Justice Rakesh Thapliyal, J.

1. Since the issue as raised in both the captioned matter are the same and identical are now being decided by the common judgment.

2. Both the matters captioned above arising out of First Information Report dated 07.06.2022 bearing FIR No. 0177 of 2022 for the offences punishable under sections 420 and 506 IPC in which petitioners have been summoned to face the trial for the offences punishable under sections 420, 506 and 120B IPC.

3. Earlier both the two petitions were allowed by the Coordinate Bench by common judgment and order dated 05.08.2025, which was assailed by the complainant before the Hon'ble Supreme Court and the Hon'ble Supreme Court on

18.08.2025 set aside the judgment of this court and remit the matter to decide afresh after considering the rival contentions of the parties in the light of the charge-sheet and all issues were also left open to raise and interim orders were also revived.

4. In WPCRL No. 159 of 2023 initially the petitioners sought for quashing of FIR dated 07.06.2022 bearing FIR No. 0177 of 2022 but subsequently by way of an amendment the charge-sheet, cognizance order as well as the entire proceedings have been sought to be quashed.

5. So far as another petition i.e. C482 petition No. 135 of 2024 is concerned, in this case also entire proceeding arising out of the same FIR dated 07.06.2022 bearing FIR No. 0177 of 2022 is also sought to be quashed.

6. At this juncture it is relevant to mention here that the petitioners of WPCRL No. 159 of 2023 are the married daughters of the applicant of C482 No. 135 of 2024 *namely* Rakesh Mehra, who initially was implicated in the FIR but subsequently on completion of investigation all of them were chargesheeted and Trial Court summoned each of them to face the trial.

FACTUAL MATRIX

7. The applicant Rakesh Mehra who preferred C482 Application No. 135 of 2024 is the proprietor of the two firms *namely* “Shri Shivaji Global Export” and “Shiva Mahadev Overseas” and these two firms have business dealings with “Divya Pharmacy” and “Patanjali Ayurveda Limited” situated at Haridwar from 2007 to 2018. The firms owned by Rakesh Mehra are basically runs business of import and export of edible oils, apple juice, concentrate, pineapple juice, tomato sauce etc. etc. from abroad like China, Malaysia, USA,

Morocco, Argentina, Africa, Myanmar, Vietnam and Indonesia.

8. During the period of 2008 to 2018 “Divya Pharmacy” and “Divya Ayurveda Limited” raised certain demands of various products from the firm owned by Rakesh Mehra, however, in the year of 2017 a dispute was arise when despite making huge payment the firms owned by Rakesh Mehra have not supplied the material.

9. Due to the aforesaid dispute the complainant herein being a representative of the firms *namely* “Divya Pharmacy” and “Divya Ayurveda Limited” lodged a First Information Report on 07.06.2022 registered as FIR No. 177 of 2022 at P.S. Kankhal District Haridwar implicating Rakesh Mehra for the offences punishable under sections 420 and 506 IPC. After lodging the FIR the investigation was commenced, however, Rakesh Mehra never joined the investigation despite notices issued under section 41-A of Cr.P.C. though his daughters joined the investigation and on culmination of investigation the daughters of Rakesh Mehra were chargesheeted on 23.04.2023 for the offences punishable under section 420, 506 r/w section 120 B of IPC, however, against Rakesh Mehra the investigation was continued since he was absconding.

In this charge-sheet the learned Judicial Magistrate (II), Haridwar took cognizance on 27.09.2023 and the daughters of Rakesh Mehra *namely* Anushka Arora and Madhvi Mehra both were summoned to face the trial for the offences punishable under sections 420, 506 IPC read with 120B IPC.

10. Now, in WPCRL No. 159 of 2023 Anushka Arora and Madhvi Mehra, the daughters of Rakesh Mehra initially challenged the First Information Report dated 07.06.2022 but

after filing the charge-sheet and taking cognizance on the charge-sheet by the Trial Court on 27.09.2023 by way of an amendment the charge-sheet, cognizance order as well as the entire proceedings were also sought to be quashed.

In this petition initially on 27.01.2023 both the petitioners were granted interim protection to the extent that no coercive action would be taken against them provided they cooperate with the investigation but subsequently, on 24.11.2023 the proceedings of trial court was also stayed.

11. So far as Rakesh Mehra is concerned, proceedings under section 82 and 83 of Cr.P.C. was drawn against him and declared as proclaimed offender and alter on look-out circular (LOC) was also issued since neither he join investigation despite notice under section 41-A nor put appearance before the Trial Court.

Subsequently, on 05.12.2023 charge-sheet was also filed against him being "Absconder", wherein, learned Judicial Magistrate took cognizance on 19.12.2023 and summoned him to face the trial for the offences punishable under sections 420, 506 and 120 B of IPC in Criminal Case No. 3419 of 2023.

