

# HIGH COURT OF ORISSA: CUTTACK.

CRLMC NO.661 OF 2007,  
CRLMC No.1949 OF 2008  
and  
CRLMC No.2004 OF 2009.

These are applications under section 482 of the Code of Criminal Procedure.

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Mukul Kumar Verma (in CRLMC No.1949/2008 and  
CRLMC No.2004/2009)  
Chandra Sekharan Nair (in CRLMC No.661/2007)

Petitioners

...  
-versus-

State of Orissa ( in all the cases )

...  
Opposite Party

For petitioners : M/s Rabindranath Mohanty,  
P.K.Pratap, R.C.Ojha and  
A.K.Jena  
(in CRLMC No.661/07)

M/s Jaydip Pal and S.K.Pradha  
(in CRLMC Nos.1949/08 and 2004/09)

For Opposite party : Additional Government Advocate

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**PRESENT:**

**THE HONOURABLE SHRI JUSTICE B.K. PATEL**

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Date of hearing -26.3.2010 :: Date of judgment - 19.5.2010

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**B.K. PATEL, J.** Criminal Proceeding in G.R.Case No.1728 of 1997 initiated  
against the petitioners for the alleged commission of offences under

sections 420 and 406 read with 34 I.P.C. in the Court of learned S.D.J.M.(S), Cuttack has been assailed in all the three applications under section 482 Cr.P.C.

2. In CRLMC No.661 of 2007 prayer has been made to quash the order dated 12.2.2007 by which petitioner C.S. Nair's prayer to discharge him under section 239 Cr.P.C. was rejected. Petitioner M.K. Verma has made prayers to quash the order dated 7.10.2002 taking cognizance of the aforesaid offences upon receipt of charge sheet against C.S. Nair in CRLMC No.1949 of 2008 and to quash the order dated 1.11.2004 taking cognizance of the aforesaid offences upon receipt of supplementary charge-sheet against him in CRLMC No.2004 of 2009.

3. Petitioner M.K. Verma is the Managing Director of M/s Vogue Garments Pvt. Limited whereas petitioner C.S. Nair is the proprietor of M/s Harsha Fashion. G.R.Case no.1728 of 1997 corresponding to Madhupatna P.S.Case No.400 of 1997 was registered on the basis of the F.I.R. lodged by the Orissa Small Industries Corporation Limited ( for short, 'the OSIC'), a Government of Orissa Undertaking against the petitioner M.K. Verma for alleged commission of offence under section 420 I.P.C. Initially charge-sheet was submitted against the petitioner C.S. Nair only under sections 420 and 406 read with 34 I.P.C. keeping the investigation open under section 173(8)

Cr.P.C. Thereafter, supplementary charge-sheet was submitted against petitioner M.K. Verma.

4. It is alleged that M/s Vogue Garments Pvt. Ltd. procured two orders for export of different varieties of dresses to M/s Fashion Book Inc., New York, USA. On being approached by the petitioner M.K.Verma, the OSIC paid to M/s Vogue Garments Pvt. Ltd. and Harsha Fashion Rs.30,28,500/- for execution of the export orders. For the purpose an agreement was executed between the OSIC and the petitioner M.K.Verma and sanction order was issued by the OSIC. In terms of the agreement both the export orders were transferred in favour of the OSIC by M/s Fashion Boom Inc., New York, USA. M/s Harsha Fashion was paid for procurement of fabrics for manufacture of garments on the request of M/s Vogue Garments Pvt. Ltd. It is alleged in the F.I.R. that the letter issued by the OSIC to M/s Harsha Fashion was returned undelivered and that the petitioner M.K.Verma left for USA on 22.9.1996 without any intimation to the OSIC.

It is further stated in the F.I.R. that the petitioner M.K.Verma has been assuring from the USA to repay the loan and that he sent a draft for US\$1000/- which was credited to the account of the OSIC on 7.4.1997 as advance of an export order. On the basis of the above averments, it was alleged in the F.I.R. :

“It is learnt that Sri Verma in order to cheat the Corporation has deliberately induced the Corporation to deliver the advance amount in his favour and has mis-utilised and

misappropriated a sum of Rs.30,28,500/-. Shri Verma as a merchant has misappropriated the entire amount by cheating the Corporation. The Corporation being a public body and dealing with public money has sustained heavy loss for such cheating and misappropriation. Since Mr. Verma and his other Directors of the unit are jointly responsible for such cheating and misappropriation, a case be registered and investigation may kindly be taken up.”

