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

RESERVED ON – 20.09.2024.

% ***PRONOUNCED ON – 11.11.2024.***

\+ CRL.M.C. 5108/2022, CRL.M.A. 20383/2022

RAFFLES EDUCATION CORPORATION LTD .....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Shri Singh, Mr. Faraz Maqbool, Mr. Chandan Kumar, Ms. Sana Juneja, Ms. Surabhi V., Advs.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Ms. Priyanka Dalal, APP for the State and SI Mukesh Chauhan, PS EOW, Mandir Marg**.**

Mr. Vivek Sood, Sr. Adv. with Mr. Achint Singh Gyani, Mr. Aman Singh Rathore, Mr. Varun Chugh**,** Ms. Shreya Mittal, Ms. Shagun S. Chugh, Mr. Utsav, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

A. Preface

1. The present petition has been filed under section 482 Cr.P.C. seeking to set aside the order dated 02.08.2022 passed by the Court of Ld. ASJ-06, Patiala House Courts, New Delhi, in criminal revision petition bearing no. 264/2021 titled '*Shantanu Prakash v. State & Anr.'*

2. A revision petition was filed by Mr Shantanu Prakash/ Respondent No. 2 before the Ld. ASJ seeking to set aside the order dated 22.05.2019, passed in CC no. 11448/18 by the Ld. CMM, Patiala House Courts whereby Respondent No. 2, along with Educomp Solutions Limited and associated persons, were summoned for the offence punishable under Sections 420/34 IPC.

3. Ld. ASJ, while dismissing the summoning order dated 22.05.2019 of Ld. CMM, opined that the allegations, even if accepted at face value, did not amount to a prima facie case of cheating under Section 420

IPC.

B. Factual Matrix

4. Petitioner is a listed company headquartered in Singapore. A complaint was filed on behalf of the petitioner company under Section 200 Cr.P.C. before the Ld. CMM, Patiala Courts, New Delhi District, alleging a concerted scheme by Educomp Solutions Limited (Educomp), led by its Chairman and Managing Director, Sh. Shantanu Prakash (Respondent No. 2) and other associated persons to defraud the petitioner and obstruct the lawful transfer of control over the joint venture entity, JRRES. It was alleged that the accused persons by their acts caused wrongful loss to the Complainant to tune of over Rs. 100 crores and wrongful gain to themselves and have committed offences punishable u/s 403/406/420 r/w 34/120B IPC.

5. Briefly stated facts, as alleged in the complaint, are that in October 2007, Respondent No. 2, Mr. Shantanu Prakash, who heads and controls Educomp Group of Companies., along with other accused persons, approached the Raffles Group seeking collaboration/investments in educational ventures in India. It has been alleged that Respondent No. 2 and his associates represented themselves as a leading educational company in India, with over 13 years of government connections, professional expertise and financial wherewithal in delivering large-scale educational projects.Believing these representations, the Raffles Group through the petitioner company agreed to enter into a Master Joint Venture Agreement (JVA) on **16.05.2008**. As part of the joint venture, two companies were incorporated:

1. Educomp-Raffles Higher Education Ltd. (ERHEL) with equal shareholding (50%) by both parties, and
2. Millennium Infra Developers Ltd. (MIDL), a subsidiary of ERHEL

6. One of the key ventures proposed by the accused persons allegedly was the establishment of a Management and Technical University in India, using Jai Radha Raman Education Society (JRRES) as the operating entity. JRRES is a society registered in Delhi in 2004 and had 44 acres of leased land from the Greater Noida Industrial Development Authority vide lease deed dated 18.06.2006. It was allegedly informed to the petitioner by Respondent no. 2 that they had gotten involved in JRRES in 2006 and further allegedly represented that his associates were made members in 2008 and therefore JRRES was under their control and could be used to build the proposed university. It has been alleged that Respondent no. 2 repeatedly represented to the petitioner company that he had control of the affairs of JRRES directly as well as indirectly through his associates.

7. It has been alleged that Educomp and Respondent No. 2 enticed the petitioner to invest substantial funds into a joint venture, misrepresenting their control over JRRES and promising smooth operations with equal say in the affairs of the Society by both parties. Loans were also provided to JRRES under favourable terms through a Loan Agreement dated 01.07.2009, with no interest charged for the first year and a three-year moratorium on repayment. Petitioner also agreed for MIDL to provide construction and project management services for setting up the university at its own cost with terms

dictating that JRRES was not to pay any such services for three years after its first intake of students in 2011.

8. It has been alleged that from 2008- 2010, Respondent no. 2 steadily increased the membership of his associates in the Governing Body of JRRES, and when it was constituted vide meeting dated 06.09.2010, it allegedly solely consisted of associates of Respondent no. 2. In 2012, Respondent 2 also became the president of the governing body and amended the rules and regulations of the society to the extent that it gave Respondent no. 2 as the president of the society the sole control over the management. It was in 2014 that the appointment of members of representative on behalf of the petitioner company was made equal to the members of the associates of Respondent no. 2.

9. Once the investments were being made, the accused failed to meet their financial obligations, forcing the petitioner to increase its stake to 58.18% in ERHEL, with Educomp retaining only 41.82%. As a result, the burden of Rs. 110 crores in funding for JRRES was borne almost entirely by the petitioner.