12. Thereafter Rakesh Mehra preferred Criminal Miscellaneous Application No. 135 of 2024 under section 482 of Cr.P.C through his power of attorney holder Mr. Akhil Arora for quashing of charge-sheet, cognizance order as well as entire proceeding of Criminal Case No. 3419 of 2023.

13. In WPCRL No. 159 of 2023 it is contended that the petitioners are not named in the FIR and even no role has been assigned to them and during investigation the local police visited their matrimonial house for enquiring about their father Rakesh Mehra and also pressurizing them to refund the

amount to “Divya Pharmacy” and “Patanjali Ayurveda Limited” and through they informed that their father is not in the country but their accounts were also freezed on the basis of forged letter of Cyber Crime Cell and entire action of freezing of their account purportedly to be done under section 102 of Cr.P.C. was illegal.

It is further stated in the petition that a writ petition was filed before the “High Court of Punjab and Haryana” at Chandigarh for quashing of freezing of account wherein the notices were issued but in the counter blast the FIR has been lodged on 07.06.2022 bearing FIR No. 0177 of 2022 implicating their father for the offences punishable under sections 420 and 506 of IPC.

It is further stated that there was no material with the Investigating Officer to show that the petitioners were having any business transaction with the firms of the complainant even then the charge-sheet has been filed against them in a very mechanical manner, which is gross abuse of process of law and the concerned Magistrate while taking cognizance on the charge-sheet did not apply his mind and passed the order of cognizance summoning each of them to face the trial. It is further stated that there was no material with the prosecution to bring the offence within the ambit of section 420 of IPC and the learned Magistrate did not consider this aspect that it was simplicitor transaction in between their father with the Companies *namely* “Divya Pharmacy” and “Patanjali Ayurveda Ltd.” and the dispute, if any, arising out of business transaction and, as such, the FIR as well as the charge-sheet and the cognizance order including the entire proceeding are liable to be quashed.

14. In addition to this, a further reference has been made in the petition that infact there was certain dues which were payable by the entities *namely* "Divya Pharmacy" and "Patanjali Ayurveda Limited" to the father of petitioners since these two entities did not provide Form 'C' for availing concessional rate of tax for which their father wrote a letter on 11.05.2022 demanding Form 'C' for the Financial Year of 2013-14, 2014-15, 2015-16 and 2016-17 and in reply thereof the Patanjali Ayurveda Limited wrote a letter on 04.06.2022 suggesting that in good faith the updated ledger account may be shared for reconciliation of account so that they can cross check and return back.

15. With regard to the seizure of their accounts a specific averment has been made in paragraph 17 and 18 by enclosing the statement of each fixed deposit account and current account showing the date of it's opening and balance. In paragraph-14 it is contended that father of petitioner Rakesh Mehra draw a family settlement and FDRs credited by him were transferred to their names including the lien of the banks regarding loan taken by Rakesh Mehra.

In paragraph-18 the status of 14 accounts were given including the account opening date, which shows that all these 14 accounts were opened in the month of July and August, 2022 except one which was opened on 25.03.2022.

16. So far as C482 Application No. 135 of 2024 is concerned it has been filed by Rakesh Mehra through his power of attorney holder Mr. Akhil Arora for quashing of entire proceeding arising out of same FIR i.e. FIR No. 0177 of 2022. It is stated in the petition that the applicant Rakesh Mehra is the sole proprietor of firm "M/s Shri Shivaji Global Exports" and "Shiva Mahadev Overseas", which are registered under the

Goods and Service Tax Act based at Punjab run by it's by-laws renewed time to time which runs exports and imports business by supplying handicrafts covers, white sandal wood, chess and other toys, juices, food items, spices and herbs etc and dealing business with "Divya Pharmacy" and "Patanjali Ayurveda" since 2008 and sold various items i.e Chinese juices, tomato paste, Chinese soup, Chinese noodles and other food items and there was no dispute till 2018 but suddenly due to some business crisis and market fall the firm of complainant stopped business dealings with the applicant's firm.

17. It is further stated in the petition that in every contract there is an "arbitration clause" and if there is any dispute in between both the firms then the matter will be settled through an Arbitrator at Amritsar as per arbitration clause. It is further stated that from 2008 till 2018 the firm of respondent no. 3 did not pay the entire amount of the goods purchased, as a result of which huge amount was lying with them. It is further stated that the firms of respondent no. 3 for purchasing the items from Bulgaria (Russia) place some order and when Rakesh Mehra ordered the goods (crude sunflower oil 2300 metric ton), valuing 16445005 USD in Bulgaria the firms of respondent no. 3 did not purchase the same and when the items were imported the entire amount was paid by him and the goods remain idle at the sea ports of Bulgaria (Russia) and ultimately the goods were confiscated due to which the applicant suffered a huge loss of around Rs. 4 crore. Subsequently, Rakesh Mehra send some e-mails to the firms of respondent no. 3 but they did not respond those e-mails nor attended their phone calls.

