REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2128 OF 2011

INTERNATIONAL ADVANCED RESEARCH CENTRE FOR POWDER METALLURGY AND NEW MATERIALS (ARCI) & ORS. ...Appellants

Versus

NIMRA CERGLASS TECHNICS (P) LTD. & ANR. ...Respondents

J U D G M E N T

R. BANUMATHI, J.

This appeal has been preferred assailing the judgment dated 17.03.2009 passed by the High Court of Andhra Pradesh in Criminal Petition No.7901 of 2008 dismissing the petition filed by the appellants under Section 482 Cr.P.C., thereby declining to quash the criminal proceedings initiated against the appellants in CC No. 840/2008 under Sections 419 and 420 IPC.

2. Brief facts which led to the filing of this case are as under:-The respondent-complainant is a private limited company engaged in the manufacturing and marketing of scientific devices and equipments. The respondent filed complaint against appellant-International Advanced Research Centre for Powder

Metallurgy and New Materials (for short 'ARCI') and its officers i.e. appellant No.2-S.V.Joshi, Associate Director and appellant No.3-G.Sunderarajan, Director alleging that the appellants have represented that ARCI possessed of technology for manufacture of extruded ceramic honeycombs which is used in manufacturing of catalytic converters which are used in automobiles for controlling emission. On that representation, the respondent entered into an agreement dated 18.06.1999 with ARCI for transfer of technology for the manufacturing process of extruded ceramic honeycombs inclusive of transfer of extrusion die fabrication technology which is an integral part of the manufacturing process for a consideration of rupees ten lakhs in instalments exclusive of royalty amount on the sales which would have been generated on the basis of products manufactured and marketed by the respondent on the basis of technology. The respondent had alleged that in pursuance of the agreement, the respondent was permitted to establish its industrial unit within the campus of ARCI at Balapur, Hyderabad for the purpose of installing and commissioning production of preferred technology and for which respondent spent around rupees one crore thirty lakhs for purchasing and installing the comprehensive machinery. The

respondent alleged that after having taken number of trial runs for testing the efficacy of the extruded ceramic honeycombs in the function organized by ARCI in May 2003, attended by higher officials, the technology was handed over to the respondent and accordingly the respondent was induced into remitting the third instalment of rupees two lakhs in addition to the amount already paid. Respondent states that he was informed that the initial trial runs conducted by the Scientists of ARCI succeeded and the appellants thus, handed over a few samples of the final product which were subsequently displayed at a joint programme launched at Hyderabad. As a result, respondent spent an amount of rupees fifteen lakhs for procuring raw materials in anticipation of commencing commercial production in the belief that the final perfected technology is in its hands. The respondent further alleged that after three years, the respondent was informed vide letter bearing No.ARCI/AD/2006-2007 dated 23.10.2006 addressed to Technology Information, Forecasting and Assessment Council (TIFAC) that the targeted specification of the end product could not be achieved. The respondent alleged that scientists working in ARCI had not perfected the honeycomb technology sufficient for commencing commercial production and

by their false representations induced the respondent to spend huge amount and thus appellants have committed an offence of cheating.

3. The respondent lodged a criminal complaint on 06.11.2007 before the court of the II Metropolitan Magistrate Cyberabad seeking prosecution of the appellants for the offences punishable under Sections 405, 415, 418, 420 IPC read with Sections 34 and 120B IPC. After investigation, the investigating officer submitted final report dated 28.01.2008 stating that the dispute is purely of civil nature and that no offence was made out against the appellants and the same may be accepted and the case be treated as closed. On protest petition filed by the respondent, the Magistrate took cognizance of the case for offences under Sections 419 and 420 IPC read with Section 34 IPC vide order dated 11.11.2008. Aggrieved by the summoning order issued by the II Metropolitan Magistrate, Cyberabad, the appellants filed petition under Section 482 Cr.P.C. before the High Court to quash the proceedings in CC No. 840 of 2008 and the same was dismissed, which is under challenge in this appeal.

