

HIGH COURT OF DELHI
Bench: JUSTICE AMIT SHARMA
Date of Decision: 02nd February, 2024

CRL.M.C. 4587/2013

Blue Bird Leisure And Holidays Ltd. & Ors.Petitioners

Versus

Spring Holiday Ltd. & Anr.Respondents

Legislation:

Section 156(3), 482 of the Code of Criminal Procedure, 1973 (CrPC)
Sections 406, 120B of the Indian Penal Code (IPC)

Subject: Petition challenging the Metropolitan Magistrate's order for FIR registration against the petitioners under Sections 406/120B IPC, in a case involving allegations of cheating and criminal breach of trust in the cancellation of air tickets.

Headnotes:

Criminal Procedure Code – Section 482 – Quashing of FIR – Petition under Section 482 CrPC challenging the order for FIR registration and its subsequent quashing – Dismissal of petition based on detailed investigation and material collected – Observations made not to be construed as an opinion on the merits of the case. [Para 9, 16]

Criminal Breach of Trust and Conspiracy – Sections 406/120B IPC – Allegations of dishonest inducement and retention of payment for air tickets – Detailed investigation substantiating the charges against the petitioners – Quashing of FIR and chargesheet not warranted. [Para 11, 14, 16]

Judicial Vigilance – Magistrate's duty in scrutinizing allegations and issuing directions – Necessity of application of judicial mind in matters of criminal complaints – Reference to precedent cases outlining the principles for Magistrates' approach to criminal complaints. [Para 4, 5]

Civil Nature of Disputes – Differentiation between civil and criminal disputes – Consideration of the nature of the dispute in the context of criminal proceedings – Rejection of the argument that the dispute is purely civil based on the facts of the case. [Para 14]

Investigation Process – Role of investigating authorities in collecting evidence – Collection of statements and material demonstrating the commission of alleged offenses – Importance of thorough investigation in criminal proceedings. [Para 14]

Power of High Court – Exercise of inherent powers under Section 482 CrPC – High Court's authority to quash proceedings to prevent abuse of process or secure justice – Criteria for exercise of such powers in the context of criminal cases. [Para 15]

Trial Proceedings – Directions to expedite trial proceedings – Order for timely completion of trial in light of the age of the FIR. [Para 20]

Decision – Petition dismissed, FIR and chargesheet upheld – Court directed expedited trial proceedings, clarifying observations made were only for adjudicating the present petition, not a comment on merits of the case [Paras 16-23].

Referred Cases:

- Priyanka Srivastava and Another v. State of Uttar Pradesh and Others, (2015) 6 SCC 287;
- Sayed Anwar Ahmed v. The State of Maharashtra, 2017 SCC OnLine Bom 3972;
- Babu Venkatesh and Ors. V. State of Karnataka and Anr., (2022) 5 SCC 639;
- Sri Rabindra Nath Dam and Another v. State of West Bengal and Another, 2019 SCC OnLine Cal 9159;
- Indiabulls Housing Finance Ltd. through Ms. Uma Salma and Others v. State of Maharashtra through Wadala Police Station and Another, 2022 SCC OnLine Bom 966;
- Satish Mohan Aggarwal v. State and Others, 2022 SCC OnLine Del 1646;
- Harry Inder Dhaul v. State of Maharashtra, 2023 SCC OnLine Bom 200;
- Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of
- Home and Another, (2019) 11 SCC 706;
- Thermax Limited and Others v. K.M. Johny and Others, (2011) 13 SCC 412;
- Nicholas John Fernandes and Another v. State as Represented by Officer in
- Charge and Another, 2021 SCC OnLine Bom 2980
- Jayaben v. Tejas Kanubhai Zala and Another, (2022) 3 SCC 230
- Deepak Gaba and Others v. State of Uttar Pradesh and Another, 2023 SCC OnLine SC 3
- Amit Kumar v. State and Another, 2022 SCC OnLine Del 4188;
- Avinash Trimbakrao Dhondage v. State of Maharashtra, 2017 SCC OnLine Bom 9099;
- Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129;
- State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272

Representing Advocates:

Petitioners: Mr. Subhash Jha and Mr. Sachin Saini

Respondent No. 1: Mr. Shrey, Mr. Abhishek Rana, Mr. T. Parth

State/Respondent No. 2: Ms. Priyanka Dalal, APP with Insp. S.K. Chandolia, DIU/NDD.