18. It is further stated that the firm of respondent no. 3 made false entries in the name of the applicant without making payment to Rakesh Mehra by making entries of Rs.

1,31,41,449/- shown as entries towards miscellaneous expenses, which are perse false and baseless and all these entries were made by the firms of respondent no. 3 in order to make pressure upon the applicant Rakesh Mehra.

19. A further reference has been made that one Mr. Ram Bharat, who is one of the supreme authority in the firms of respondent no. 3 made a request to pay an amount of Rs. 2.25 crore to one M/s S.K. Jewellers of Dehradun and on his assurance Rakesh Mehra paid an amount of Rs. 2.25 crore to M/s S.K. Jewellers but this amount was never been returned back.

It is further stated that the firms of respondent no. 3 has also not paid the amount of Rs. 2,30,00,915/- with regard to the items purchased by the firm.

20. It is further stated that FIR has been lodged with malafide intent, which is an abuse of process of law by respondent no. 3 and there were the business relations in between both of them since 2007 to 2018 and it was not an abrupt business, which itself reveals that the amount claimed by the complainant on behalf of the firms is arising out of business transaction and does not fall within the ambit of section 420 of IPC. It is further stated that the Investigating officer was in connivance with the respondent/complainant and did not conduct fair investigation and though there was no fraudulent intention even then the Investigating Officer in a mechanical manner filed the charge-sheet and while taking cognizance the concerned Magistrate did not applied his mind.

21. It is also stated that the Investigating officer without any material comes to the conclusion while filing the charge-sheet that the applicant transferred the amount in the account of his

daughters though as a matter of fact the amount, which were transferred were lying in his account much prior to the year of 2015 and the FIR has been lodged only to put pressure upon the applicant since the applicant's firm ask Form 'C' since 2012, which was required to submit in Trade Tax department for completion of his tax requirement to get tax exemption at the time of tax assessment but despite repeated requests Form 'C' was not provided, in support of which letter of Assistant Commissioner State Tax dated 08.09.2022 is also placed on record, which pertains to imposition of penalty and the round figure of penalty so imposed is likely to be around Rs. 7 crore and this is only due to non furnishing of Form 'C'.

It is further stated that the initiation of proceeding arising out of First Information Report lodged by the respondent no. 3 bearing FIR No. 0177 of 2022 is an abuse of process of law, hence, the entire proceedings is liable to be quashed. It is also contended that the daughters of the petitioner have been wrongly chargesheeted by the Investigating Officer that too in connivance with the respondent no. 3.

22. A counter affidavit has been filed by the complainant, wherein, it is stated that the applicant never joined the investigation, however, the Investigating Officer collected concrete evidence before filing charge-sheet. It is further stated that by letter dated 04.06.2022 it was informed to the applicant's firm that Form 'C' for the Financial year 2013-14, 2014-15, 2015-16 and 2016-17 were already provided by "Patanjali Ayurveda Limited" and in good faith even asked them to provide the updated ledger so that reconciliation of the account can be done but surprisingly instead of giving response to the letter dated 04.06.2022 applicant's firm sent a letter giving threatening to impart information on National and International press/media

to malign the reputation of Patanjali Ayurveda Limited that what activities are going on in the name of “Swadeshi”.

The complainant in para-7 gives the details of all those remedies as availed by Rakesh Mehra during the period by giving reference of WPCRL No. 139 of 2022, which was filed for quashing of FIR No. 177 of 2022 and the same was dismissed by this court by directing the Registry to file a criminal complaint before the jurisdictional Magistrate against notary public and the advocate who allegedly identified the deponent as well as the person, who has identified him, against which SLP 9384 of 2022 was filed, which was dismissed as withdrawn.

23. In the counter affidavit a further reference has been made of certain dates in a chronological manner which shows that on 10.08.2022 and 11.10.2022 the Investigating Officer issued notice under section 41-A of Cr.P.C. to the applicant Rakesh Mehra to join investigation, but he did not appear, thereafter, on 04.03.2023 look out circular was issued. Subsequently, on 05.06.2023 the proceeding under section 82 of Cr.P.C. was drawn, the publication of which was made on 28.07.2023 and thereafter on 30.10.2023 the proceeding under section 83 of Cr.P.C. was also drawn and on 19.11.2023 attachment proceeding was initiated and thereafter Rakesh Mehra was declared as an absconder/proclaimed offender and on 05.12.2023 charge-sheet was filed against him as absconder/proclaimed offender in which on 19.12.2023 the cognizance was taken by the Trial Court but uptill date he did not appear to face the trial.

24. The Investigating officer also filed the objection by annexing the notices issued under section 41A of Cr.P.C. as well as the non-bailable warrant and the documents relating to the proceedings under sections 82 and 83 of Cr.P.C.

