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This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 CrPC when the matter was still at the investigation stage.

16. In the concluding paragraph of the judgment under challenge, the High Court has also observed that considering the facts and circumstances and the allegations made in the complaint it could be said that the initiation of criminal proceedings is abuse of process of court and miscarriage of justice. No reasons in support of the aforesaid observation have been given. As already stated, the case was still under investigation and the police was in the process of collecting evidence. The sweeping remark made by the High Court in the circumstances of the case was wholly unjustified.

17. For the reasons mentioned above, the appeal is allowed and the judgment and order dated 23-2-2005 of the High Court is set aside. It is made clear that any observation made in this order is only for the limited purpose of deciding the appeal and shall not be construed as an expression of opinion on the merits of the case.

(2006) 6 Supreme Court Cases 736

(BEFORE H.K. SEMA AND R.V. RAVEENDRAN, JJ.)

INDIAN OIL CORPN. . . Appellant;

Versus

NEPC INDIA LTD. AND OTHERS . . Respondents.

Criminal Appeals No. 834 of 2002† with No. 833 of 2002, decided on July 20, 2006

A. **Criminal Procedure Code, 1973 — S. 482 — Petition under S. 482 CrPC for quashing criminal complaint alleging commission of various offences under Penal Code — Disputes arising from breach of contract — Civil remedy available and availed of — Remedy under criminal law, held not barred if the allegations disclose a criminal offence — Allegations contained in the complaint, taken on their face value, if, on facts, constituted offences under Penal Code — Maintainability of the petition under S. 482 — However, current practice of misuse of criminal process to put undue pressure in civil disputes deprecated — Penal Code, 1860, Ss. 378, 403, 405, 415 and 425**

B. **Penal Code, 1860 — Ss. 405, 420, 403 & 415 — Breach of contract — Filing of criminal complaint — Maintainability**

The appellant Indian Oil Corporation (IOC) entered into a contract with the respondent NEPC India Ltd., agreeing to supply aircraft fuel. According to the appellant, in respect of the fuel supplied under the contract, the respondent committed default in making payments. The respondent hypothecated its two aircrafts to the appellant under a deed. It was stipulated in clause (2) of the deed

† From the Judgment and Order dated 29-3-2001 of the High Court of Madras in Criminal OPs Nos. 2418 of 1999 and 1563 of 2000

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that the hypothecation was by way of charge and as security for payment of the amounts due. Clause (3) read with the schedule set out the instalments' schedule for payment of the amount due. Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the instalments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. As the respondent failed to pay the first two instalments as per the schedule, appellant stopped supply of fuel. However, subsequently, under a fresh agreement, a revised payment schedule was agreed upon and the appellant agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. But this agreement also came to an end as the instalments were not paid. Apprehending that the respondent may remove one of the hypothecated aircraft from Coimbatore Airport to a place outside its reach, the appellant filed a suit in the High Court seeking a mandatory injunction to the authorities concerned to detain the aircraft so as to enable it to take possession thereof. The High Court granted an interim injunction. In regard to the other hypothecated aircraft kept at Chennai Airport the appellant filed another suit in City Civil Court for a similar mandatory injunction. The appellant then filed two complaints against NEPC India and its two directors under Section 200 CrPC alleging that NEPC India unauthorisedly and clandestinely removed the engines and certain other parts from the two hypothecated aircrafts so as to defeat IOC's right to take possession of the two aircrafts in view of default in payments made by NEPC India and further that such act was against the terms of the hypothecation deed and would amount to offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. The respondents thereupon filed petitions under Section 482 CrPC for quashing the said two complaints on the following grounds:

(*i*) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(*ii*) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 IPC.

The High Court by a common judgment allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arose for consideration:

(*i*) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

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(*ii*) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Quashing of criminal complaint

C. **Criminal Procedure Code, 1973 — Ss. 482 and 250 — Criminal complaint when can be quashed — Principles restated — If allegations in the complaint, taken at their face value, disclose a criminal offence, complaint cannot be quashed merely because it relates to a commercial transaction or breach of contract for which civil remedy is available or has been availed — A commercial transaction or dispute may also involve criminal offence — If it is found that a frivolous criminal complaint had been filed knowing well that remedy lay only in civil law, person who filed such complaint should himself be made accountable in accordance with law at the end of such proceeding — Court should exercise power under S. 250 CrPC frequently where there is malice or frivolousness or ulterior motives on the part of the complainant**

Held :

The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings which are relevant for the present purpose are:

(*i*) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.

(*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(*v*) A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed of, is not by itself a ground to quash the criminal proceedings.