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 („CrPC“) assails order dated 07.06.2013 passed by the learned Metropolitan Magistrate-05, Patiala House Courts, New Delhi in CC No. 114/1/2013, whereby an application under Section 156(3) of the CrPC filed on behalf of respondent no. 1 was allowed and an FIR was directed to be registered against the petitioners. The petitioners further seek quashing of the consequent FIR No. 80/13 under Sections 406/120B of the Indian Penal Code („IPC“) registered at PS Barakhamba Road. **Background**

2. The case of respondent no.1/Spring Holiday Ltd. („complainant company“), as set out in the complaint filed before the learned Trial Court is as under:

- i. The complaint was filed by Sh. Virender Rana, Director of the complainant company, stating that the latter is engaged in the business of tours and travels. In the month of April 2012, an official from Blue Bird Leisure and Holidays Ltd./petitioner no. 1 engaged in the business of selling air tickets, contacted the complainant company stating that they can avail air tickets to them at a more reasonable price as compared to the market rates. Thereafter, the complainant company received assurances and a representation from the Managing Director, i.e., Ms. Aditi Jaiswal/petitioner no.2 of petitioner no. 1 company as well as the Chairman, i.e., Mr. Sanjay Jaiswal/petitioner no. 3.
- ii. Thereafter, the complainant company purchased air tickets from petitioner no. 1 company for their customers for a total consideration of Rs.2,34,078/-.
- iii. On 13.12.2012, it came to the knowledge of the complainant company that after receipt of the consideration amount, petitioner no. 1 company cancelled the air tickets without informing them. On enquiring about it, the complainant company received no response from petitioner no. 1 company.
- iv. After cancellation, the complainant company had to book the air tickets again, which costed approximately Rs. 1,25,000/-. Therefore, it was averred that the petitioners caused a loss of Rs. 3,59,078/- and cheated the complainant company of hard-earned money.

Accordingly, an FIR was sought to be registered against the petitioners for offence under Sections 420/406 of the IPC.

3. Based on the aforesaid complaint and an application under Section 156(3) of the CrPC, the learned Metropolitan Magistrate, *vide* order dated 07.06.2013, directed the concerned SHO to register an FIR and investigate the allegations. Accordingly, FIR No. 80/13 dated 14.06.2013 was registered at PS Barakhamba Road under Section 420 of the IPC. Upon completion of investigation, a chargesheet was filed *qua* the accused persons including the petitioners under Sections 406/120B of the IPC.

Submissions on behalf of the Petitioners

4. Learned counsel for the petitioners submitted that as per the case of the prosecution, the complaints received against the petitioners were referred to the Prosecution Branch, Patiala House Courts for opinion. Later, the Prosecution Branch opined that the said complaints were civil in nature. It was submitted that the said fact was suppressed from the Court of the learned Metropolitan Magistrate at the time of passing of the impugned order. It was further submitted that though the Action Taken Report („ATR“) dated 06.06.2013 filed before the learned Trial Court disclosed the factum of the opinion received from the Prosecution Branch, the learned Metropolitan Magistrate has not taken the same into account while passing the impugned order. It was further urged that the present dispute is purely civil in nature as the same arises out of a contract between the parties. Learned counsel for the petitioners further submitted that the impugned order has been passed in violation of the judgment of the Hon^{ble} Supreme Court in **Priyanka Srivastava and Another v. State of Uttar Pradesh and Others, (2015) 6 SCC 287**, wherein it has been held as under:

“27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a

separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. Issuing a direction stating “as per the application” to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice-President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) CrPC is a simple application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in

the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

5. In support of his contentions, learned counsel for the petitioners further placed reliance on the following judgments:

i. Sayed Anwar Ahmed v. The State of Maharashtra, 2017 SCC OnLine

Bom 3972 - Reliance was placed on paragraphs 18, 19, 21, 23 of the said judgment wherein it has been observed and held that in exercising powers under Section 156 of the Code of Criminal Procedure, 1973, the magistrate cannot act mechanically. Attention of this Court was drawn to Para 27 of the said judgment, wherein it has been held as under:

“**27.** To summarise,

(a) While dealing with a Complaint seeking an action under SubSection(3) of Section 156 of Cr. P.C., the learned Magistrate cannot act mechanically. He is required to apply his mind to the contents of the Complaint and the documents produced along with the Complaint;

(b) An Order passed on the said Complaint must record reasons in brief which should indicate application of mind by the Magistrate. However, it not necessary to record detailed reasons;