In para-11 it is contended that during investigation the details were asked from the accused persons with regard to account no. 00011100099521 in which Rs. 7.29 crore were transferred as well as the details of account no. 0001100099528, wherein, an amount of Rs. 4.99 crore were transferred during the short period i.e. from 28.07.2022 to 06.08.2022, which shows that the applicant Rakesh Mehra siphon-off huge amount by transferring in the accounts of his daughter that too after lodging the FIR. In the objection the Investigating officer also contended that during investigation the documentary evidences were also collected including bank statement, report of Chartered Accountant and the statement of various witnesses were also recorded. It is further contended in the objection that during the course of investigation the applicant did not cooperate with the Investigating Agency, consequently non-bailable warrant was issued against him including the lookout circular and he was also declared to be a “proclaimed offender”.

SUBMISSIONS ON BEHALF OF PETITIONERS/APPLICANTS

25. Mr. U. K. Uniyal, learned Sr. counsel argued that impugned FIR does not disclose any cognizable offence and the dispute, if any, as reflected from the FIR appears to be civil in nature. He further submits that in fact, the petitioners have been victimized by the firm of respondent/complainant since demand of crude sun flower oil was raised by them but did not purchase the same due to which applicant Rakesh Mehra suffered huge loss of more than 4 crores. He submits that in the year of 2022, the applicant Rakesh Mehra, asked for Form “C” for tax exemption, which were never delivered despite repeated request. Subsequently, the Tax Department issued notice on

29.08.2022 to the applicant whereby he was informed that if he will not furnish Form "C", then, he has to pay tax of Rs. 7,75,96,555/- otherwise, he will be blacklisted. After receiving the said notice, the applicant remind to the firm of informant on 05.05.2022 through e-mail wherein he was requested for delivery of Form "C", failing which he will be compelled to disclose that firm of informant is indulged in malpractice of importing goods from abroad and selling in the name of "swadeshi products" in the public and will also report to the Government of India and now in counter blast, the impugned FIR has been lodged implicating the present applicant Rakesh Mehra, for the offence punishable under Section 420, 506 IPC in which on completion of investigation present applicant Rakesh Mehra and his married daughters have been chargesheeted and now summoned to face trial.

He submits that the daughters of Rakesh Mehra has been wrongly chargesheeted since the amount were transferred in their account only on account of family settlement. He further submits that applicant and the firms of informant were engaged in the business for the last more than a decade and there is no pending dues from the side of the applicants and even if it is presumed that there is any pending dues, it appears to be a civil dispute for which civil remedy should be availed but instead of availing civil remedy FIR has been lodged.

Mr. U.K. Uniyal also submits there is an arbitration clause, therefore, the informant should invoke "arbitration clause" instead of lodging FIR.

He further submits I.O. concerned file the charge-sheet in a mechanical manner and even then the charge-sheet does not discloses any cognizable offence against the petitioners. Mr. Uniyal concluded his arguments by the submitting that entire

proceedings initiated pursuant to the FIR dated 07.06.2022 bearing FIR No. 177 of 2022 is clearly an abuse of process of law and as such, entire proceeding is liable to be quashed since the dispute if any in between the applicant and firm of the informant is arising out of certain pending dues, which appears to be a civil dispute, therefore, the informant has to avail either civil remedy or to invoke arbitration clause.

26. Per contra, learned counsel for the complainant/respondent no. 3 raised a preliminary objection on the maintainability of the petition filed by Rakesh Mehra by placing reliance on Hon'ble Apex Court decision in the case of T.C. Mathai and another vs. District and Session Judge 1999 (3) SCC 613 and submits that petition filed by Rakesh Mehra through power of attorney cannot be held to be maintainable. In support of such submission, he placed reliance to paragraph 4, 5, 6, 7 and 15 of the said decision, which are being reproduced herein as under for convenience:

“4. The appellant, during the course of his arguments, referred to a commentary on criminal law to support his contention that a power-of-attorney holder has all powers to act on behalf of his principal. We would assume that the respondent-couple would have executed an instrument of power of attorney empowering the appellant to act on their behalf. Can he become a pleader for the respondent-couple on the strength of it?

5. Section 303 of the Code of Criminal Procedure (for short “the Code”) entitles a person to the right of being defended by a “pleader” of his choice when proceedings are initiated against him under the Code. “Pleader” is defined in Section 2(q) as thus:

“2. (q) ‘pleader’, when used with reference to any proceeding in any court, means a person authorised by or under any law for the time being in force, to practise in such court, and includes any other person appointed with the permission of the court to act in such proceeding;”

6. The definition envelopes two kinds of pleaders within its ambit. The first refers to legal practitioners who are authorised to practise law and the second refers to “any other person”. If it is the latter, its essential requisite is that such person should have been appointed with the permission of the court to act in such proceedings. This is in tune with Section 32 of the Advocates Act, 1961 which empowers a court to permit any person, who is not enrolled as an advocate to appear before it in any particular case. But if he is to plead for another person in a criminal court, such permission should be sought for by that person.