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The test is whether the allegations in the complaint disclose a criminal offence or not. (Para 12)

Madhavrao Jiwajirao Scindia v. *Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692 : 1988 SCC (Cri) 234; *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426; *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*, (1995) 6 SCC 194 : 1995 SCC (Cri) 1059; *Central Bureau of Investigation* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045; *State of Bihar* v. *Rajendra Agrawalla*, (1996) 8 SCC 164 : 1996 SCC (Cri) 628; *Rajesh Bajaj* v. *State NCT of Delhi*, (1999) 3 SCC 259 : 1999 SCC (Cri) 401; *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*, (2000) 3 SCC 269 : 2000 SCC (Cri) 615; *Hridaya Ranjan Prasad Verma* v. *State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786; *M. Krishnan* v. *Vijay Singh*, (2001) 8 SCC 645 : 2002 SCC (Cri) 19; *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*, (2005) 1 SCC 122 : 2005 SCC (Cri) 283, *relied on*

In this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy. (Para 15)

The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not. (Para 16)

The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings. (Para 17)

However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests 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. (Para 13)

G. Sagar Suri v. *State of U.P.*, (2000) 2 SCC 636 : 2000 SCC (Cri) 513, *referred to*

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. (Para 14)

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Alleged offences under Penal Code

D. **Penal Code, 1860 — S. 378 — Theft — Unless property is in possession of any person other than the accused, question of theft does not arise**

Held :

The averments in the complaint clearly show that neither the aircrafts nor their engines were ever in the possession of IOC. It is admitted that they were in the possession of NEPC India at all relevant times. The question of NEPC committing theft of something in its own possession does not arise. (Para 19)

E. **Penal Code, 1860 — S. 403 — Dishonest misappropriation of movable property — Ingredients of the offence — Property in question must belong to a person other than the accused so as to constitute offence under S. 403**

Held :

The basic requirements for attracting the section are: (*i*) the movable property in question should belong to a person other than the accused; (*ii*) the accused should wrongly appropriate or convert such property to his own use; and (*iii*) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject-matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot "misappropriate or convert to its own use" such aircraft or parts thereof. Therefore Section 403 is also not attracted. (Para 20)

F. **Penal Code, 1860 — S. 405 — Criminal breach of trust — Ingredients — Entrustment of the property or dominion over the property — Property hypothecated to creditor — Creating only a charge on the property with right in favour of the creditor to take possession in the event of default on the part of debtor-hypothecator — Possession remaining with the debtor-owner and creditor having neither ownership nor beneficial interest in the property — Held, element of entrustment not involved in such hypothecation — Owner-debtor does not hold the property in trust for the creditor — Charge over the property created in favour of the creditor does not create a beneficial interest in the creditor unless he takes possession of the property in exercise of his right under the deed of hypothecation — Whether the deed created a floating charge or a fixed charge inconsequential**

G. **Property Law — Hypothecation — Meaning — Ownership and possession of the property hypothecated remain with the debtor-owner — Creditor does not get any beneficial interest in the property — Creditor only gets a charge over the property and a right to take possession and sell the property to recover the dues — Words "beneficial interest", "floating charge" and "fixed charge" — Meaning of**

Held :

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 wilfully 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

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which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. (Para 22)

Chelloor Mankkal Narayan Ittiravi Nambudiri v. *State of Travancore Cochin*, AIR 1953 SC 478 : 1954 Cri LJ 102; *Jaswantrai Manilal Akhaney* v. *State of Bombay*, 1956 SCR 483 : AIR 1956 SC 575 : 1956 Cri LJ 1116, *relied on*

The question is whether there is "entrustment" in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both, ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (Note: no opinion is being expressed on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor. (Para 25)

P. Ramanatha Aiyar's Advanced Law Lexicon [3rd Edn. (2005), Vol. 2, pp. 2179 and 2180], *relied on*

The allegations in the complaints are that aircrafts and the engines fitted therein belong to NEPC India. Possession of the aircraft, neither actual nor symbolic, was delivered to IOC. As the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the deed of hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India. The very first requirement of Section 405, that is, the person accused of criminal breach of trust must have been "entrusted with the property" or "entrusted with any dominion over property" is, therefore, absent. (Para 27)

Central Bureau of Investigation v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045, *applied*

It is not possible to accept the contention that *Duncans Agro* decision itself recognises that there can be criminal breach of trust where a beneficial interest exists in the other person, and the offender holds the property in trust for such person and that when the deed of hypothecation was executed by NEPC India in favour of IOC, the hypothecation created a beneficial interest in the property in favour of IOC, and vis-à-vis such "beneficial interest" of IOC, the possession of the property by NEPC India was in "trust". The Supreme Court in *Duncans Agro* specifically held that when goods are hypothecated, the owner does not hold the goods in trust for the creditor. A charge over the hypothecated goods in favour of the creditor cannot be said to create a beneficial interest in the creditor, until and unless the creditor in exercise of his rights under the deed, takes possession. The term "beneficial interest" has a specific meaning and connotation. When a trust is created vesting a property in the trustee, the right of the beneficiary against the trustee (who is the owner of the trust property) is known as the "beneficial interest". The trustee has the power of management and the beneficiary has the right of enjoyment. Whenever there is a breach of any duty imposed on the