10. To resolve the disputes and facilitate the transfer of control, a Share Purchase Agreement (SPA) was executed on **12.03.2015,** wherein the petitioner agreed to purchase Educomp's stake in ERHEL for approximately Rs. 98 crores.The process of completing the SPA was set out in detail in the SPA itself, which provided that on signing, the Claimants were to pay (and did pay) 10% of the purchase price to an escrow agent (" Escrow Agent"), following which a number of key documents were to be provided by the Educomp to the Escrow Agent in copy and/or original. The transaction was structured in such a

manner that upon execution of the SPA, the funding of the operation of JV entities - ERHEL, MIDL and JRRES would be the exclusive responsibility of the petitioner company. However, one of the preconditions for completion of SPA was that nominees of Educomp JRRES would resign, allowing full control to be transferred to the petitioner. A Business Advisory Agreement (BAA) dated 12.03.2015 was also signed between Raffles Education Investment Pvt. Ltd. and M/s Edulearn Solutions Ltd., under which Rs. 10 crore was promised to EduLearn for advisory services in regards to Joint Ventures in India, with Rs. 1 crore paid upfront to M/s Edulearn Solutions Ltd. ("Advisors") on the condition that if the conditions precedent in SPA dated 12.03.2015 were not met, this payment would be returned.

11. It has been alleged that Respondent No. 2 was the mastermind of the entire scheme and allegedly misappropriated funds provided by the petitioner and withheld Rs. 1 crore under a fraudulent Business Advisory Agreement. It has been alleged that Respondent No. 2 failed to fulfil the terms of the Share Purchase Agreement (SPA) and obstructed the transfer of control over JRRES to the Petitioner, despite repeated attempts to enforce the agreement.

12. Respondent No. 2 allegedly also orchestrated the appointment of key associates and nominees to strategic positions in JRRES to retain control. Harpreet Singh, Pramod Thatoi, Ashok Mehta, Bindu Rana, and Soumya Kanti Purkayastha were inducted as Educomp's nominees and they allegedly facilitated the mismanagement of JRRES, manipulated key processes, and misrepresented the status of resignations of critical members to maintain Educomp's influence over

the joint venture.

13. As per the complaint, Mr. Jagdish Prakash, father of Respondent no. 2 became a life member of JRRES to ensure Educomp's dominance, actively obstructing the lawful functioning of the society in alignment with the broader conspiracy led by Respondent No. 2.

14. As the petitioner tried to regain control, it has been alleged that Mohan Krishna Lakhamraju and Narpat Singh conspired with Respondent No. 2 to delay the transfer of JRRES and further disrupt its operations. Narpat Singh, acting on behalf of Respondent No. 2, allegedly issued threats to prevent the petitioner from exercising lawful control over the institution, thereby frustrating the petitioner's efforts to manage the joint venture effectively.

15. The complaint further alleges that Ashish Mittal made false representations and issued threats concerning the SPA to the Petitioner. Meanwhile, Mahesh Bathla, as Financial Controller, allegedly abused his position by withholding critical payments necessary for JRRES's operations.

16. These alleged actions ultimately led to the closure of the institution, causing significant harm to the petitioner's interests. Consequently, the petitioner initiated arbitration proceedings in Singapore seeking specific performance of the SPA and completion of the Transaction, failing which an award of damages was sought.

17. The arbitral tribunal issued its award on 31st March 2017 wherein it analysed the legality of the SPA under Indian Law, the nature of obligations under the SPA and the automatic Termination of the SPA under Clause 5.9.

18. The tribunal examined the purpose and structure of the SPA, noting that although it was ostensibly designed to enhance educational infrastructure, the practical effect of transferring control of JRRES to a foreign entity went beyond operational efficiency. The tribunal found that the SPA involved an aspect of monetisation of JRRES's assets, but held that Educomp failed to demonstrate adequately that the petitioners had an intention to do so.

19. The tribunal also scrutinized the contractual obligations outlined in the SPA and determined that Educomp's responsibilities were absolute, not conditional or best-efforts. Further, it noted that Clause 5.9 was enforceable and provided for automatic termination if the transaction was not completed by 19th August 2015.

20. Given the termination of the SPA and that specific performance required actions to be taken by the third party, damages were rendered as an appropriate remedy. It was held that if specific performance was to be awarded, SPA would be enforced in India and in circumstances where local courts of India would not allow specific performance, such a remedy can not be granted by the Tribunal either. Petitioner was awarded only monetary damages. It is pertinent to note that in pursuance of the arbitral award, an execution proceedings bearing O.M.P. (EFA)(COMM) 6/2017 was filed by the petitioners and is sub-judice before the coordinate bench of this Court.

21. Thereafter, in 2018, the petitioner filed a complaint with the Economic Offences Wing (EOW), seeking criminal action against Educomp and its representatives for fraud, misrepresentation, and breach of trust. The EOW, however, did not entertain the complaint terming it as a civil

dispute.