5. Investigation was conducted under Mangalabag Police Station till 15.1.1998 when the same was handed over to the C.I.D., Crime Branch, Orissa.

6. Initial charge-sheet dated 6.10.2002 reads:

“Brief facts of the case is that on 3.10.1997 complainant Sandeep Pattnaik, Manager, Exports of O.S.I.C. Ltd., Khapuria, P.S. Madhupatna, Cuttack submitted a written report at Madhupatna P.S. alleging that Rs.30,28,500/- was paid to M/s Vogue Garments Pvt. Ltd, BBSR and M/s Harsha Fashions, 56-A.V.Nagar, New Delhi-45 for execution of export orders of M/s Fashion Boom, New York, U.S.A. for supply of readymade garments as per the order of M/s Fashion Boom. The payment was made by OSIC in the shape of drafts in favour of Harsha Fashions, New Delhi at which the forwarded accd. Chandra Sekhar Nair is the proprietor. After payment of the amounts OSIC received some materials from M’s Harsha Fashions against the payment of first two instalments, but no material was received against the 3<sup>rd</sup> advance of Rs.14,67,640/-. In this connection, OSIC made correspondence with M/s Harsha Fashions, but registered post was received back without any postal mark. Sri Mukul Kumar Varma, M.D. of Vogue Garments Pvt. Ltd., BBSR left for USA with the assurance to repay the loan by the way of execution of export order, but so far no such order has been executed. The assurance to repay the loan by the way of execution. During investigation it came to light that the accused Chandra Sekhar Nair, the proprietor of Harsha Fashions, New Delhi had received the draft amount for 3<sup>rd</sup> installment amounting to Rs.14,67,640/- from OSIC, but without supplying the materials he paid Rs.9,66,180/- to M.K.Verma as General Manager of M/s Harsha Fashions of New Delhi and Trade Wings Ltd. Details of his account

have been verified at New Delhi and he was arrested on 8.8.2002 and forwarded at New Delhi on 9.8.2002.

As there is prima facie evidence against Chandra Sekhar Nair for committing an offence U/s 420/406/34 IPC. I submitted C.S. against him to face his trial in the court of law. I pray to the Hon'ble court for further investigation open u/s 173(8) Cr.P.C..”

7. Supplementary Charge-sheet dated 21.8.2003 reads:

“Brief facts of the case is that FIR was lodged by OSIC, that Rs.30,28,500/- was paid to M/s Vogue Garments Pvt. Ltd. and M/s Harsha Fashions, 56 A.V. Nagar, New Delhi-45 for execution of export orders of M/s Fashion Book, New York, USA for supply of readymade garments as per the orders of M/s Fashion Book. After payment of the above amount, the OSIC received some materials from M/s Harsha Fashions against the payment of first two instalments but no material was issued against the third advance of Rs.14,67,640/-. During investigation it came to light that accused Chandra Sekhar Nair the proprietor of M/s Harsha Fashion, New Delhi had received the draft amounting Rs.14,67,640/- from OSIC. Out of this amount accused C.S.Nair vide pay order No.077155 dt.19.9.1996 favouring Trade wings Ltd, New Delhi and paid Rs.9,66,180/- to Sri M.K.Verma showing him as General Manager of M/s Harsha Fashion, New Delhi to get foreign exchange. The relevant documents of Trade Wings Ltd., New Delhi has been seized. Accused C.S.Nair has been arrested and forwarded to the Hon'ble Court at New Delhi. All possible efforts have been taken to arrest the absconding accused Muklu Kumar Verma who is reportedly staying at U.S.A.. Red Corner Notice has been issued against him.

As there is sufficient evidence against accused Chandra Sekhar Nair charge-sheet was submitted against him u/s 420/406/34 IPC on dt.6.10.2002. Further as there is sufficient evidence against accused Mukul Kumar Verma I am submitting supplementary C.S. against him vide C.S. No.237 dt.21.8.2003 u/s 420/406/34 IPC showing him as absconder to stand his trial in the court of law.”