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trustee with reference to the trust property or the beneficiary, he commits a breach of trust. On the other hand, when the owner of a goods hypothecates a movable property in favour of a creditor, no "beneficial interest" is created in favour of the creditor nor does the owner become a trustee in regard to the property hypothecated. The right of the creditor under a deed of hypothecation is the right to enforce the charge created under the deed of hypothecation in the manner specified in the deed and by no stretch of imagination can such right be equated to a beneficial interest of a beneficiary in a property held in trust. Therefore, the contention that a creditor has a beneficial interest in the hypothecated property and the owner is in the position of a trustee with reference to the creditor is liable to be rejected. (Paras 28 and 29)

Central Bureau of Investigation v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045, *explained*

Gobindram C. Motwani v. *Emperor*, (1938) 39 Cri LJ 509 : AIR 1938 Sind 73, *distinguished*

There is also no basis for the further submission that *Duncans Agro* case dealt with a hypothecation deed creating a floating charge, whereas the case on hand related to a fixed charge and therefore, the principle laid down in *Duncans Agro*, (1996) 5 SCC 591, will not apply. The principle stated in *Duncans Agro* will apply in regard to all types of hypothecations. It makes no difference whether the charge created by the deed of hypothecation is a floating charge or a fixed charge. Where a specific existing property is hypothecated, what is created is a "fixed" charge. The floating charge refers to a charge created generally against the assets held by the debtor at any given point of time during the subsistence of the deed of hypothecation. The principle in *Duncans Agro* is based on the requirement of "entrustment" and not with reference to the "floating" nature of the charge. (Para 30)

Central Bureau of Investigation v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045, *explained*

Accordingly, it must be held that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of "criminal breach of trust" as defined under Section 405 IPC can be made out against NEPC India. (Para 31)

H. **Penal Code, 1860 — S. 415 — Cheating — Ingredients — Having regard to allegations made in the complaint, held, on facts, elements of deception and inducement with fraudulent intention prima facie made out**

Held :

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. (Para 32)

In this case, the complaints clearly allege that the accused with fraudulent intention to cheat and defraud IOC, had induced IOC to resume supply of aircraft fuel on cash-and-carry basis, by entering into a further agreement and

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undertaking to clear the outstanding amount of Rs 18 crores approximately within the time stipulated in the hypothecation agreements. The sum and substance of the said allegation read with other averments is that NEPC India, having committed default in paying the sum of Rs 18 crores, entered into a fresh agreement agreeing to clear the outstanding amount as per a fresh schedule, with the dishonest and fraudulent intention of pre-empting and avoiding any action by IOC in terms of the hypothecation deeds to take possession of the aircrafts. Though the supplies after the fresh agreement were on cash-and-carry basis, the fraudulent intention is alleged to emanate from the promise under the said agreement to make payment, thereby preventing immediate seizure (taking possession) of the aircrafts by IOC. This allegation made in addition to the allegation relating to removal of engines, has been lost sight of by the High Court. All that is to be seen is whether the necessary allegations exist in the complaint to bring the case within Section 415. Thus the allegations in the complaint constitute such an offence. The Court is not concerned with the proof of such allegations or ultimate outcome of trial at this stage. (Para 36)

I. **Penal Code, 1860 — S. 425 — Mischief — Ingredients — Ownership and possession of the property is not relevant — Even though the property belongs to the accused, if the ingredients are made out, accused can be held to have committed mischief**

Held :

There are three ingredients of the section which are: (*i*) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person; (*ii*) causing destruction of some property or any change in the property or in the situation thereof; and (*iii*) the change so made destroying or diminishing the value or utility or affecting it injuriously. For the purpose of Section 425, ownership or possession of the property is not relevant. Even if the property belongs to the accused himself, if the ingredients are made out, mischief is committed, as is evident from Illustrations (*d*) and (*e*) to Section 425. The complaints clearly allege that NEPC India had removed the engines thereby making a change in the aircrafts and that such removal has diminished the value and utility of the aircrafts and affected them injuriously, thereby causing loss and damage to IOC, which has the right to possess the entire aircraft. The allegations clearly constitute the offence of "mischief". The Court is not concerned with the proof or ultimate decision. (Para 37)

Thus the High Court was not justified in quashing the complaints/criminal proceedings in entirety. The allegations in the complaints are sufficient to constitute offences under Sections 415 and 425 IPC. Accordingly, the appeals are allowed in part and the order of the High Court insofar as it quashes the complaints under Sections 415 and 425 is set aside. (Para 38)

R-M/ATZ/34655/CR

Advocates who appeared in this case :

L. Nageswara Rao, Senior Advocate (H.K. Puri, Ujjwal Banerjee, S.K. Puri, Ms Priya Puri and V.M. Chauhan, Advocates, with him) for the Appellant;

C.A. Sundaram, Senior Advocate (Sanjay Sen, S.R. Raghunathan, Rana S. Biswas, Ms Indra Sawhney and Pramod Dayal, Advocates, with him) for the Respondents.