22. The petitioner then filed Complaint No. 11448/2018 before the Patiala House Courts, alleging cheating, criminal conspiracy, and breach of trust under Sections 420, 406, and 120B of the IPC. The trial court issued a summoning order on 22.05.2019, finding prima facie evidence against Respondent no. 2and the other accused. The Respondent aggrieved of this filed the revision petition. The Revisional Court vide the impugned order set aside the summoning order.

C. <u>Submissions on behalf of the Petitioner</u>

23. Sh. Sandeep Sethi, leaned senior counsel for the petitioner submitted that the impugned order dated 02.08.2022 is liable to be set aside as it fails to appreciate the threshold for taking cognizance/issuance process underlying exercise that is required to be conducted by a trial Court at this preliminary/nascent stage of any criminal case.

24. At the outset, it has been submitted that the impugned order by the Ld. ASJ is ex-facie baseless and erroneous. It is the case of the petitioner that the revisional court erroneously set aside the summoning order dated 22.05.2019, which was issued correctly by the Ld. CMM based on cogent material and evidence. It has been contended that the summoning order was passed by the Ld. CMM on 22.05.2019 after a thorough examination of the petitioner's complaint, pre-summoning evidence, and other supporting documents, which establish a prima facie case of fraud and dishonest conduct by Respondent No.2.

25. Learned senior counsel for the Petitioner submits that the Ld. ASJ exceeded its revisional jurisdiction by evaluating the defence arguments at the nascent stage of proceedings, amounting to a mini-

trial. Such an approach, it is argued, is contrary to settled legal principles, as only a prima facie case needs to be established for the issuance of summons. To buttress this contention, reliance has been placed on the judgement of the Hon'ble Supreme Court in ***U.P. Pollution Board v. Mohan Meakins Ltd.*** (2000) 3 SCC 745, ***Dy. ChiefController v. Roshanlal Agarwal***, (2003) 4 SCC 139, ***Kanti Shah v. State***, (2000) 1 SCC 722, and the judgement of this court in ***Aseem Kapoor v. State*** 2018 SCC Online Del 9073. Learned Counsel for the petitioner has also placed reliance on a plethora of judgements of the Hon'ble High Court of Allahabad to contend that the defence of the accused is not to be considered at the stage of revisional jurisdiction against a summoning order including ***Shayesta Khan & Anr. v. State of UP & Ors***. (2016) SCC Online ALL 1922, ***Mohd. Sajid and others v. The*** State ***of U.P. and anothe***r(2009) SCC OnLine All 1924, ***Prabhakar Pandey v, The State of UP***& ***Ors.***bearing no Crl. Revision No. 2341/2001 and ***Jagdish Kumar v. State of UP.*** bearing no Crl. Revision No. 936/2003

26. Learned senior counsel for the petitioner submitted that Respondent No. 2 engaged in fraudulent inducements at multiple stages of the transactions, resulting in significant financial loss to the Petitioner. This conduct has been divided into phases by the petitioner:

    1. **Phase 1:**It has been submitted that the Petitioner was induced to enter into a JV Agreement based on Respondent No. 2's false claims of expertise, financial stability, and governmental connections. It has been stated that Respondent No. 2 fraudulently represented the expertise of accused persons, financial

wherewithal and local contacts/connections in the Indian education market, and strong working relations with various Government agencies, which could ensure timely approvals/clearances on a range of education-related issues based which the Petitioner entered into a JV Agreement.

2. **Phase 2**: Further, it has been submitted that inducements were also made regarding Respondent No. 2's control over JRRES. It was stated that it was fraudulently represented that Respondent no. 2 qua, his associates (members of JRRES) and himself have full control over the society. This induced the petitioner company to have large sums of money on extremely favourable terms and to bear a lopsided financial burden. Contrary to assurances of shared governance, it has been submitted that Respondent No. 2 inserted his associates into key positions, retaining unilateral control, while the Petitioner bore the financial burden of more than INR 110 crores.It has been stated that in January 2009, Respondent No. 2 and as well as his father became life members of the governing body of JRRES.

3. **Phase 3:**It has been submitted that the petitioner company was fraudulently induced to enter into the Share Purchase Agreement (SPA) and the Business Advisory Agreement (BAA), resulting in an advance payment of INR 1 crore to Respondent No. 2. This amount, it is contended, was never intended to be repaid. It has been submitted that Respondent no. 2 had no intention of either closing the SPA or giving up control/shareholding in JV entities as he failed to provide resignation letters of the nominee members on

a false pretextthat he had no control over them (contrary to previous representations).

27. Learned senior counsel for the petitioner submitted that Respondent No. 2 deliberately frustrated the closing of SPA by not sending relevant documents and sought an unconditional extension for the closing of SPA without any explanation. Learned Senior Counsel submitted that having no option petitioner extended the Closing Date till it became clear that all this was a ruse to induce them to continue the funding while R-2 had control. On 11.09.2015, an illegal meeting was convened by the accused persons in the absence of the Chairman of JRRES wherein it was held that affairs of JRRES were to revert to the state before execution of SPA. It has been stated that Respondent No. 2 held various void meetings and continued interfering with the affairs of JRRES by unilaterally suspending key employees, interfering in the work of the Director of JRE College, refusing to cooperate in the approval of expenses for essential services and also asserting that loans given by the petitioner herein were not recoverable.