7. It is not necessary that the “pleader” so appointed should be the power-of-attorney holder of the party in the case. What seems to be a condition precedent is that his appointment should have been preceded by grant of permission of the court. It is for the court to consider whether such permission is necessary in the given case and whether the person proposed to be appointed is capable of helping the court by pleading for the party, for arriving at proper findings on the issues involved in the case.

x x x

15. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party-in-person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power-of-attorney holder

appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of the accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power-of-attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case."

Learned counsel for the respondent / informant submits that the aforesaid decision of Hon'ble Supreme Court in the case T.C. Mathai (supra) has been followed by different High Courts and still holds a good law.

He submits that on plain reading of the ratio laid by Hon'ble Supreme Court in the case of T.C. Mathai (supra), clearly goes to reveal, that it is only the accused person, against whom, a criminal case, has been registered or a criminal complaint, has been filed, can file a petition, under Section 482 Cr.P.C., in the High Court, for quashing of the complaint, the summoning order, and the subsequent proceedings, and no third person, can fight a proxy war, on his behalf He further submits that the aggrieved party, which is affected by an order, is required to seek redress of his grievances, by questioning the legal validity or correctness of the same.

He submits that it is another thing, if the aggrieved party is suffering from some disability i.e. unless such party is a

minor, an insane person, or is suffering from any other disability, which, in law, is recognized as sufficient to permit any other person e.g. next friend, to move the Court, on his behalf.

Learned counsel submits that in the case in hand, there is nothing on record to show that Rakesh Mehra is suffering from any disability, recognized by provisions of law and since, he is an accused, who has been charge sheeted, and therefore, for all purposes, he is the only person, who is aggrieved with the cognizance order and summoning order. He submits that in view of the law laid down by Hon'ble Supreme Court in the case of T.C. Mathai (supra), petition filed by Rakesh Mehra is not maintainable and on this account alone, the petition filed by him through his power of attorney holder, is liable to be dismissed.

In support of such submissions he also placed reliance on another judgment of Hon'ble Supreme Court in the case of **Simranjit Singh Mann Vs. Union of India AIR 1993 SC 280** wherein it has been held that ordinarily, the aggrieved party who is affected by any order has a right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability and it is only the accused person, against whom criminal case has been registered, can file petition under Section 482 Cr.P.C. and no third person can fight proxy war on his behalf.

He also submits that in the case in hand, Rakesh Mehra neither appeared before the I.O. nor appeared before the trial court to face trial and due to his absence, trial is put on hold since 2023. He submits that the I.O. concerned during investigation issued notices under Section 41A Cr.P.C. to

Rakesh Mehra to call upon him to join the investigation but he did not turn up and subsequent thereto, non bailable warrants was also issued and subsequently he was declared to be a proclaimed offender. Apart from this, he submits that after collecting material documentary evidence i.e. report of C.A., Audit report and Bank statements, charge sheet has been filed, which clearly reveals that persons, who have been charge sheeted has siphoned off crores of rupees of the firm of complainant by diverting the amount in the accounts of his daughters that too after lodging of the FIR.

27. With regard to preliminary objection on the maintainability of the petition, Mr. U.K. Uniyal, learned Sr. counsel argued that the petition is maintainable through Power of Attorney Holder and cannot be dismissed merely on the ground that the same has been filed through Power of Attorney Holder. He argued that admittedly applicant was in business relation with the firm of complainant and the dispute if any appears to be a civil dispute and cannot be result of cheating and criminal breach of trust and as such, the police do not have power to investigate the matter relating to business transaction and the remedy, which is available is only to approach the Civil Court for recovery of money. In support of his argument, he placed reliance to the judgment of Hon'ble Apex Court in the case of **Lalit Chaturvedi Vs. State of U.P. 2024 SCC Online SC 171 decided on 06.02.2024** particularly by placing reliance to paragraphs 9 and 10 which are being reproduced herein as under:

“9. We will assume that the assertions made in the complaint are correct, but even then, a criminal offence under Section 420 read with Section 415 IPC is not established in the absence of deception by making false and

misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money.

10. The charge-sheet also refers to Section 406 IPC, but without pointing out how the ingredients of the said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The charge-sheet does refer to Section 506IPC relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats, etc. have been made only with an intent to activate police machinery for recovery of money."

28. Learned Sr. Counsel also placed reliance to the recent judgment of Hon'ble Apex Court in the case of **Naresh Kumar Vs. State of Karnataka 2024 SCC Online 268** wherein earlier

judgment of Hon'ble Apex Court in the case of **Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673** was followed.