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9. (1995) 6 SCC 194 : 1995 SCC (Cri) 1059, *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* 747*f-g*
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14. (1938) 39 Cri LJ 509 : AIR 1938 Sind 73, *Gobindram C. Motwani* v. *Emperor* 755*a*, 755*b-c*

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J.— These appeals are filed against the common order dated 29-3-2001 passed by the Madras High Court allowing Crl. OPs Nos. 2418 of 1999 and 1563 of 2000. The said two petitions were filed by the respondents herein under Section 482 of the Criminal Procedure Code ("the Code" for short) for quashing the complaints filed by the appellant against them in CC No. 299 of 1999 on the file of Judicial Magistrate No. 6, Coimbatore and CC No. 286 of 1998 on the file of Judicial Magistrate, Alandur (Chennai).

2. The appellant (Indian Oil Corporation, for short "IOC") entered into two contracts, one with the first respondent (NEPC India Ltd.) and the other with its sister company, Skyline NEPC Limited ("Skyline" for short) agreeing to supply to them aviation turbine fuel and aviation lubricants (together referred to as "aircraft fuel"). According to the appellant, in respect of the aircraft fuel supplied under the said contracts, the first respondent became due in a sum of Rs 5,28,23,501.90 and Skyline became due in a sum of Rs 13,12,76,421.25 as on 29-4-1997.

3. The first respondent hypothecated its two Fokker F27-500 Aircrafts, bearing Registration Nos. VT-NEJ (12684) and VT-NEK (10687) to the appellant under the deed of hypothecation dated 1-5-1997, to secure the outstanding amounts. Clause (2) of the said deed provided that the two

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aircrafts with all parts and accessories stood hypothecated to IOC by way of charge and as security for payment of the amounts due, with effect from the date of hypothecation. Clause (3) read with the schedule set out the instalments' schedule for payment of the amount due. Under clause (6), NEPC India declared that it would not assign, sell, pledge, charge, underlet or otherwise encumber or part with the possession, custody or beneficial interest in respect of the two aircrafts without the previous written consent of IOC. It also undertook not to do any act which may diminish the value of the hypothecated property without clearing the entire outstanding amount. Clause (9) provided that if NEPC India failed to pay any of the instalments with interest within the stipulated time, or if any undertaking or assurance given by NEPC India was found to be false, IOC shall have the "right to take possession of the hypothecated property" and sell the same by public auction or by private contract and appropriate the sale proceeds towards the outstanding dues without recourse to court of law. Clause (12) confirmed that NEPC India had handed over the title deeds relating to the aircraft to IOC, and agreed to receive them back only after paying the amounts due. It is stated that Skyline also hypothecated its aircraft (VT-ECP) under a separate hypothecation deed dated 14-5-1997. It is further stated that a tripartite agreement dated 6-5-1997 was entered among IOC, NEPC India and Skyline setting out the mode of payment of the dues and recovery in the event of default.

4. As NEPC India failed to pay the first two instalments as per schedule, IOC stopped supply of aircraft fuel on 3-6-1997. However, subsequently, under a fresh agreement dated 20-9-1997, a revised payment schedule was agreed upon and IOC agreed to recommence supply of aircraft fuel on "cash-and-carry" basis. Even this arrangement came to an end as the instalments were not paid.

5. Apprehending that NEPC India may remove the hypothecated aircraft (VT-NEJ) from Coimbatore Airport to a place outside its reach, IOC filed CS No. 425 of 1997 in the Madras High Court seeking a mandatory injunction to the Airport Authority of India and the Director General of Civil Aviation to detain the said aircraft stationed at Coimbatore Airport, under Section 8 of the Aircraft Act, 1934 so as to enable it to take possession thereof. The High Court granted an interim injunction on 16-9-1997 restraining NEPC India from removing the aircraft (VT-NEJ) from Coimbatore Airport. In regard to the other hypothecated aircraft (VT-NEK) kept at Meenambakkam (Chennai) Airport, IOC filed a suit (OS No. 3327 of 1998) in the City Civil Court, Chennai for a similar mandatory injunction.

6. IOC filed the two complaints against NEPC India and its two Directors (Respondents 2 and 3 herein) in July 1998 under Section 200 of the Code of Criminal Procedure alleging unauthorised removal of the engines and certain other parts from the two hypothecated aircraft. They are:

(*i*) CC No. 299 of 1999 before Judicial Magistrate No. 6, Coimbatore, regarding aircraft bearing No. VT-NEJ.

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(*ii*) CC No. 286 of 1998 before the Judicial Magistrate, Alandur (Chennai) regarding aircraft bearing No. VT-NEK.

7. The relevant averments in the complaint in CC No. 299 of 1999 (Coimbatore Court) read as under:

"The complainant states that on 24-4-1998, IOC had come to know that NEPC India Limited in total disregard to the orders of the Hon'ble High Court, Madras had clandestinely removed both the engines and certain other parts from Aircraft VT-NEJ, Aircraft Sl. No. 12684 (Fokker F27-500) stationed at the Coimbatore Airport, Coimbatore….

The complainant states that, besides the above, the act of NEPC India Limited in removing the engines and certain other parts from the Aircraft VT-NEJ, Aircraft Sl. No. 12684 (Fokker F27-500) stationed at Coimbatore Airport, Coimbatore is against the terms of the hypothecation deeds dated 1-5-1997 and 20-9-1997 and will amount to theft, criminal breach of trust, and cheating which are offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. No notice was given to IOC in this regard."