28. Reliance has been placed on ***Vijay Ghai v. State 2***022 SCC OnLine SC 344***, Devendra v. State*** (2009) 7 SCC 495***, Hridaya Verma v. State*** (2000) 4 SCC168, ***B.M. Gupta v. State*** 2013, SCC OnLine Del 3065 to contend that it was only the representations by the accused persons that induced the petitioner to enter into the transactions.

29. Learned senior counsel for the petitioner submitted that the Learned Sessions Judge unlawfully quashed the summoning order in its entirety, even for those accused persons who were not parties to the revision petition. This is an arbitrary act and goes beyond the scope of the relief

sought by Respondent No.2. It has been submitted that no finding was recorded qua the other accused person despite there being specific allegations in the complaint regarding their collusion with Respondent no. 2.

30. Learned senior counsel for the petitioner submitted that Ld. CMM's summoning order correctly considered the series of dishonest actions taken by Respondent No.2, including the breach of agreements, control over JRRES, and fraudulent retention of funds, amounting to offences under Sections 420/34 IPC.

31. Furthermore, it has been submitted that the Learned Sessions Judge failed to appreciate the fraudulent conduct of Respondent No. 2 and erroneously treated the dispute as purely civil, ignoring the established legal principle that a single cause of action can give rise to both civil and criminal liabilities. Reliance in this regard has been placed on the judgement of the Hon'ble Supreme Court in ***Lalmuni Devi v. State of Bihar*** (2001) 2 SCC 17.

32. It has also been submitted that the finding by learned Sessions Court that the petitioner's complaint was filed only after the arbitration proceedings failed is incorrect. It has been submitted that an arbitration award was passed in favour of the petitioner, and the complaint was initiated independently based on criminal fraud by the respondents. Learned Senior Counsel for the petitioner has also pointed out that on 07.03.2023, the Hon'ble Singapore High Court in ***Raffles Education Corporation Ltd. & Ors. v. Shantanu Prakash & Anr.*** (Suit No.709/2019) passed a detailed judgment against Respondent No.2 whereby not only it awarded damages (with interest) to the Petitioner

but also returned categorical & uncontroverted conclusions on issues relevant to the present case including finding Respondent no. 2 liable/guilty on several counts of fraudulent misrepresentations to the Raffles Group, inducement, conspiracy etc.

33. Learned senior counsel for the petitioner further submits that Respondent No. 2 has failed to adequately address the allegations of fraudulent inducement, financial misrepresentation, and obstruction of JRRES operations. Respondent no 2's claims of not having control over JRRES members hold no ground as there is enough evidence, such as agreements, emails, and records of meetings, on record which demonstrates the Respondent's de facto control and influence over the governing body.

34. Moreover, it has been submitted that the Impugned Order despite admitting that 1 Crore was paid rendered a contrary finding that there was no delivery of property and drew an adverse inference against the petitioner for non-issuance of demand notice. It has been submitted that delivery of property to the accused is not a sine qua non to establish cheating. Further, the impugned order erroneously limits itself to payment made in the escrow account forSPA and ignores that 1 Crore paid to Respondent no. 2as initial payment for BAA which was never returned, Raffles Group had invested more than 110 Crores from time to time on Respondent's false representations and that the share capital was increased only because of the continued false representations of respondent no. 2. It has been submitted that despite investing/paying more than 110 Crores, Petitioner never got the equal say in JRRES' affairs as promised by

35. Lastly, it has been submitted that the petitioner has suffered immense financial loss and damage to its business prospects due to Respondent No.2's fraudulent conduct.

36. Sh. Sandeep Sethi, learned senior counsel for the petitioner submits that the Impugned Order of the Learned Sessions Judge is legally unsustainable, having been passed without proper appreciation of the material facts and legal principles involved. The Petitioner prays that the Impugned Order dated 02.08.2022 be set aside, and the Summoning Order dated 22.05.2019 be restored, allowing the trial to proceed in accordance with law.

D. <u>Submissions on behalf of the Respondent</u>

37. Sh. Vivek Sood, learned senior counsel for respondent no. 2 has submitted that the present petition is wholly misconceived, vexatious, and amounts to a gross abuse of the process of law. It is stated to be a desperate attempt at the hands of the petitioner to achieve what could not be accomplished through civil remedies or arbitration. It has been submitted that the petitioner had previously failed to gain control over JRRES through arbitration proceedings before the Singapore International Arbitration Centre (SIAC), and the sole objective behind these criminal proceedings is to harass the respondent, intimidate the members of JRRES into resigning, and take over control of the society through coercion which in itself is in violation to the public policy of India.

38. Learned senior counsel for Respondent no. 2 has also contended that the petitioner deliberately delayed filing the complaint, and in fact, these criminal proceedings have been filed only after an unfavourable

arbitral award from SIAC. The Tribunal vide its award refused to grant specific performance of the SPA, recognizing that JRRES was not part of the joint venture arrangement and could not be controlled by the petitioner. The petitioner was awarded monetary damages, and execution proceedings for the same are pending before the Hon'ble Delhi High Court in O.M.P. (EFA)(COMM.) 6 of 2017.