8. Learned counsel for the petitioners would submit that the gist of the entire allegations made in the case is violation of terms of agreement for financial assistance entered into between petitioner

M.K.Verma and the OSIC. As the Managing Director of M/s Vogue Garments Pvt. Ltd., he approached the OSIC for financial assistance in order to execute two export orders which petitioner M.K.Verma had got from M/s Fashion Boom Inc., New York, USA. Having assessed the proposal the OSIC entered with the agreement dated 11.6.1996 and sanctioned financial assistance to M/s Vogue Garments Pvt. Ltd. by letter dated 20.6.1996. It was stipulated in the sanction order that M/s Vogue Garments Pvt. Ltd. was to manufacture goods as per the specification and design of M/s Fashion Boom. The agreement reveals that M/s Fashion Boom Inc. transferred the export order in favour of the OSIC. Therefore, so far as M/s Vogue Garments Pvt. Ltd. is concerned, the company was to simply manufacture goods as per the design and specification and to help the OSIC in execution of the export orders. Learned counsel for the petitioners would further contend that garments were in fact manufactured and handed over to the OSIC and in terms of the agreement the OSIC remained in custody thereof. Since finished products were handed over to the OSIC, the OSIC was responsible for not exporting the consignment to the buyer. In course of investigation, garments manufactured by M/s Vogue Garments Pvt. Ltd. were seized and the OSIC published advertisement in newspaper inviting offers for disposal of seized articles by way of sale from intending buyers. FIR itself would go to show that petitioner M.K.Verma made part payment in

discharge of his liability. In terms of the agreement the OSIC has filed Certificate Case No.1 of 1997 before the Certificate Officer, Sadar, Cuttack for realization of dues payable by petitioner M.K.Verma. Also OSIC has instituted I.C.C. No.4 of 1997 under section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') against petitioner M.K.Verma. Both the proceedings have been stayed by this Court in W.P. (C) No.13006 of 2005 and CRLMC No.2997 of 2003 respectively. While filing the complaint case under section 138 of the N.I.Act, the OSIC did not allege commission of offence either under section 420 or under section 406 I.P.C. by any of the petitioners. That itself goes to show that there was no allegation of cheating or criminal breach of trust against any of the petitioners. Criminal case has been initiated as an afterthought with *mala fide* intention. Learned counsel for the petitioners would further contend that the allegations made against the petitioners do not disclose commission of offence either under section 420 or under section 406 I.P.C. On the contrary, petitioners are accused of breach of contract and/or negligence for which the OSIC has already instituted Certificate Proceeding. There is no allegation, nor is there any material on record, to indicate that any of the petitioners harboured dishonest or fraudulent intention. Dispute arising out of the loan transaction between the parties is civil in nature. It was strenuously contended that criminal proceeding has been maliciously instituted

against the petitioners by the OSIC. Not only the case was registered and charge-sheet was submitted but also cognizance of offences was taken without application of mind. Criminal proceeding against the petitioners, instead of pursuing appropriate civil proceeding, amounts to abuse of process of court which is not in the interest of justice. In support of the contentions reliance was placed on behalf of the petitioners on a number of decisions of the Hon'ble Supreme Court.

9. Learned counsel appearing for the State, in reply, would submit that it is obvious from the facts and circumstances of the case that loan was availed from the OSIC in order to execute export orders. On being requested by petitioner M.K.Verma substantial amount was disbursed to the petitioner C.S. Nair for supply of raw material. Both the petitioners did not take any step towards execution of export orders and to repay loan amount. There is no bar under law to initiate criminal proceeding also against a person who is liable to be proceeded against in civil court.

10. In the impugned proceeding, petitioners are accused of commission of offences under sections 420 and 406 IPC for cheating and criminal breach of trust. The main thrust of contentions raised on behalf of the petitioners is that materials on record do not disclose commission of any of the said offences by any of the petitioners.



11. In **Anil Mahajan -v- Bhor Industries Ltd. and another:**  
 (2005)10 SCC 228 relied upon by the petitioners it has been  
 held:

“The substance of the complaint is to be seen. Mere use of the expression “cheating” in the complaint is of no consequence. Except mention of the words “deceive” and “cheat” in the complaint filed before the Magistrate and “cheating” in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs.3,05,39,086/- out of the total amount of Rs.3,38,62,860/- was paid leaving balance of Rs.33,23,774/-. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant’s own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending *inter se* the parties for the amounts in question.”

12. Admittedly, on being approached by petitioner M.K. Verma on behalf of M/s Vogue Garments Pvt. Ltd., the OSIC provided financial assistance for execution of two orders to export garments to M/s Fashion Boom. In that connection, an agreement was entered into between the parties and sanction order was issued. I.C.C. No.4 of 1997 was filed by the OSIC against M/s Vogue Garments Pvt. Ltd. and another alleging commission of offence under section 138 of the N.I. Act. Also, Certificate Case under the Orissa Public Demand Recovery Act (for short ‘the OPDR Act’) was filed by the OSIC before Certificate Officer, Sadar, Cuttack for