8. The relevant averments in the complaint in CC No. 286 of 1998 (Alandur Court) read as under:

"…With a view to defeat the said right of IOC (that is, right to take possession and sell the aircraft), NEPC India removed the engines of the aircraft (VT-NEK) stationed at Meenambakkam Airport….

The complainant states that, the act of NEPC India Limited in removing the engines and certain other parts from Aircraft VT-NEK, Aircraft Sl. No. 10687 (Fokker F27-500) stationed at Meenambakkam Airport, Chennai is against the terms of the hypothecation deed dated 1-5-1997 as well as the terms of the agreement dated 20-9-1997 and will amount to offences punishable under Sections 378 (theft), 403 (dishonest misappropriation of property), 405 (criminal breach of trust), 415 (cheating), 425 (mischief) of the Penal Code, 1860. No notice was given to IOC in this regard."

9. Both the complaints also contain the following common allegations:

"The complainant states that the accused had with fraudulent intention to cheat and defraud IOC induced IOC to resume supply of aircraft fuel on cash-and-carry basis, by undertaking to clear the outstanding amount of Rs 18 crores approximately within the time stipulated in the hypothecation agreements. However, the accused had failed to clear the said outstanding amounts and had breached the terms of the hypothecation agreements. Subsequently on 20-9-1997, an agreement was entered into between IOC and M/s NEPC India Limited. As per the terms of the above agreement M/s NEPC India Limited had agreed to clear the outstanding amount of Rs 18 crores approximately due to IOC from M/s NEPC India Limited and M/s Skyline NEPC

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Limited within a time-frame. However, M/s NEPC India Limited had failed to keep up the schedule of payments mentioned in the said agreements.

The facts narrated above will clearly show that IOC has got every right to take possession of Aircraft VT-NEK as well as VT-NEJ. Only with a view to defeat the said right of IOC, M/s NEPC India has removed the engines of the aircraft...."

10. The respondents herein filed Crl. OP No. 1563 of 2000 and Crl. OP No. 2418 of 1999 respectively under Section 482 CrPC for quashing the said two complaints on the following two grounds:

(*i*) The complaints related to purely contractual disputes of a civil nature in respect of which IOC had already sought injunctive reliefs and money decrees.

(*ii*) Even if all the allegations in the complaints were taken as true, they did not constitute any criminal offence as defined under Sections 378, 403, 405, 415 or 425 IPC.

11. The High Court by a common judgment dated 23-3-2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration:

(*i*) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(*ii*) Whether the allegations in the complaint, if accepted on face value, constitute any offence under Sections 378, 403, 405, 415 or 425 IPC?

Re: Point (i)

12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre*[1], *State of Haryana* v. *Bhajan Lal*[2], *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill*[3], *Central Bureau of Investigation* v. *Duncans Agro Industries Ltd.*[4], *State of Bihar* v. *Rajendra Agrawalla*[5], *Rajesh Bajaj* v. *State NCT of Delhi*[6], *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.*[7],

1 (1988) 1 SCC 692 : 1988 SCC (Cri) 234
2 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426
3 (1995) 6 SCC 194 : 1995 SCC (Cri) 1059
4 (1996) 5 SCC 591 : 1996 SCC (Cri) 1045
5 (1996) 8 SCC 164 : 1996 SCC (Cri) 628
6 (1999) 3 SCC 259 : 1999 SCC (Cri) 401
7 (2000) 3 SCC 269 : 2000 SCC (Cri) 615

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Hridaya Ranjan Prasad Verma v. *State of Bihar*[8], *M. Krishnan* v. *Vijay Singh*[9] and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque*[10]. The principles, relevant to our purpose are:

(*i*) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(*ii*) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(*iii*) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(*iv*) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(*v*) A given set of facts may make out: (*a*) purely a civil wrong; or (*b*) purely a criminal offence; or (*c*) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. 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 that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also,

8 (2000) 4 SCC 168 : 2000 SCC (Cri) 786
9 (2001) 8 SCC 645 : 2002 SCC (Cri) 19
10 (2005) 1 SCC 122 : 2005 SCC (Cri) 283

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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.*[11] this Court observed: (SCC p. 643, para 8)

> "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."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

15. Coming to the facts of this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. It has filed CS No. 425 of 1997 in the Madras High Court and OS No. 3327 of 1998 in the City Civil Court, Chennai seeking injunctive reliefs to restrain NEPC India from removing its aircrafts so that it can exercise its right to possess the aircrafts. It has also filed two more suits for recovery of the amounts due to it for the supplies made, that is, CS No. 998 of 1999 against NEPC India (for recovery of Rs 5,28,23,501.90) and CS No. 11 of 2000 against Skyline (for recovery of Rs 13,12,76,421.25) in the Madras High Court. IOC has also initiated proceedings for winding up NEPC India and filed a petition seeking initiation of proceedings for contempt for alleged disobedience of the orders of temporary injunction. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy.