39. Learned senior counsel for respondent no. 2 has also drawn the attention of this court to the reports of EOW, Delhi, dated 02.05.2018 and 30.06.2018, which concluded that the matter is civil, arising out of contractual disputes, and advised the petitioner to seek remedies in appropriate civil forums. It has been submitted that the Ld. CMM, in issuing the summoning order, failed to consider the EOW's findings and acted mechanically without applying judicial mind.

40. It has been submitted that the sequence of events makes it evident that the petitioner's grievances have been addressed through civil and arbitral proceedings. Having exhausted civil remedies, the petitioner has initiated these criminal proceedings, which amounts to an abuse of process.

41. Learned senior counsel for respondent No. 2 submitted that the petitioner's allegations are vague and unsupported by any concrete evidence. The petitioner alleges fraudulent inducement, yet the pre-summoning evidence does not contain any material to substantiate that the respondent acted with dishonest intent from the inception of the business relationship. It has been stated that the mere fact that disputes arose later does not imply that the respondent's intentions were fraudulent.

42. Learned senior counsel for respondent no. 2 further submitted that there is no delivery of property or wrongful gain to the respondent. The alleged sum of INR 1 crore, under the Business Advisory Agreement, was never personally received by the respondent. It has been submitted that the amount was paid to M/s Edulearn Solutions Limited, a separate legal entity, and the contractual obligations under that agreement were subject to arbitration, not criminal proceedings.

43. Further, it has been contended that the allegation of the petitioner that the respondent failed to ensure the resignation of JRRES members as required under the SPA and the said action warrants these criminal proceedings is baseless. It has been submitted that the SPA explicitly provided for civil consequences in the event of non-performance, including the refund of 10% of the purchase price by the Escrow Agent. The petitioner's attempt to portray this as a criminal offence is unsustainable. Moreover, even the Business Advisory Agreement (BAA) similarly outlined a mechanism for the resolution of disputes through arbitration. There is no evidence that the petitioner issued the required notice under the BAA, which was a precondition for demanding a refund of the advisory fee. The petitioner's failure to follow contractual processes further underscores the civil nature of the dispute.

44. It has been submitted that the learned ASJ passed a detailed and reasoned order, correctly setting aside the summoning order dated 22.05.2019. The Ld. ASJ carefully examined the agreements between the parties and concluded that the allegations pertain to the non-performance of contractual obligations, which cannot constitute an

offence under Section 420 IPC. The Ld. ASJ rightly emphasized that the alleged grievances are subject to the terms of the SPA and BAA, and the petitioner's recourse lies in civil forums. Furthermore, learned ASJ noted that the petitioner's complaint lacks specific allegations or evidence to establish fraudulent intent. Learned ASJ also observed that the amount of 10% of the purchase price, which the petitioner claims was wrongfully withheld, was never transferred to the respondent or his entities but remained with the Escrow Agent.

45. It has also been submitted that the petitioner has a pattern of filing false and malicious cases against the respondent to exert undue pressure. The petitioner previously filed complaints with the Serious Fraud Investigation Office (SFIO) and circulated false allegations to various authorities, including the Prime Minister's Office. These actions demonstrate a sustained campaign to harass the respondent and undermine his reputation. The petitioner's complaints are stated to be part of a broader strategy to gain control over JRRES and its assets, which are governed by strict laws against the commercialization of education. The petitioner's desire to control a not-for-profit society through improper means is evident from its conduct.

46. Learned senior counsel for respondent no. 2 also submits that the essential ingredients of Section 420 IPC, such as dishonest inducement and wrongful gain, are absent in the petitioner's allegations. Learned ASJ correctly held that the allegations pertain to breach of contractual obligations, which cannot be equated with criminal fraud. In the case of ***Commissioner of Police v. Devender Anand,*** 2019 SCC OnLine SC 996 Hon'ble Supreme Court has reiterated that criminal law cannot be

used to settle civil disputes.

E. Findings and Analysis

47. Chapter XV of the Cr.P.C. pertains to "Complaints to Magistrate." Upon a private complaint being filed under Section 200 Cr.P.C. the Magistrate may issue a process under Section 204 Cr.P.C. if there are sufficient grounds for proceedings. While issuing the process under Section 204 Cr.P.C., the Magistrate must ascertain whether the complaint presents a prima facie case based on its assertions. At this stage, the Magistrate is not required to determine the adequacy of the evidence or the probability of the accused being found guilty. However, at this stage, the Court while forming the opinion can certainly take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. Reliance can be placed on ***Nagawwa v. Veernna*** AIR 1976 SC 1947.