29. He further submits that in the case of **Randheer Singh Vs. State of U.P. (2021) 14 SCC 626**, it was observed by the Hon'ble Supreme Court that criminal proceedings cannot be taken recourse to as a weapon of harassment. Learned Sr. Counsel further placed reliance to the Apex Court decision in the case of **Usha Chakraborty Vs. State of West Bengal 2023 SCC Online SC 90** wherein the Hon'ble Supreme Court held that a dispute which is essentially of a civil nature is given a cloak of criminal, the High Court should not hesitate to exercise inherent powers under Section 482 Cr.P.C.

30. Ms. Pinky Anand, learned Sr. counsel for the applicant, also advanced her arguments and submits that Hon'ble Apex Court in the case of **Asha Dubey Vs. State of Madhya Pradesh 2024 SCC Online 5633** has held that in the event of the declaration under Section 82 of the Cr.P.C., it is not as if in all cases that there will be a complete embargo on considering the application for the grant of anticipatory bail and the Court will have to see the circumstances of the case, nature of the offence and the background based on which such a proclamation was issued.

She argued that in the case in hand, FIR was lodged by respondent no. 3 complainant and there were life threats from the side of respondent no. 3 – complainant, therefore, applicant has to stay abroad where he is doing business with other countries as well. She further submits that despite order passed by this Court dated 23.02.2024 restraining the State from taking further action pursuant to lookout circular, the State did not take any action for removing the look out circular. She further submits that on 31.07.2024 interim order was passed by

directing the State Government to communicate the order dated 20.03.2024 to the Authorities concerned but no action was taken and the Authorities did not remove the look out circular. She submits that the applicant sent many e-mails to the SSP, Haridwar for removal of look out circular in order to implement the order passed by this Court, resultantly, when the look out was in existence there was an apprehension that if applicant comes to India, he will be arrested, though the High Court already directed not to implement the look out circular.

31. Mrs. Pinky Anand further argued that applicant having life threat and has an apprehension of his false implication in other similar cases, if he comes to India to face the trial. She submits that applicant cannot be shown as a proclaimed offender under Section 82 Cr.P.C., since offence under Section 420 IPC does not fall within the ambit of Section 82 (4) Cr.P.C., therefore, order declaring the applicant as proclaimed offender is also illegal because mandatory provisions for initiation proceedings under Section 82 Cr.P.C. was not complied with. She further submits that the order passed under Section 82 Cr.P.C. was a non speaking order and consequential order under Section 83 Cr.P.C. is also non speaking one and, as such, initiation of proceedings under Section 83 Cr.P.C. appears to be an abuse of process of law as the same has been wrongly invoked, since the offence punishable under Section 420 IPC does not fall within the ambit of Section 82 (4) Cr.P.C.

In support of such submissions she has placed reliance to the judgment of Delhi High Court in the case of **Arun Kumar Parihar Vs. State of NCT, Delhi (2021) 279 DLI 548** as well as in the case of **Manoj Tandon Vs. State of NCT, Delhi CRL MC 1961 of 2020 decided on 25.11.2020** and argued that unless a person is charged for the offences as mentioned in Section 82 (4)

Cr.P.C., he cannot be declared as a proclaimed offender and if he fails to appear at specified place and time, required by the proclamation issued against him, the Court may not pronounce him proclaimed offender and make a declaration to that effect.

32. Mrs. Pinky Anand, learned senior counsel further argued that so far as petition filed through Power of Attorney Holder is concerned since there was regular threat that if he comes to India, he will be roped in other criminal cases also, therefore, there was no option except to file petition through Power of Attorney Holder, who in fact is his son-in-law and in order to remove further complications, Rakesh Mehra also filed his own affidavit along with application which was verified at Hongkong on 19.11.2025, by adopting all the pleadings of his Power of Attorney Holder. In addition to this, he also filed copy of passport showing he went to Vietnam and various other countries from 2002 to 2024 and he has disclosed all his whereabouts in his affidavit and on this affidavit, no objection has been filed by the respondents.

In support of such submission, she placed reliance to the judgment of High Court of Punjab and Haryana in the case of **Mangal Dass Gautam Vs. State of Haryana 2018 SCC Online P & H 8136**, by referring paragraph 40 which reads as under:

“40. We would also like to point out that filing of petition under section 482 of Cr. P.C. 1973 is an exception to general rule of criminal law that in criminal proceedings, either the accused should be available before the Court in custody or on bail, unless granted exemption. We hold that any petition under section 482 of Cr. P.C. 1973 through Power of Attorney should contain special reason for non-filing of petition by accused himself or herself to enable the High Court to consider and allow the

same. But if, at any stage, the High Court finds that the petition has been filed by accused through Power of Attorney with some oblique motive or the same is violative of any statute or law or is an act of abuse of process of the Court, the Court would have wide discretion to dismiss the petition filed through Power of Attorney. The High Court will have inherent power to give an opportunity to the accused to personally file the petition."