16. The respondents, no doubt, have stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. They have taken pains to point out that the aircrafts are

11 (2000) 2 SCC 636 : 2000 SCC (Cri) 513

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continued to be stationed at Chennai and Coimbatore Airports; that the two engines of VT-NEK though removed from the aircraft, are still lying at Madras Airport; that the two DART 552 TR engines of VT-NEJ were dismantled for the purpose of overhauling/repairing; that they were fitted into another aircraft (VT-NEH) which had been taken on lease from M/s Aircraft Financing and Trading BV and that the said aircraft (VT-NEH) has been detained by the lessor for its dues; that the two engines which were meant to be fitted into VT-NEJ (in places of the removed engines), when sent for overhauling to M/s Hunting Aeromotive, UK, were detained by them on account of a dispute relating to their bills; and that in these peculiar circumstances beyond their control, no dishonest intent could be attributed to them. But these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, we are only concerned with the question whether the averments in the complaint spell out the ingredients of a criminal offence or not.

17. The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings.

Re: Point (ii)

18. This takes us to the question whether the allegations made in the complaint, when taken on their face value as true and correct, constitute offences defined under Sections 378, 403, 405, 415 and 425 IPC? Learned counsel for the appellant restricted his submissions only to Sections 405, 415 and 425, thereby fairly conceding that the averments in the complaint do not contain the averments necessary to make out the ingredients of the offence of theft (Section 378) or dishonest misappropriation of property (Section 403).

Section 378

19. Section 378 defines theft. It states:

> "378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

The averments in the complaint clearly show that neither the aircrafts nor their engines were ever in the possession of IOC. It is admitted that they were in the possession of NEPC India at all relevant times. The question of NEPC committing theft of something in its own possession does not arise. The appellant has therefore rightly not pressed the matter with reference to Section 378.

Section 403

20. Section 403 deals with the offence of dishonest misappropriation of property. It provides that "whoever dishonestly misappropriates or converts to his own use any movable property", shall be punished with imprisonment of either description for a term which may extend to 2 years or with fine or both. The basic requirements for attracting the section are: (*i*) the movable

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property in question should belong to a person other than the accused; (*ii*) the accused should wrongly appropriate or convert such property to his own use; and (*iii*) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject-matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot "misappropriate or convert to its own use" such aircraft or parts thereof. Therefore Section 403 is also not attracted.

Section 405

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 with 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 wilfully 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 wilfully 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 pledgee with reference to the goods pledged by the owner/borrower.

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(*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*[12] this Court held: (AIR p. 484, para 21)

"[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 dominion 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."

(emphasis supplied)

24. In *Jaswantrai Manilal Akhaney* v. *State of Bombay*[13] this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is "entrustment". It, however, clarified: (SCR p. 499)

"But when Section 405 which defines 'criminal breach of trust' speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

25. The question is whether there is "entrustment" in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both, ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note: we are not expressing any opinion on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). The following definitions of the term "hypothecation" in *P.*

12 AIR 1953 SC 478 : 1954 Cri LJ 102

13 1956 SCR 483 : AIR 1956 SC 575 : 1956 Cri LJ 1116

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Ramanatha Aiyar's Advanced Law Lexicon [3rd Edn. (2005), Vol. 2, pp. 2179 and 2180] are relevant:

> "*Hypothecation*.—It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrower enters into an agreement with the lender to hand over the possession of the hypothecated assets whenever called upon to do so. The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledgee.
>
> * * *
>
> 'Hypothecation' means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor, without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property. [Borrowed from Section 2(*n*) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.]"

But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor.

26. The question directly arose for consideration in *Central Bureau of Investigation* v. *Duncans Agro Industries Ltd.*[4] It related to a complaint against the accused for offences of criminal breach of trust. It was alleged that a floating charge was created by the accused debtor on the goods by way of security under a deed of hypothecation, in favour of a bank to cover credit facility and that the said goods were disposed of by the debtor. It was contended that the disposal of the goods amounted to criminal breach of trust. Negativing the said contention, this Court after stating the principle as to when a complaint can be quashed at the threshold, held thus: (SCC pp. 607-08, para 27)

> "[A] serious dispute has been raised by the learned counsel … as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence 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

4 (1996) 5 SCC 591 : 1996 SCC (Cri) 1045

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person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. *When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit.* In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. *In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed.*" (emphasis supplied)

27. The allegations in the complaints are that aircrafts and the engines fitted therein belong to NEPC India, and that a charge was created thereon by NEPC India in favour of IOC by way of hypothecation to secure repayment of the amounts due to IOC. The terms of hypothecation extracted in the complaints show that the ownership and possession of the aircrafts continued with NEPC India. Possession of the aircraft, neither actual nor symbolic, was delivered to IOC. NEPC India was entitled to use the aircraft and maintain it in good state of repairs. IOC was given the right to take possession of the hypothecated aircrafts only in the event of any default as mentioned in the hypothecation deed. It is not the case of IOC that it took possession of the aircraft in exercise of the right vested in it under the deed of hypothecation. Thus, as the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the deed of hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India. The very first requirement of Section 405, that is, the person accused of criminal breach of trust must have been "entrusted with the property" or "entrusted with any dominion over property" is, therefore, absent.