(c) The power under Sub-Section(3) of Section 156 is discretionary. Only because on plain reading of the Complaint, a case of commission of cognizable offence is made out, an Order of investigation should not be mechanically passed. In a given case, the learned Magistrate can go in to the issue of the veracity of the allegations made in the Complaint. The learned Magistrate must also consider the other relevant aspects such as the inordinate delay on the part of the Complainant. The nature of the transaction and pendency of civil proceedings on the subject are also relevant considerations;

(d) When a Complaint seeking an action under Sub-Section(3) of Section 156 is brought before the learned Metropolitan Magistrate or

the learned Judicial Magistrate, it must be accompanied by an affidavit in support as contemplated by the decision of the Apex Court in *Priyanka Srivastava*. The affidavit must substantially comply with the requirements set out in Chapter VII of the Criminal Manual and especially paragraphs 5 and 8 which are quoted above; and

(e) Necessary averments recording compliance with SubSections (1) and (3) of Section 154 of the CrPC should be incorporated with material particulars. Moreover, the documents in support of the said averments must be filed on record.” ii. **Babu Venkatesh and Ors. V. State of Karnataka and Anr., (2022) 5 SCC 639** - Reliance was placed on paragraphs 23 to 26 of the said judgment to submit that applications under Section 156(3) of the CrPC are required to be supported by an affidavit sworn by the complainant in order to deter persons from casually invoking jurisdiction of a Court under the said provision.

iii. **Sri Rabindra Nath Dam and Another v. State of West Bengal and Another, 2019 SCC OnLine Cal 9159** - reliance was placed on paragraph 22 of the said judgment, wherein it has been observed and held as under:

“22. After completion of investigation charge-sheet was submitted under sections 420/120B of the Penal Code, 1860 and under section 138 of the Negotiable Instruments Act. In the present case, the complainant did not issue any notice to the accused after the dishonour of the cheque in question for second time on 18.04.1996. Thereafter on 21.06.1996 the complainant filed the application under Section 156(3) of the Code of Criminal Procedure. Having failed to bring an action under the specific provision of section 138 of the Negotiable Instruments Act, the opposite party No. 2/complainant started the proceedings under Section 156(3) of the Code of Criminal Procedure. Dishonour of a cheque constitutes an offence under section 138 of the Negotiable Instruments Act. Moreso, the averments of the petition of complaint do not prima facie disclose the existence of the offence of cheating as defined in Section 405 of the Penal Code, 1860.”

iv. **Indiabulls Housing Finance Ltd. through Ms. Uma Salma and Others v. State of Maharashtra through Wadala Police Station and Another, 2022 SCC OnLine Bom 966** - Reliance was placed on paragraph 31 of the said judgment to submit that the complaint under Section 156(3) of the CrPC filed in the present case lacks a basic requirement of such a complaint, i.e., a supporting affidavit. Reliance was further placed on paragraph 37 of the said judgment to argue that the case of the petitioners is squarely covered by the judgment of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**.

- v. **Satish Mohan Aggarwal v. State and Others, 2022 SCC OnLine Del 1646** - Reliance was placed on paragraphs 16, 17 and 19 of the said judgment to submit that the present dispute between the parties is primarily civil in nature and therefore, it is a fit case for quashing of the criminal proceedings.
- vi. **Harry Inder Dhaul v. State of Maharashtra, 2023 SCC OnLine Bom 200** - Reliance was placed on paragraphs 9, 10, 12 and 17 of the said judgment to reiterate that the complaint filed by the respondents was required to be accompanied by a supporting affidavit, as prescribed by procedure.
- vii. **Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home and Another, (2019) 11 SCC 706** – Reliance was placed on paragraphs 14 and 15 of the said judgment to submit that the fact that a chargesheet has been filed in the present case cannot be a ground for dismissal of the present petition and that despite the aforesaid circumstance, this Court is vested with an inherent power to set aside the impugned order and quash the impugned FIR. Reliance was further placed on paragraphs 22 and 26 of the said judgment to submit that the complainant company has deliberately pressurizing the petitioners by criminally prosecuting them in relation to a dispute which is otherwise purely civil in nature.
- viii. **Thermax Limited and Others v. K.M. Johny and Others, (2011) 13 SCC 412** - Reliance was placed on paragraphs 24, 35, 36, 43, 44, 45, 47 and 49 of the said judgment to reiterate that the dispute between the parties is civil in nature and therefore, the criminal proceedings ought to be quashed. It was further submitted that be that as it may, the contents of the complaint under Section 156(3) of the CrPC do not disclose a cause of action for initiation of criminal proceedings.
- ix. **Nicholas John Fernandes and Another v. State as Represented by Officer in Charge and Another, 2021 SCC OnLine Bom 2980** - Reliance was placed on paragraph 7 of the said judgment to submit that the present is a fit case for quashing of an FIR in exercise of powers vested by Section 482 of the CrPC in order to prevent abuse of process of law and secure the ends of justice.
- x. **Jayaben v. Tejas Kanubhai Zala and Another, (2022) 3 SCC 230** - Learned counsel for the petitioners drew the attention of this Court to Para 22 of the said judgment to submit that the Director of Prosecution

has a crucial role to play and that his opinion (which in this case was that the present dispute is civil in nature) cannot be ignored.