4. Contention at the hands of the appellants is that when Technology Transfer Agreement dated 18.06.1999 was entered

into, NIMRA was fully aware of ARCI's honeycomb technology and second and third appellants were involved in the process of developing the technology wholly in their capacity as Associate Director and Director of ARCI and there was no dishonest intention on their part to cheat the respondent. Taking us through various clauses in the technology transfer agreement, Mr. Raju Ramachandran, learned Senior Counsel submitted that the said technology transfer agreement provides for a contingency that if the targeted specifications are not achieved, then ARCI is liable to pay damages to the tune of twenty percent of the lump-sum technology transfer fee charged. It was contended that the case is purely of a civil nature and for the alleged breach of contract, arbitral proceedings have already commenced and the criminal prosecution is clear abuse of process of law.

5. Reiterating the above submissions, Mr. Manoj Sharma, learned counsel for the appellant No.2 contended that in the year 1999, second appellant was not in the ARCI campus and the second appellant was appointed as the Associate Director and entrusted the responsibility of heading the technology transfer activities of ARCI only in April 2005 and no dishonest intention

could be ascribed to the second appellant in his individual capacity.

6. Mr. Mushtaq Ahmad, learned counsel for respondent No.1 submitted that the appellants made false representation to the respondent that ARCI was possessed of proved ceramic honeycomb technology and the appellants conspired and induced the respondent to enter into agreement and based on the assurance of the appellants, respondent spent huge money in purchasing and installing comprehensive machinery in its industrial unit set up in ARCI campus and only in the year 2006, by the letter dated 23.10.2006, second appellant intimated that ceramic honeycomb technology has failed and the facts and circumstances clearly show that the representation was a fraudulent right from inception.

7. We have carefully considered the rival contentions and perused the impugned order and the material on record.

8. ARCI, a grants-in-aid research and development institute under the Ministry of Science and Technology, Government of India, carries out research work for the development of a number of scientific products to be used in various fields. As a part of its scientific development, ARCI

developed a process for extruded ceramic honeycombs. The said extruded ceramic honeycombs were found suitable for manufacture of catalytic converters which are used in vehicles for controlling the pollution in the emission of vehicles and extruded gases. ARCI is said to have held the intellectual property rights for the know-how i.e. the process for extruded ceramic honeycombs and extrusion die fabrication technology.

9. ARCI entered into a technology transfer agreement on 18.06.1999 with respondent to transfer the know-how related to the process for extruded ceramic honeycombs as per the specifications indicated thereon in the annexure to the agreement. The agreement details the modalities of the terms and conditions for the grant of licence by ARCI and NIMRA for utilizing the said know-how and the rights and obligations of the parties and the financial arrangements between them. As per Article 2.5 of the agreement, NIMRA has seen ceramic honeycombs as per specifications indicated thereon and felt that they could be a substitute for imported honeycombs for manufacture of catalytic converter automotive application. Further Article 2.6 of the agreement provides that NIMRA had made some preliminary evaluation of ARCI honeycomb samples and found that the

ceramic honeycombs may be suitable for manufacture of catalytic converters for automobile application.

10. Contention at the hands of respondent is that ARCI had already developed and possessed know-how for extruded ceramic honeycombs. Article 2.2 of technology transfer agreement suggests that ARCI has the intellectual property rights for the know-how of the ceramic honeycomb technology and the extrusion die fabrication technology. It was contended that the intellectual property rights could not have been given to ARCI unless the Centre developed the process hundred percent successfully and without such cent percent success appellants should not have entered into an agreement for transfer of the technology. Further contention of respondent is that believing the representation of the appellants, respondent established an industrial unit within the Balapur Campus of the Centre and in this regard spent an amount of rupees one crore and thirty lakhs for purchasing and installing comprehensive machinery. It is submitted that in the month of May 2003 officials of ARCI convened a convention for trial run and they assured the respondent that the technology was a proved one and was fully developed and believing their assurances, respondent spent

rupees fifteen lakhs for procuring raw materials and three years thereafter, second appellant informed the respondent that the targeted specification of the end project could not be achieved and the second appellant marked a copy of the letter dated 23.10.2006 addressed to TIFAC that the ceramic honeycombs technology has failed and act of the appellants made out a case of cheating and rightly Magistrate has taken cognizance of the matter.