48. It is no longer *res integra* that at this stage the Court is only required to see whether allegations made in the complaint are prima facie sufficient to proceed against the accused, and the Magistrate is not permitted to enter into a detailed discussion on the merits and demerits of the case. This threshold requirement aims to prevent unwarranted proceedings, as repeatedly underscored by the Constitutional Courts. Issuance of summons is a serious matter, that requires judicial mind application to the facts and relevant law. The penal proceedings cannot be set into motion mechanically. The Court, while issuing the summons, must apply its judicial mind to the facts of the case and the law applicable thereto. Merely because a complaint has been filed with

certain allegations and the complainant has examined his witnesses who corroborated the allegations does not mean that the Magistrate is bound to pass a summoning order. The Magistrate is required to examine the nature of the allegations made in the complaint and supporting evidence, both oral and documentary and form an informed opinion about their sufficiency for summoning the accused. The Court at no stage can be a silent spectator and has to ensure that orders are passed in accordance with the requirement of the law.

49. In the case of ***Birla Corporation Ltd. vs. Adventz Investments & Holdings Ltd. & Ors***. (2019) 16 SCC 610, the Supreme Court, while discussing the scope of powers of the Magistrate to issue summons *inter alia* held as under:

> "*34. In* ***Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others*** *(1998) 5 SCC 749, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of*the case and law governing the issue. In para (28), it was held as under:-
>
> > *"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent*

spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The principle that summoning an accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in ***GHCL Employees Stock Option Trust v. India Infoline Limited*** *(2013) 4 SCC 505.*

35. To be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. In ***Punjab National Bank and Others v. Surendra Prasad Sinha*** *1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.*

36. At the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be prima facie satisfied that there are sufficient grounds for proceeding against the accused. In Jagdish Ram v. State of Rajasthan and Another (2004) 4 SCC 432, it was held as under:-

> *"10. ....The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at thestage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."*

50. In the plethora of judgements, it has been emphasised the proceedings should not commence merely based on allegations, the Magistrate at this stage is also required to see whether the matter, which is essentially civil, has been cloaked as a criminal offence in an attempt to apply pressure or harass the accused or out of enmity towards the accused. In cases where complaints are essentially civil but dressed as criminal allegations, the Courts have time again cautioned against abuse of penal provisions to settle scores. While it is true that certain disputes may exhibit both civil and criminal elements but a criminal trial is justified only if clear criminal elements exist alongside the civil componentsi.e. the essential ingredients of the alleged offence are made out. In ***Md. Ibrahim & Ors. v. State of Bihar.*** [2009] 13 S.C.R. 1254, the Hon'ble Supreme Court reiterated that criminal jurisdiction cannot serve as a tool for advancing civil disputes.

51. However, it is pertinent to note that in certain cases, even when civil remedies are available, they cannot solely justify the quashing of criminal proceedings The real test is to ascertain whether the allegations in the complaint disclose the criminal offence and satisfy

the said ingredients required. In the case ***Vesa Holdings Private Ltd vs. State of Kerala*** (2015) 8 SCC 293 , it was *inter alia*held that when allegations do not indicate dishonest or fraudulent intent at inception, no offence under Section 420 can be sustained as Section 420 of IPC mandates a proof of intent to cheat from the outset of the transaction. If the allegations in the complaint do not show that, at the very inception, there was any intention on behalf of the accused persons to cheat, the summoning order would not be sustained in the eyes of the law.

52. It is a settled proposition of law that the powers under Section 482 Cr.P.C., are of wide plenitude but have to be exercised sparingly with caution and only if the conditions laid down in the section are satisfied. These conditions are to prevent the abuse of the process of court and to otherwise secure the ends of justice.The object behind the exercise of such power should be to do real and substantial justice for the administration of which the courts exist. Therefore, the High Court,through its inherent power under Section 482 Cr.P.C., can intervene to quash proceedings if allegations made in the complaint are taken at face value and accepted in their entirety, do not constitute a cognizable offence.If the complaint or First Information Report (FIR) fails to disclose an offense on its face, then allowing the proceedings to continue is unjust. This principle has been established in multiple cases of the Hon'ble Supreme Court and this court including ***R.P. Kapur v. State of Punjab 1***960 CriLJ 1239 and ***State of Haryana v. Bhajan Lal,*** 1992 Supp (1) SCC 335

53. Basically the Court at this stage would see the complaint filed by the

complainant so as to ensure that were there sufficient grounds to issue the process against the petitioner. The Court may conduct this exercise *de-hors* the order passed by the Ld. Sessions Court and certainly without taking into the defence of the respondent.

54. At this juncture, it is essential to examine the allegations made out in the complaint. A perusal of the complaint filed by the complainant before the Ld. Trial Court indicates that in the year 2007, the petitioner entered into a Master Joint Venture Agreement dated 16.05.2008 with Educomp Group with the objective of setting up of various projects including green field campuses, learning and study centres, education cities etc. in India. Pursuant to this the parties incorporated ERHEL and MIDL- a subsidiary of ERHEL. It has been alleged in the complaint that Respondent No.2 and his associates falsely represented control over JRRES and identified it to establish a Management College and Technical University. The complainant alleged that respondent No.2 represented that they had his associates as members of JRRES in 2008 and he is in control of the affairs of the society directly and indirectly (through his associates and confidantes) as on the date of the Joint Venture Agreement. The complainant further alleged that it was a stated understanding between the parties that respondent No.2 would ensure that the affairs of the Society were arranged in such a manner that Educomp and the Complainant would have equal members and say in the affairs of the Society and upon these representations the Complainant agreed to invest in and continually fund the proposed Management and Technical University through JRRES. The complainant also allegedly extended huge loans to JRRES upon