recovery of Rs.32,91,781.42/- alongwith interest. F.I.R. in G.R. Case No.1728 of 1997 impugned in these applications was lodged on 3.10.1997. It further appears that in a joint meeting held on 29.11.1997 with petitioner M.K. Verma as well as one of the Directors of M/s Vogue Garments Pvt. Ltd. proposal for preparation of rehabilitation package for M/s Vogue Garments Pvt. Ltd. was discussed by the representatives of the OSIC and the Orissa State Financial Corporation, and others. It also appears from the record that on 25.10.2000, in connection with the investigation of the present case, finished and semi-finished garments were seized from the custody of OSIC and the seized articles were kept in zima of one of the officers of the OSIC. The deed of agreement dated 11.6.1996 reveals that M/s Fashion Boom had transferred the export orders in favour of OSIC. The parties to the agreement agreed that the watch and ward of the godown of raw materials and finished products would be taken care of by the OSIC. The OSIC undertook to release raw materials from time to time for manufacture of garments. Clause-17 of the agreement provided that the OSIC was at liberty to initiate legal action against M/s Vogue Garments Pvt. Ltd as per law including under the provision of the OPDR Act for recovery of dues alongwith interest and other expenses. Consequent upon execution of the agreement sanction order appears to have been issued by the OSIC. Terms of sanction order reveal that raw materials

and finished products were to remain in custody of the OSIC. M/s Vogue Garments Pvt. Ltd. was required to give post-dated cheques against release of each payment which were to be returned on due receipt of payment. Thus, it is evident that OSIC entered into the transaction for providing financial assistance to M/s Vogue Garments Pvt. Ltd. in terms of the agreement and the sanction order containing elaborate provisions relating to disbursement of loan amount, relating to custody of raw materials and finished products and relating to repayment and realization of loan amount advanced by the OSIC. The petitioner M.K. Verma handed over post-dated cheques towards repayment of the loan. In connection with such cheques the OSIC has instituted ICC No.4 of 1997 for alleged commission of offence under section 138 of N.I. Act. Admittedly, no allegation has been made in ICC No.4 of 1997 against any of the petitioners of commission of offence either under section 420 or section 406 IPC. Therefore, obviously, OSIC itself also did not allege cheating or criminal breach of trust on the part of the petitioners initially.

13. In **G.Sagar Suri and another -v- State of U.P. and others :** (2002)2 SCC 636, it was observed:

“None of the respondents has been able to explain as to why offences under sections 406/420 IPC were not added in the complaint filed under section 138 of the Negotiable Instruments Act and why resort was had to filing of a separate first information report. xxx”

14. Though it has been alleged that the petitioners are guilty of commission of offences of cheating and criminal breach of trust, it has not been indicated that any of the petitioners entered into transaction with the OSIC with dishonest intention. Rather, materials on record indicate that the OSIC executed an agreement to provide financial assistance. It was a loan transaction supported by agreement, sanction order, custody of raw materials and finished products and also handing over of post-dated cheques. In the F.I.R. itself it has been admitted that the petitioner M.K.Verma sent draft for 1000 U.S. dollars to the OSIC. In terms of the agreement the OSIC has already instituted certificate proceeding under the OPDR Act for realization of dues. Also, criminal proceeding has been instituted under Section 138 of the N.I. Act on the allegation that post-dated cheques handed over by petitioner M.K. Verma were not honoured by the Bank.

15. In **Anil Mahajan -v- Bhor Industries Ltd. and another:** (2005)10 SCC 228, it has been held:

“xxx A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.”

16. As has been held in **Hira Lal Hari Lal Bhagwati -v- CBI,** **New Delhi :** (2003)5 SCC 257:

“Section 415 of the Indian Penal Code deals with cheating. To hold a person guilty of cheating as defined under section 415 of the Indian Penal Code, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Indian Penal code which defines cheating, requires deception of any person (a) inducing that person to; (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property OR (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody’s mind, reputation or property. In view of the aforesaid provisions, the appellants state that a person may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.”

It has been further held:

“It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. xxx”

17. In **Indian Oil Corpn. -v- NEPC India Ltd. and others:**

(2006)6 SCC 736 also it has been pointed out:

“The essential ingredients of the offence of “cheating” are: (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes

or is likely to cause damage or harm to that person in body, mind, reputation or property.”

It was observed in the above cited decision:

“While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression and that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In **G.Sagar Suri -v- State of U.P.** (2000)2 SCC 636: 2000 SCC(Cri)513 this Court observed:

“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal Proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

18. In **All Cargo Movers(I)Pvt. Ltd. -vs- Dhanesh Badarmal**

**Jain & Another:** 2007 AIR SCW 6667, it has been held:

“Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefore.