11. Learned counsel for the respondent further submitted that in the letter addressed to TIFAC dated 23.10.2006, appellant No. 2 stated that targeted specification of the end product could not be achieved implying that the so-called perfect honeycomb technology which the appellants asserted to be having was in fact, an imperfect technology. Drawing our attention to the official website of ARCI, it was submitted that the ARCI submitted an application for patent registration only on 03.07.2001 and patent was granted on 13.01.2006 and while so, Article 2.2 of transfer technology agreement mentioning that ARCI has the intellectual property rights for the know-how and the extrusion die fabrication technology is false and the appellants made a false representation to the respondent that ARCI was having intellectual property rights for extruded ceramic honeycombs and the Magistrate has

rightly taken cognizance of the matter for the offence punishable under Sections 419 and 420 IPC.

12. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is, as to whether uncontroverted allegations as made in the complaint establish the offence. The High Court being superior court of the State should refrain from analyzing the materials which are yet to be adduced and seen in their true perspective. The inherent jurisdiction of the High Court under Section 482 Cr.P.C. should not be exercised to stifle a legitimate prosecution. Power under Section 482 Cr.P.C. is to be used sparingly only in rare cases. In a catena of cases, this Court reiterated that the powers of quashing criminal proceedings should be exercised very sparingly and quashing a complaint in criminal proceedings would depend upon facts and circumstances of each case. Vide *State of Haryana & Ors. vs. Bhajan Lal & Ors.*, 1992 Supp.(1) SCC 335; *State of T.N. vs. Thirukkural Perumal*, (1995) 2 SCC 449; and *Central Bureau of Investigation* vs. *Ravi Shankar Srivastava, IAS & Anr.* (2006) 7 SCC 188.

13. In the light of the well-settled principles, it is to be seen whether the allegations in the complaint filed against ARCI

and its officers for the alleged failure to develop extruded ceramic honeycomb as per specifications disclose offences punishable under Sections 419 and 420 IPC. It is to be seen that whether the averments in the complaint make out a case to constitute an offence of cheating. The essential ingredients to attract Section 420 IPC are: (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security and (iii*) mens rea* of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

14. Distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a

promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In *S.W. Palanitkar & Ors. vs. State of Bihar & Anr.* (2002) 1 SCC 241, this Court held as under:

> "21 .....In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

The above view in *Palanitkar's* case was referred to and followed in *Rashmi Jain vs. State of Uttar Pradesh & Anr.* (2014) 13 SCC 553.

15. Various clauses in the agreement indicate that technology transfer agreement 1999 was only experimental in nature and ARCI shall endeavour to achieve the performance as per the specifications. In the agreement, there was no

commitment on the part of ARCI to provide extruded ceramic honeycombs as per expected specifications. Article 12 which deals with performance guarantee suggests that ARCI is to conduct performance test and shall endeavour to achieve product quality/specification as mentioned in annexure I of the agreement. We may usefully refer to Article 12.2 to 12.6 of the agreement which read as under:

> "**12.2** When all guarantee figures as set forth in Article 12.1 are achieved during the performance guarantee test, then ARCI shall be released thereafter from any liability for the performance guarantee of the know-how.
>
> **12.3** In the event of failure to achieve the performance as agreed in Article 12.1 in the first performance test, ARCI shall make necessary rectification and another performance test will be conducted.
>
> **12.4** In the event of failure to achieve the guarantee figures in the second performance test, ARCI may at its option either (I) make necessary rectification so that another performance test can be conducted or pay the liquidated damages equal to 20% of the lump-sum technology transfer fee charged.
>
> **12.5** When the liquidated damages are paid by ARCI as specified in Article 12.4, the performance guarantee shall be deemed to have been fulfilled as ARCI shall be relieved from any liability or the performance guarantee.
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> **12.6** If for reasons not attributable to ARCI, the performance guarantee figures are not attained during the performance test, both parties shall discuss and agree upon measures to be taken."