beneficial terms. Vide the Loan Agreement entered into between ERHEL and JRRES on 01.07.2009 was also duly executed and allegedly complainant invested a huge amount of money at hugely beneficial terms on the specific representation of respondent No.2/Educomp that they control the management of JRRES through members who were associates and confidants of respondent No.2. The complainant alleged that however respondent No.2 kept on increasing the membership of his associates in the Governing Body and took control of the same. It was also alleged that respondent No.2/Educomp started defaulting in their obligation to make equal contributions to the Joint Venture. It was alleged that respondent No.2 represented to the complainant that Educomp was willing to give up its shareholding/control in the joint venture entities, including JRRES, and would ensure that their nominee members in the Governing Body and the General Body of JRRES shall submit their resignation letters, such that the Complainant would come in complete control of JRRES. It was alleged that upon this representation, the complainant agreed to purchase the stake of respondent No.2/Educomp in the Joint Venture at a price of approximately Rs. 98 crores vide Share: Purchase: Agreement dated 12.03.2015 was executed. Allegedly, respondent No2. Further sought a separate fee of Rs. 10 crores in the form of Business Advisory Agreement. Allegedly, Rs. 1 crore was paid to Educomp upon execution of the agreement.

55. Complainant has alleged that subsequent events demonstrated that respondent No.2 had no intention of actually closing the transaction and giving up either his shareholding or control of the Joint Venture

entities including JRRES and fraudulently and dishonestly the complainant and entered into SPA and fraudulently received a monetary benefit of Rs. 1 crore under the Business Advisory Agreement and fraudulently retained control of JRRES, ERHEL and MIDL. It was alleged that respondent No.2 and accused persons refused to obtain any of the approvals necessary to transfer the control of JRRES to the complainant and to complete other formalities. The closing date of the SPA was extended. In the meanwhile, respondent allegedly convened the Governing Body meeting of JRRES on 11.09.2015 contrary to the rules and regulations. It was alleged that since the respondent No.2/Educomp failed to fulfill the obligations, the unconditional extension was refused by the complainant was constrained to initiate and suffer an expensive international arbitration against Educomp in Singapore.

56. The Arbitral Tribunal passed an award dated 31.03.2017 in favor of the complainant. The complainant alleged that the mala fide and criminal intent of Mr. Prakash's evident from the fact that he never resigned from JRRES nor he returned the initial Advisory Fee of Rs. 1 crore received on 12.03.2015. The complainant examined CW-1 John Tham who reiterated the averments made in the complaint. Ld. Trial Court vide order dated 22.05.2019 issued the summoning order for the offence punishable under Section 420/34 IPC.

57. The perusal of the summoning order indicates that Ld. CMM besides recording the allegations and testimony of CW-1 did not give any reason for reaching the opinion that there are sufficient grounds for proceeding or issuing the process under Section 420/34 IPC. Besides

this, it is pertinent to mention here that the Master Joint Venture Agreement between the parties was executed on 16.05.2008 and Addendum to Joint Venture Agreement was executed on 09.05.2012. A Loan Agreement was executed between ERHEL and JRRES on 01.07.2009. Subsequently, certain disputes arose between the parties and to settle the dispute Share Purchase Agreement dated 12.03.2015 was executed between the parties.

58. Clause 1.15 of the SPA provided that the documents listed in Clause-4.1 and 4.3 are to be submitted by the seller to the Escrow agent within the time limits mentioned therein. The Share Purchase Agreement was primarily for the purchase of 15,53,209 shares in the amount of INR. 97,11,56,000/- (Rupees Ninety Seven Crore Eleven Lac Fifty Six Thousand Only) by the theRaffles Education Investment and purchase of 24,379 Shares of Educomp Professional for the amount of INR 1,52,44,000/- (Rupees One Crore Fifty Two Lac Forty Four Thousand Only) by the Raffles Design. The Share Purchase Agreement provided certain conditions precedents of the sellers for the closing in Clause 4. It is also pertinent to mention here that the amount under the Share Purchase Agreement was kept with the Escrow agent till the closing of the agreement, and in case the Share Purchase Agreement stands terminated, the Escrow agent was required to refund the purchase price to the purchasers.

59. It is essential to mention that the law related to ESCROW is very well laid down. In the case of ***Jeweltouch (India) Pvt. Ltd.v. Naheed Hafeez Quraishi (Patrawala)***, 2008 SCC OnLine Bom 82, the principles regarding release of documents through the escrow

mechanism were laid down, and it was inter alia observed that the documents, even though executed, become valid and enforceable in law only upon release of such documents after due fulfillment of perquisites and satisfaction of the Escrow agent. Thus, the document i.e., SPA and BBA were actually forward-looking and was to be released to Educomp after completion of the conditions spelt out in Clause- 4 of the SPA. The payment of any amount under SPA cannot be attributed to the respondent as the amount deposited was with the escrow agent and admittedly SPA never attained finality.