Criminal Proceedings should not be encouraged, when it is found to be *mala fide* or otherwise an abuse of the process of the Court.”

19. In **Suresh -v- Mahadevappa Shivappa Danannava and**

**anr.:** (2005)3 SCC 670, it has been held:

“xxx A perusal of the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not prima facie disclose commission of alleged criminal offence under section 420 IPC. The Magistrate, in our opinion, has not considered the report filed by the police under section 156(3) CrPC judicially. Irrespective of the opinion of the police, the Magistrate may or may not take cognizance under section 190(1) CrPC xxx ”

20. Section 406 IPC provides punishment for “criminal breach of trust”, definition of which is provided under Section 405 IPC. In **Indian Oil Corpn. -v- NEPC India Ltd and others** (supra), it has been observed:

“21. We will next consider whether the allegations in the complaint make out a case of criminal breach of trust under Section 405 which is extracted below:

“405. *Criminal breach of trust.*- Whoever, being in any manner entrusted with property, or any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits ‘criminal breach of trust’.”

22. A careful reading of the section shows that a criminal breach of trust involves the following ingredients: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any

legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under Section 405) where there is “entrustment”:

- (i) An “executor” of a will, with reference to the estate of the deceased bequeathed to legatees.
- (ii) A “guardian” with reference to a property of a minor or person of unsound mind.
- (iii) A “trustee” holding a property in trust, with reference to the beneficiary.
- (iv) A “warehouse keeper” with reference to the goods stored by a depositor.
- (v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.
- (vi) A servant or agent with reference to the property of the master or principal.
- (vii) A pledge with reference to the goods pledged by the owner/borrower.
- (viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor).

23. In *Chelloor Mankkal Narayan Ittiravi Nambudiri v. state of Travancore Cochin*; AIR 1953 SC 478 this Court held :

“[T]o constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all *that the accused was entrusted with some property or with any domination or power over it*. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.”



24. In *Jaswantraai Manilal Akhaney v. State of Bombay*: AIR 1956 SC 575 this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is "entrustment".

21. In the present case, there is absolutely no scope to assert that any of the petitioners was entrusted with any property, or any dominion over property as contemplated under section 405 IPC. Even the materials on record do not support the main allegation of cheating under section 415 IPC inasmuch as there is no material to indicate that the petitioners fraudulently or dishonestly induced the OSIC to deliver property. It is well settled that to deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of entering into the disputed transaction. There is no allegation that the petitioners made any willful misrepresentation. Admittedly, the OSIC entered into a valid agreement and financial assistance was duly sanctioned. The grievance of the OSIC is that the petitioner M.K. Verma failed to discharge his contractual obligations. There is no allegation against any of the petitioners to have practised fraud or to have dishonestly induced the OSIC to provide financial assistance and thereby the OSIC disbursed loan. As has been observed in **Anil Mahajan -v- Bhor Industries Ltd.** **And another** (supra), it is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present

intention of carrying it out but if , having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. Existence of dishonest intention is one of the essential ingredients of offence of cheating punishable under Section 420, I.P.C. as well as misappropriation punishable under Section 406, I.P.C. It has been reiterated in **V.Y. Jose & Anr. .V. State of Gujarat & Anr.:** (2009) 42 OCR (SC)488 that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the I.P.C. can be said to have been made out. It is well settled that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. High Court can exercise inherent power under Section 482, Cr.P.C. in order to prevent abuse of the process of Court or otherwise to secure the ends of justice for quashing the criminal proceeding. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The superior Courts with a view to maintain

purity in the administration of justice, should not allow abuse of the process of Court. They have a duty in terms of Section 483 of the Cr.P.C to supervise the functioning of the Trial Courts.

22. In the present case, the OSIC having already instituted certificate proceeding for realization of dues payable under the disputed transaction and also having already instituted criminal proceeding under the N.I. Act in which no allegation of cheating or criminal breach of trust on the part of any of the petitioners was made, in the facts and circumstances of the case, institution and continuance of G.R. Case No.1728 of 1997 against the petitioners amount to abuse of process of court. Therefore, in order to secure the ends of justice the criminal proceeding is liable to be quashed.

23. Accordingly, the impugned orders taking cognizance of offences and the criminal proceeding in G.R. Case No.1728 of 1997 of the court of learned S.D.J.M.(S), Cuttack are quashed.

The CRLMCs are allowed.

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**B.K. Patel, J.**