- xi. Deepak Gaba and Others v. State of Uttar Pradesh and Another, 2023 SCC OnLine SC 3** – Reliance was placed on Para 22 of the said judgment to submit that the complaint filed by respondent no. 1 company ought to have disclosed the necessary ingredients of the alleged offences, as the allegations were in relation to an alleged breach of contract. In absence of averments disclosing the required ingredients, the impugned order is liable to be set aside.
- xii. Amit Kumar v. State and Another, 2022 SCC OnLine Del 4188** – Reliance was placed on the said judgment to reiterate that in the facts and circumstances of the present case, interest of justice would be best served in the present petition is allowed and the impugned FIR is quashed.

Submissions of behalf of Respondent No. 1

6. *Per contra*, learned APP for the State assisted by learned counsel appearing for respondent no. 1 submitted that petitioner no. 1 company through petitioners no. 2 and 3 dishonestly induced complainant/respondent no. 1 to purchase tickets. It was pointed out that during the course of investigation, it has come on record that petitioner no. 1 company was not International Air Transport Association („IATA“) approved company.

7. It was further pointed out that during the course of investigation, several other complaints made by travel agents against the petitioners herein have come on record. The allegations with respect to the petitioners made in the said complaints are similar to those levelled in the present complaint. It was pointed out that the petitioners, after receiving the amount from respondent no.1/complainant, cancelled the tickets and dishonestly retained the amount received by them, with respect to the said tickets. It was further pointed out that after completion of investigation, chargesheet in the present case has been filed before the Court of competent jurisdiction for offences punishable under Sections 406/120B of the IPC. It was further pointed out that the ratio in **Priyanka Srivastava (supra)** would not be applicable to the present case, as the impugned order was passed on 07.06.2013, which is prior in time to the directions passed in the said judgment. Reliance was placed on **Avinash Trimbakrao Dhondage v. State of Maharashtra, 2017**

SCC OnLine Bom 9099, wherein in para 16 it has been held as under:

“16. So far as the submission of the learned advocate for the applicants that the complaint filed by Respondent No. 2 was not supported by the affidavit as is laid down in the case of Priyanka Srivastava (*supra*) is concerned, suffice for the purpose to observe with respect that there is no specific provision contained any where in the Cr.P.C. requiring such affidavit to be filed. However, it is only in view of the decision in the form of direction in the case of Priyanka Srivastava that the Magistrates would now be obliged to examine if the complaint/applications invoking their power under Section 156(3) of the Cr.P.C. are supported by an affidavit of the person making the application. Since the directions in the case of Priyanka Srivastava have been issued by the judgment dated 19.03.2015, such procedure can be expected to be followed only after that date. Since, in the matter in hand the impugned order was passed on 23.09.2013, it cannot be said that Respondent No. 2 was under any legal obligation to follow such a procedure or for that matter the learned Magistrate should have ensured that such a procedure was followed. Therefore, even this limb of argument of the learned advocate for the applicants is not sustainable.”

8. It was further submitted that the opinion of the prosecution branch would not be binding on the learned Magistrate while exercising powers under Section 156(3) of the CrPC. It was further urged that after the registration of the present FIR, a thorough investigation has been conducted and relevant material has been placed on record *prima facie* establishing commission of offence punishable under Sections 406/120B of the IPC.

Analysis and Findings

9. Learned counsel for the petitioners had strenuously argued that the directions laid down in **Priyanka Srivastava (*supra*)** have not been followed, with respect to impugned order dated 07.06.2013, passed under Section 156(3) of the CrPC. So far as the said contention of learned Senior Counsel for the petitioner is concerned, the judgment relied upon by respondent no. 1 in **Avinash Trimbakrao Dhondage (*supra*)** would be clearly applicable in the facts of the present case. In the present case, the impugned order is dated 07.06.2013 and the directions in **Priyanka Srivastava (*supra*)** were issued *vide* a judgment dated 19.03.2015. The procedure adopted by the learned Magistrate cannot be held to be in violation of the directions in **Priyanka Srivastava (*supra*)**.