28. Learned counsel for the appellant, however, sought to distinguish the decision in *Duncans Agro*[4] on two grounds. It was pointed out that *Duncans Agro*[4] itself recognises that there can be criminal breach of trust where a beneficial interest exists in the other person, and the offender holds the property in trust for such person. It is submitted that when the deed of hypothecation was executed by NEPC India in favour of IOC, the hypothecation created a beneficial interest in the property in favour of IOC,

4 *Central Bureau of Investigation* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045

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and vis-à-vis such "beneficial interest" of IOC, the possession of the property by NEPC India was in "trust". In support of this contention, reliance was placed on a decision of the Sind Judicial Commissioner in *Gobindram C. Motwani* v. *Emperor*[14]. In that case the complaint was that the accused had hypothecated the goods in their shop as collateral security against an advance and had agreed to hold the goods and proceeds thereof in trust and to pay the proceeds as and when received by them. However, as they did not pay the proceeds, the complaint was that they committed criminal breach of trust. The Magistrate took the view that as the hypothecated goods were still the property of the accused, they could not commit criminal breach of trust in respect of their own property. The Judicial Commissioner did not agree. He held: (*Gobindram C. Motwani case*[14], AIR p. 76)

> "The test in this case appears to me to be whether the owners of the goods, the accused, created an equitable charge over the goods in their possession when they executed the trust receipt. If they did so, they held the goods as trustees, they were 'in some manner entrusted' with the goods, and if they dealt with them in violation of the terms of the trust, they committed an offence under this section, provided they had the necessary criminal intent. I can myself see no reason why it should be said that by this trust receipt the accused did not give a beneficial interest in the goods to the applicant and did not hold the goods, with which they were entrusted as legal owners, in trust for the applicant. That being so, I think the learned Magistrate was wrong in his decision that the accused could not be guilty of criminal breach of trust because the goods were their own property."

It is evident that the said observations were made on the peculiar facts of that case where the Commissioner concluded that the goods were held by the accused in trust as trustee in view of execution of a "trust receipt" by the accused. The facts were somewhat similar to example (*viii*) in para 22 above. Further, the Judicial Commissioner finally observed that there was so much room for an honest difference of opinion as to the rights and liabilities of the parties to the trust receipt that no useful purpose could be served in interfering with the order of discharge by the Magistrate. The said decision is therefore of no assistance to the appellant.

29. If the observations relied on by the appellant are to be interpreted as holding that the debtor holds the hypothecated goods, in trust for the creditor, then they are contrary to the decision of this Court in *Duncans Agro*[4] which specifically holds that when goods are hypothecated, the owner does not hold the goods in trust for the creditor. A charge over the hypothecated goods in favour of the creditor cannot be said to create a beneficial interest in the creditor, until and unless the creditor in exercise of his rights under the deed, takes possession. The term "beneficial interest" has a specific meaning and

14 (1938) 39 Cri LJ 509 : AIR 1938 Sind 73

4 *Central Bureau of Investigation* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045

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connotation. When a trust is created vesting a property in the trustee, the right of the beneficiary against the trustee (who is the owner of the trust property) is known as the "beneficial interest". The trustee has the power of management and the beneficiary has the right of enjoyment. Whenever there is a breach of any duty imposed on the trustee with reference to the trust property or the beneficiary, he commits a breach of trust. On the other hand, when the owner of a goods hypothecates a movable property in favour of a creditor, no "beneficial interest" is created in favour of the creditor nor does the owner become a trustee in regard to the property hypothecated. The right of the creditor under a deed of hypothecation is the right to enforce the charge created under the deed of hypothecation in the manner specified in the deed and by no stretch of imagination can such right be equated to a beneficial interest of a beneficiary in a property held in trust. Therefore, the first contention that a creditor has a beneficial interest in the hypothecated property and the owner is in the position of a trustee with reference to the creditor is liable to be rejected.

30. The second ground on which learned counsel for the appellant sought to distinguish *Duncans Agro*[4] is that the said case dealt with a hypothecation deed creating a floating charge, whereas the case on hand related to a fixed charge and, therefore, the principle laid down in *Duncans Agro*[4] will not apply. This contention is also without basis. The principle stated in *Duncans Agro*[4] will apply in regard to all types of hypothecations. It makes no difference whether the charge created by the deed of hypothecation is a floating charge or a fixed charge. Where a specific existing property is hypothecated what is created is a "fixed" charge. The floating charge refers to a charge created generally against the assets held by the debtor at any given point of time during the subsistence of the deed of hypothecation. For example where a borrower hypothecates his stock-in-trade in favour of the bank creating a floating charge, the stock-in-trade, held by the borrower as on the date of hypothecation may be sold or disposed of by the debtor without reference to the creditor. But as and when new stock-in-trade is manufactured or received, the charge attaches to such future stock-in-trade until it is disposed of. The creditor has the right at any given point of time to exercise his right by converting the hypothecation into a pledge by taking possession of the stock-in-trade held by the debtor at that point of time. The principle in *Duncans Agro*[4] is based on the requirement of "entrustment" and not with reference to the "floating" nature of the charge. The second contention also has no merit.