60. Further, Clause-15.2 of SPA specifically provides the matter be referred to the arbitration in accordance with the SIAC Rules. Similarly, the Business Advisory Agreement was entered into on 12.03.2015, in pursuance of which Rs. 1 crore was paid to EduLearn Solutions Limited which is a separate legal entity. The Edulearn was required to refund the initial payment to the Raffles Education Investment t(India) Pte. Ltd. within 5 business days from the receipt of the notice from the company requesting the same. It is also pertinent to mention that Clause 7 of this agreement also provided that any dispute arising out of or in connection with the agreement shall be referred to arbitration under the SIAC Rules. It is not disputed that the dispute arising from the SPA was referred to the arbitration and the Ld. Arbitrator vide award dated 31.03.2017 granted a compensation of Rs. 30 crores.

61. In brief, the specific allegations against Educomp Group of companies are that they entered into the Share Purchase Agreement with fraudulent intent and from the outset, they had no intention of

complying with the terms of the SPA, specifically regarding the resignation of Educomp nominee from JRRES, which was a key pre-condition for the agreement. It is also the case of the petitioner that Educomp misrepresented its ability to transfer control of JRRES to the Petitioner company, and false assurances were given to induce the petitioners to invest more funds and enter the SPA, which Educomp never intended to honour. The complainant has also alleged that respondent No.2/Educomp refusal to provide resignation was in fact a cheating scheme to retain unauthorized control over JRRES and gain financial advantage.

62. It is pertinent to mention here that the matter was referred to Arbitration and the Ld. Arbitral Tribunal in the award had *inter alia* held that Educomp's failure to ensure resignations constituted a breach of contract. A civil case cannot be given a criminal cloak by smart drafting. While dealing with such matters, the Court has to keep in mind that there is a distinction between breach of contract and offence of cheating. Though the distinction is a fine one the same has to be judged by the conduct of the parties. Subsequent conduct of the alleged cannot be a sole test, and a mere breach of contract cannot give rise to criminal prosecution for cheating unless the fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

63. It is well settled that Section 420 of IPC deals with the offence of cheating and dishonestly inducing delivery of property. This section is invoked when an individual deceives another person, leading to the delivery of property or the alteration or destruction of valuable security.

To constitute an offence under Section 420 IPC, the following elements must be present: (i) Deception: The accused must have deceived the complainant. (ii) Inducement: The deception must have induced the complainant to deliver property or to do or omit to do something. (iii) Fraudulent or Dishonest Intention: The intention must be fraudulent or dishonest from the outset. (iv) Resultant Delivery of Property: The deception must result in the delivery of property or valuable security. These elements differentiate an offence of cheating from a mere breach of contract.

64. The intention is the gist of the offence, and therefore in order to summon a person for the offence of cheating, there has to be material on the record that there was fraudulent or dishonest intention at the time of making the promise. Reference can be made to ***Hridaya Ranjan Prasad Verma v. State of Bihar*** [(2000) 4 SCC 168].

65. In ***M N G Bharatesh Reddy vs. Ramesh Ranganathan and Another*** (2002) SCC Online SC 1061 it was *inter alia* held that mere breach of contract cannot give rise to criminal prosecution for cheating unless the fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. It was also further inter alia held that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract, the criminal proceeding shall not be sustained. Reference can be made to ***Ajay Mitra v. State of M.P.*** [(2003) 3 SCC 11 : 2003 SCC (Cri) 703]).

66. In ***V.R. Dalal & Ors. vs. Yougendra Naranji Thakkar & Anr***. (2008), the Hon'ble Supreme Court dealt with a dispute where a partnership

firm was never acted upon, leading to its cancellation. The Court held that, as the partnership deed was cancelled and had never been operational, no wrongful act could be attributed to the appellants. The Court emphasized that any allegations of conspiracy were unfounded, as the partnership was void from its inception. This case illustrates that if a contract is void *ab initio* and has not been acted upon, there is no basis for charging an offence.

67. In the case at hand, the complainant was aggrieved of the fact that the respondents failed to honour their obligations as contained in the Share Purchase Agreement. However, the Share Purchase Agreement provided the mechanism in case of the non-fulfillment of the conditions therein. The non-fulfillment of the conditions had led to the arbitration agreement. The Ld. Arbitral Tribunal had also found that there was a breach of contract on the part of the respondent. Furthermore, it has also to be seen that the initial Joint Venture Agreement was entered into in the year 2008 followed by Addendum in 2012, the Loan Agreement was executed in 2016, and the Share Purchase Agreement and Business Advisory Agreement were executed in 2015. However, the present complaint was made only in May 2018. Thus there was substantial delay in making the complaint. The delay on the part of the complainant has not been explained in any manner. The fact that the petitioner initially initiated the arbitration proceedings also indicates that it was merely a civil dispute.

F. <u>Conclusion</u>

68. The Court therefore finds that there is no illegality in the order of the Ld. Additional Session Judge vide which the summoning order has

been set aside. The Court is of the considered opinion that the private complaint filed by the petitioner did not even fulfill the basic ingredients of Section 420/34 IPC. Hence, the present petition along with the pending application(s), if any, stands dismissed.

DINESH KUMAR SHARMA, J

NOVEMBER 11, 2024/*Ankit/smg*