10. It is a matter of record that the present complaint was filed on 17.04.2013 and therefore, the learned Metropolitan Magistrate asked

for an ATR *vide* order dated 22.04.2013. The ATR dated 06.06.2013 was filed before the learned Metropolitan Magistrate, wherein it was stated that the opinion had opinion had been taken from the prosecution branch and the nature of the complaint was stated to be „civil“. The learned Metropolitan Magistrate, after examining the records of the case, passed the impugned order dated 07.06.2013. Although, in the impugned order, the learned Metropolitan Magistrate, while referring to the ATR, does not discuss the fact of the opinion of the prosecution branch as stated in the ATR, however, the same cannot be a sole ground for setting aside the order and quashing of the FIR and the consequent chargesheet. More particularly, in the facts and circumstances of the present case, wherein after a detailed investigation, a chargesheet has been filed before the Court of competent jurisdiction. As far as the reliance placed by learned counsel for the petitioner on **Jayaben (supra)** is concerned, it is noted that the observations in relation to the position of Director of Prosecution were made in the context of facts wherein the State did not prefer an appeal challenging bail granted to an accused person. The Hon“ble Supreme Court, in the said case, was of the opinion that the Director of Prosecution ought to have taken a prompt decision in that regard. Therefore, it is noted that the observations made in **Jayaben (supra)** do not apply to the facts and circumstances of the present case. Be that as it may, this Court is of the considered opinion that the opinion of the Prosecution Branch that the dispute is civil in nature was given at a preliminary stage and is not in consonance with the facts of the case which have subsequently come on record. In any case, the opinion of the Prosecution branch cannot be stated to be binding on the learned Metropolitan Magistrate.

11.Coming to the merits of the case, it is the case of the complainant that relying upon the representation made by the petitioner company through petitioners no. 2 and 3 a consolidated payment of Rs. 2,34,078/- was made in the following manner:

- i. Rs. 1,50,000/- on 17.10.2012 by cash.
- ii. Rs. 39,258/- *vide* cheque dated 23.10.2012.
- iii. Rs. 44,820/- *vide* cheque dated 29.10.2012.

12.It is the case of the prosecution that on receiving the said amount, tickets were issued by petitioner no. 1 company which were subsequently cancelled and the amount so received was retained. It

is the case of the petitioner that the tickets were being purchased from M/s Ezeego with whom they had an established business relationship. It is the case of the petitioners that the aforesaid M/s Ezeego cancelled their bookings despite receiving payments and therefore, resulting in cancellation of the tickets booked by respondent no. 1/complainant. It is submitted that a civil suit was filed by petitioner no.1 company against M/s Ezeego before the Hon^{ble} high Court of Calcutta, i.e, TA No. 142 of 2012 regard to the aforesaid disputes. The case of the petitioner, therefore, is that the dispute is civil in nature and on account of the fact that M/s Ezeego did not adhere to their arrangement, the tickets booked for respondent no.1/complainant, got cancelled. At this stage, it is relevant to note that in the civil suit filed on behalf of the petitioner, i.e., TA No. 142 of 2012 following averments had been made:

“6. In the 1st fortnight of September, 2012, the petitioner purchased tickets from the respondent of an aggregate value of Rs. 3,10,00,000/- . As per the mode of transaction which subsists between the petitioner and the respondent, the petitioner was required to pay the said money on or before of 30th September, 2012.

7. **The respondent, however, without honouring the mode of transaction or adhering to the same, all on a sudden by electronic mail dated 27th September, 2012 called upon the petitioner to pay Rs. 2,00,00,000/- out of the outstanding amount Rs.3,10,00,000/- for the 1st fortnight of September, 2012, by 27th September, 2012, failing which, the issuance of tickets to the petitioner will remain stopped with immediate effect.** The respondent also threatened to cancel all tickets issued even prior to the 1st fortnight of September, 2012 in respect of which payment had already been made but the journey has not been performed till such time.

8. The petitioner states that in respect of the tickets so purchased prior to 1st fortnight of September, 2012, there are enumerable tickets with regard to which journey has not been performed. As the price of the tickets upto 31st August, 2012 had already been duly paid, the respondent cannot and could not have issued threat of cancellation as has been done by the respondent.