31. We accordingly hold that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of "criminal breach of trust" as defined under Section 405 IPC can be made out against NEPC India.

4 *Central Bureau of Investigation* v. *Duncans Agro Industries Ltd.*, (1996) 5 SCC 591 : 1996 SCC (Cri) 1045

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Section 415

32. 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.

33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no "cheating". The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (*f*) and (*g*) to Section 415 make this position clear:

> "(*f*) *A* intentionally deceives *Z* into a belief that *A* means to repay any money that *Z* may lend to him and thereby dishonestly induces *Z* to lend him money, *A* not intending to repay it. *A* cheats.
>
> (*g*) *A* intentionally deceives *Z* into a belief that *A* means to deliver to *Z* a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces *Z* to advance money upon the faith of such delivery, *A* cheats; but if *A*, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

34. In *Rajesh Bajaj*[6] this Court held: (SCC pp. 262-63, paras 9 & 11)

> "*9*. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. ...
>
> * * *
>
> *11*. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."

6 *Rajesh Bajaj* v. *State NCT of Delhi*, (1999) 3 SCC 259 : 1999 SCC (Cri) 401

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35. In *Hridaya Ranjan Prasad Verma*[8] this Court held: (SCC pp. 176-77, paras 14-15)

> "*14*. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he 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.
>
> *15*. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless 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. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

36. In this case, the complaints clearly allege that the accused with fraudulent intention to cheat and defraud IOC, had induced IOC to resume supply of aircraft fuel on cash-and-carry basis, by entering into a further agreement dated 20-9-1997 and undertaking to clear the outstanding amount of Rs 18 crores approximately within the time stipulated in the hypothecation agreements. The sum and substance of the said allegation read with other averments extracted above, is that NEPC India, having committed default in paying the sum of Rs 18 crores, entered into a fresh agreement dated 20-9-1997 agreeing to clear the outstanding amount as per a fresh schedule, with the dishonest and fraudulent intention of pre-empting and avoiding any action by IOC in terms of the hypothecation deeds to take possession of the aircrafts. Though the supplies after 20-9-1997 were on cash-and-carry basis, the fraudulent intention is alleged to emanate from the promise under the said agreement to make payment, thereby preventing immediate seizure (taking possession) of the aircrafts by IOC. This allegation made in addition to the allegation relating to removal of engines, has been lost sight of by the High Court. All that is to be seen is whether the necessary allegations exist in the complaint to bring the case within Section 415. We are clearly of the view that the allegations in the complaint constitute such an offence. We are not concerned with the proof of such allegations or ultimate outcome of trial at this stage.

8 *Hridaya Ranjan Prasad Verma* v. *State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786

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Section 425

37. Section 425 IPC provides:

> "425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits 'mischief'."

The three ingredients of the section are: (*i*) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person; (*ii*) causing destruction of some property or any change in the property or in the situation thereof; and (*iii*) the change so made destroying or diminishing the value or utility or affecting it injuriously. For the purpose of Section 425, ownership or possession of the property is not relevant. Even if the property belongs to the accused himself, if the ingredients are made out, mischief is committed, as is evident from Illustrations (*d*) and (*e*) to Section 425. The complaints clearly allege that NEPC India had removed the engines thereby making a change in the aircrafts and that such removal has diminished the value and utility of the aircrafts and affected them injuriously, thereby causing loss and damage to IOC, which has the right to possess the entire aircraft. The allegations clearly constitute the offence of "mischief". Here again, we are not concerned with the proof or ultimate decision.

Conclusion

38. In view of the above discussion, we find that the High Court was not justified in quashing the complaints/criminal proceedings in entirety. The allegations in the complaints are sufficient to constitute offences under Sections 415 and 425 IPC. We accordingly allow these appeals in part and set aside the order of the High Court insofar as it quashes the complaints under Sections 415 and 425. As a consequence, the Judicial Magistrate, Coimbatore and the Judicial Magistrate, Alandur before whom the matters were pending, shall proceed with the matters in accordance with law in regard to the complaints filed by IOC insofar as offences under Sections 415 and 425 IPC. Parties to bear their respective costs.

(2006) 6 Supreme Court Cases 759

(BEFORE S.B. SINHA AND DALVEER BHANDARI, JJ.)

STATE OF ORISSA AND ANOTHER . . Appellants;

Versus

ASWINI KUMAR BALIAR SINGH . . Respondent.

Civil Appeal No. 7472 of 2003†, decided on August 8, 2006

A. **Contempt of Court — Civil contempt — Flouting of High Court's order alleged — But subsequent to High Court's order Govt. issued certain**

† From the Judgment and Order dated 18-7-2002 of the High Court of Orissa at Cuttack in Original Criminal Misc. Case No. 594 of 2001