33. In reference to the role of the daughters of applicant Rakesh Mehra, who have also been charge sheeted, Ms. Pinky Anand, learned senior counsel submits that the amount which were transferred in their accounts was out of family settlement despite this their accounts have been freezed. She submits that the amount which was lying with the accounts of daughters have no concerned with the issue in hand.

She further submits that the amount which has been freezed by the trial court does not fall within the ambit of Section 102 Cr.P.C., therefore, it has been wrongly freezed and the same is liable to be defreezed since the order to freeze was obtained even prior to opening of accounts. She further submits that FDRs of the applicant was also pledged with the Bank in the loan account and the loan amount was transferred in the name of applicant's daughter. She further submits that there was no whisper in the entire statement of the witnesses that daughters of the applicant were having criminal conspiracy with the applicant before lodging of the FIR despite this daughters have been charge sheeted.

Lastly, she concluded her arguments by submitting that allegations, as reflected from the FIR, appears to be civil in nature which cannot be given colour of criminal offence, hence

the petition filed by the applicant under Section 482 Cr.P.C. is liable to be allowed and proceedings initiated on the basis of FIR lodged by the complainant - respondent no. 3 is also liable to be quashed. She also submits that the trial court without application of mind took cognizance on the charge sheet though as a matter of fact impugned proceedings is nothing but an abuse of process of law and therefore, impugned proceedings are also liable to be quashed.

34. In response to the argument of Ms. Pinky Anand, learned senior counsel, per contra, learned counsel for the respondent/complainant Mr. Raj Kishore Chaudhary, reiterated his argument by submitting that petition filed by Rakesh Mehra under Section 482 Cr.P.C. is not maintainable since he never turn up to join the investigation despite notices under Section 41A Cr.P.C. and not only this, even non bailable warrants were issued against him and was also declared as proclaimed offender and a look out circular was also issued. He submits that since Rakesh Mehra is an absconder as well as proclaimed offender, therefore, petition filed by him through power of attorney holder is not maintainable, in view of the law laid down by the Hon'ble Supreme Court in the case of **T. C. Mathai and another Vs. District & Sessions Judge, Thiruvananthapuram, (1999) 3 SCC 614.**

35. In reference to the submissions with regard to the lookout circular and declaration of proclaimed offender, learned counsel for the complainant submits that the validity of all these aspects cannot be looked into since the same are not put to challenge. Even otherwise the declaration of proclaimed offender is strictly as per law. He submits that learned senior counsel for the applicant is misinterpreting section 82(4) of Cr.P.C. that no declaration can be made in reference to the

offences in which the applicant have been chargesheeted are itself contrary to section 82 of the Code of Criminal Procedure.

36. Learned counsel for the complainant further submits that in the present case the Trial Court took cognizance on 27.09.2023 and also 19.12.2023 but uptill date the charges has not been framed since the applicant Rakesh Mehra never put appearance and the entire trial is put on hold and in his absence the charges cannot be framed. He submits that the Trial Court rightly took cognizance on the charge-sheet since the Investigating Officer collected all documentary evidences including the bank statement, the report of Chartered Accountant as well as the Audit report, therefore, all the arguments as advanced on behalf of the petitioners are the subject matter of trial and cannot be examined in a writ jurisdiction as well as under inherent jurisdiction of the court under section 482 Cr.P.C.

37. He also submits that present applicant filed WPCRL No. 1239 of 2022, wherein, the Coordinate Bench on 05.07.2022 directed the Registrar to file a criminal complaint under Section 196, 197 IPC against the Notary public and the advocate, who has allegedly identified the deponent as well as the person, who has identified him and there is a long history of litigations of the applicant.

He also submits that the applicant fabricated a sham family settlement to justify dishonest transfer of funds in the accounts of his daughters after lodging of the FIR and since then he is absconding.

He submits that the Hon'ble Apex Court while remanding the matter also observed in the order that all issues are left open and therefore, plea of maintainability cannot be

over looked. He submits that as on date admitted position is that the applicant/accused Rakesh Mehra is a declared proclaimed offender, which has been recorded by the Hon'ble Apex Court in it's order dated 06.05.2025 passed in SLP (Criminal) No. 2525 of 2025 arising out of SLP (Criminal) No. 2714 of 2024 and vide order dated 02.04.2025 the Hon'ble Apex Court directed the investigating agency to file charge sheet and proceed in accordance with law.

ANALYSIS

38. Heard learned counsel for the parties and perused the record as well as the order passed by the Hon'ble Apex Court, whereby, the matter has been remanded.

39. First of all a preliminary objection as raised by learned counsel for the informant is being taken into consideration. Admittedly, the applicant Rakesh Mehra is an absconder and is a proclaimed offender and also a lookout circular was issued against him. Now the question is whether the petition filed by him through a power of attorney holder is maintainable. On this issue learned counsel for the informant placed reliance to the judgment of Hon'ble Apex Court in the case of T.C. Mathai (Supra). The Hon'ble Apex Court in this case dealt with the issue in the light of definition of pleader as defined under section 2(q) of Code of Criminal Procedure, which refers to legal practitioners who are authorized to practice law and also envisages "any other person".