9. **The petitioner was utterly shocked and surprised to receive such electronic mail dated 27th September, 2012.** The petitioner had from time to time upto 31st August, 2012 purchased tickets from the respondent and had made over the same to its valuable customers and clients. The journey in respect of many such tickets were not performed till 27th September, 2012. The petitioner become very much apprehensive as the business reputation and goodwill of the petitioner would be seriously jeopardized in the event the respondent cancelled the tickets against which journey had not been performed till such time.

(emphasis supplied)

13. A perusal of the aforesaid averments reflects that petitioner no. 1 company had already received an e-mail from aforesaid M/s Ezeego on 27.09.2012, wherein it was stated that if a payment of Rs. 2 Crore is not made, then the issuance of tickets to the petitioner shall be stopped with immediate effect. As pointed out hereinabove, respondent no. 1/complainant paid the consideration amount for the tickets to the petitioners on 17.10.2012, 23.10.2012 and 29.10.2012, i.e., after receiving the said email. It is an admitted fact that petitioner no. 1 company was not an IATA approved agent and therefore, had to rely on M/s Ezeego for the purchase of tickets. In this scenario, when the aforesaid M/s Ezeego had clearly indicated their stand for not booking the tickets for the petitioners, the latter had no authority to accept the payment made by respondent no.1/complainant towards booking of the subject tickets. The attention of this Court was also drawn to a notice issued by petitioner no. 1 company to respondent no. 1/complainant dated

14.01.2013, wherein, in Para 3 it is recorded as under:

“3. However, Ezeego w.e.f. 1st October, 2012 stopped extending any credit facility to our client abruptly and called upon our client to make the entire payment immediately. According to Ezeego as on 30.9.2012 a sum of Rs.5.50crores was due and payable to them by our client and although our client did not enjoy any credit facilities, they ensured the outstanding which was Rs.5.50crores was substantially reduced and brought down to Rs.2.50 crores within a short span of 30 days. A sum of Rs.2.50 crores according to Ezeego is still outstanding in their books of accounts and for which they would exert pressure on our client. Our client was threatened that the air tickets which were purchased in bulk by our client from Ezeego and in turn sold those tickets to their customers/travel agents would be cancelled. Our client did try to explain to Ezeego their bonafide by stating that their outstanding has been substantially reduced and has been brought down to half within a short span of 30 days and therefore extending the cooperation in a situation like this to our client would certainly not jeopardize their business interest. However, Ezeego would repeatedly administer threats of cancellation of the air tickets issued by them.”

14. In the present case, the petitioners had no authority to book tickets for respondent no. 1/complainant and the tickets stood cancelled on 13.12.2012. The amount received by petitioner no. 1 company from respondent no. 1/complainant was never refunded. A perusal of the record reflects that the contention of learned counsel appearing on behalf of the petitioners that the dispute in the present case is of civil in nature, is not sustainable. The aforesaid aspect, as highlighted

hereinabove, shows that even as per the petitioners' own case, as on 27.09.2012, they were not authorized to book any tickets by M/s Ezeego. The scope of the present jurisdiction is limited in nature and disputed facts which require minute scrutiny cannot be gone into, at this stage. The aforesaid circumstances, in the opinion of this Court, does not appear to be civil in nature. There appears to be *prima facie* substance in the allegations made against the petitioners. A perusal of the chargesheet reflects that the Investigating Officer has collected material, i.e., statements of relevant witnesses including those of other complainants who were aggrieved with the act of the petitioners by involving cancellation of tickets in a similar fashion, as in the present case.

15. The Hon'ble Supreme Court, in **Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129**, held as under:

19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In *State of Orissa v. Saroj Kumar Sahoo* [*State of Orissa v. Saroj Kumar Sahoo*, (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272], a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)

"8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto."

16. The facts and circumstances of the case, as discussed hereinabove, do not warrant exercise of jurisdiction under Section 482 of the CrPC for quashing of FIR No. 80/13 under Sections 406/120B of the IPC registered at PS Barakhamba Road and the consequent chargesheet pending before the Court of competent jurisdiction.

17. The petition is accordingly dismissed and disposed of.
18. Pending applications, if any, also stand disposed of.
19. Interim order dated 12.02.2015 stands vacated.
20. In view of the fact that the FIR is dated 14.06.2013, the learned Trial Court is directed to expedite the proceedings in case FIR No. 80/13 under Sections 406/120B of the IPC registered at PS Barakhamba Road.
21. Nothing stated hereinabove shall be construed as an opinion on the merits of the case and observations made are only for the purpose of adjudication of the present petition.
22. Judgment be uploaded on the website of this Court, *forthwith*.
23. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

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