In this case the Hon'ble Apex Court has held that in no case an accused can appear through a power of attorney holder. This is one aspect of the matter.

Another aspect is whether the "power of attorney holder" can maintain a petition on behalf of the person who is

absconder and is a proclaimed offender and against whom a lookout circular was issued. It is settled principle of law, as has been held by the Hon'ble Apex Court as well as by different High Courts in the catena of decisions that an accused, who is declared to be a proclaimed offender cannot seek leave for quashing of an FIR or any such proceeding arising thereof without surrendering, the court will not exercise its extraordinary or inherent jurisdiction in favour of an individual, who is intentionally evading the process of law and is absconding, or has been declared a proclaimed offender and such an accused person cannot execute a power of attorney in favour of a power of attorney holder to invoke the jurisdiction of the High Court under section 482 of the Cr.P.C.

As viewed from another angle, neither the lookout circular nor the declaration of proclaimed offender put to challenge, therefore, in such eventuality, the petition filed by Rakesh Mehra through power of attorney holder cannot be held to be maintainable. Furthermore, this court has also on previous occasion directed that lookout circular be not be given effect to in order to enable applicant/accused Rakesh Mehra to join the Trial Court proceedings, which is put on hold and has not been commenced so far though Trial Court took cognizance as far as back year of 2023, despite this he has not turn to join the trial. A justification has been made by the learned senior counsel on behalf of Rakesh Mehra that one such an affidavit has been filed by Rakesh Mehra sworn at Hongkong by adopting the pleadings of the power of attorney holder. The question is whether such an affidavit can be taken into consideration in order to cover up the lacuna. This court is of the firm opinion that such an affidavit is of no use, but to anyhow to evade the process of law.

40. Apart from this, what this court has also observed that admittedly the applicant is an accused against whom charge-sheet has been filed and has been summoned to face the trial. The process of lookout circular issued against him is to ensure the availability of the accused during the investigation or trial and to prevent the accused to circumvent the judicial process. In the facts of the present case, the Investigating Agency has placed documents on record exhibiting that the petitioner has siphoned off huge amount by diverting the same in the accounts of his daughters i.e. about Rs. 31.25 crore and there is sufficient to proceed with the trial and, therefore, in such an eventuality, lookout circular cannot be treated as unreasonable since the authority issuing the lookout circular has recorded their satisfaction while issuing LOC. In this particular case neither the applicant Rakesh Mehra joined the investigation at any point of time nor join the Trial Court proceedings, though look out circular was kept in abeyance and now learned senior counsel on his behalf taking plea that if he comes to India then he may be implicated in some other case. Such an apprehension is nothing, but to avoid the judicial process and to avoid to face trial and amount to evade the process of law.

41. Thus, in view of the discussion as above, with regard to the maintainability of the petition filed by Rakesh Mehra, this court is of the view that the petition filed by him through power of attorney holder is not maintainable.

42. The another issue as raised before this court is that the dispute appears to be civil in nature, therefore, the impugned proceedings arising out of First Information Report dated 07.06.2022 bearing FIR No. 0177 of 2022 is liable to be quashed. In this particular case, after completion of the investigation, charge-sheet was filed and the investigation reveals that during

investigation the documentary evidence have been collected including the Audit report as well as the certificate of the Chartered Accountant. Taking the plea that the informant has not supplied Form 'C', one of the letters has been placed on record i.e. letter dated 04.06.2022, wherein, the applicant Rakesh Mehra was informed that all Form 'C' were already supplied, however, he has been requested to provide with the ledger accounts but he has not respond to this.

43. At this juncture, it is also relevant to mention here that after lodging of the FIR huge amount was siphoned by crediting the same by Rakesh Mehra in the accounts of his daughters that too within a short span of period, which has already been discussed above. Thus, there are sufficient material to proceed against the applicant Rakesh Mehra and his daughters, which were collected during investigation. This court in a writ jurisdiction as well as under section 482 Cr.P.C. cannot meticulously appreciate evidence and adjudicate upon its probative value as held by Hon'ble Apex Court in catena of judgments that the existence of commercial relations, contractual arrangement, does not itself include criminal law and the test in such cases is whether a civil remedy is available to the complainant but if the complaint discloses a cognizable offence and then is tried on the same set of facts, civil and criminal liability co-exist and existence of one does not exclude the other.

44. Thus, in view of the discussion as above, this court does not find any merit in both the petitions and the same are dismissed being devoid of merit and the all interim orders passed earlier shall also stand vacated.

45. The Trial Court is directed to proceed with the trial as per law without being influenced with the observation as above.

46. No order as to costs.

(Rakesh Thapliyal, J.)
17.06.2026

PR