16. By reading of the above clauses in the technology transfer agreement, it is seen that the development of technology ceramic honeycombs by ARCI was experimental. Terms and conditions of technology transfer agreement clearly suggest that

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the Centre is to conduct performance guarantee to achieve the product quality/specification of extruded ceramic honeycombs as mentioned in annexure-1 of the technology transfer agreement and make necessary rectification, if required. The agreement provides that in the event of failure to achieve the guarantee figures as per specification even after second performance test, option given to ARCI either to conduct another performance test or pay the liquidated damages equal to twenty percent on the lump-sum technology transfer fee charged. As per the terms and conditions of the agreement, ARCI had the option to conduct performance test to achieve the quality/specifications and when it could not achieve these specifications, it cannot be said that ARCI acted with dishonest intention to cheat the respondent attracting the essential ingredients of Section 420 IPC.

17. Two important aspects are relevant to be noted to hold that criminal liability cannot be foisted on the appellants. Firstly, satisfaction of NIMRA as to suitability of ceramic honeycombs. As per Article 2.5 of the technology transfer agreement, NIMRA felt that ARCI's honeycombs could be a substitute for imported honeycombs for manufacture of catalytic converters automotive application. Further, as seen from Article 2.6, NIMRA made some

preliminary evaluation of the honeycomb samples and found that the ceramic honeycombs may be suitable for manufacture of catalytic converters for automobile application. Secondly, as seen from Article 2.8 of technology transfer agreement 1999, NIMRA had earlier entered into an agreement with ARCI on 28.05.1997 to optimize the wash coat and catalyst coating by NIMRA on ARCI's substrate to achieve conversion efficiency on two samples for two vehicles Maruti 800cc and Ceilo 1500cc. As per the said agreement, ARCI paid rupees six lakhs fifty thousand to respondent for optimization process to achieve conversion efficiency and the said agreement was further extended vide amendment dated 06.05.1999. It is seen that NIMRA first approached ARCI for co-operation and received money from ARCI for developing part of the technology and finally NIMRA opted for developing part of the technology by itself rather than jointly transfer to a third party as provided for in 1997 agreement. No dishonest intention could be attributed to the appellants as is apparent from the fact that NIMRA earlier had collaboration with ARCI and ARCI put in sufficient efforts by conducting repeated performance guarantee tests.

18. Respondent mainly relied upon the letter bearing No.ARCI/AD/2006-2007 dated 23.10.2006 to contend that what appellant No.2 conveyed was that the so-called perfect honeycomb technology which they asserted to be having, was in fact, an imperfect technology and thus act of the appellants amounted to cheating. By perusal of the letter bearing No.ARCI/AD/2005-2006 dated 05.04.2006, it is seen that the Centre was trying their best efforts to improve the wall thickness uniformity and they are expecting to accomplish all experimentation necessary for the purpose. In the letter bearing No.ARCI/AD/2006-2007 dated 23.10.2006 addressed to Technology Information, Forecasting & Assessment Council (TIFAC), copy of which was marked to NIMRA states that targeted specifications could not be achieved despite ARCI's best efforts. The said letter further states as under:-

> " ...ARCI has already conveyed to NIMRA that ARCI may not be able to meet the specifications as presently targeted. ARCI had further indicated to NIMRA very clearly that it would write to TIFAC requesting short-closure of the project for the above reasons. However, Mr. Khaja has dissuaded ARCI from taking such a step, indicating that he does not want the project to be termed as a failure and carry the image of not fully repaying the loan amount received from TIFAC. Mr. Khaja has also indicated to ARCI that Nimra Cerglass would, therefore, like to make one final effort to commercialize the product despite the existing departure from the specifications. For the purpose, Mr. Khaja has proposed to modify the canning process, involving a flexible mat suitable for canning honeycomb substrates with warpage, to explore the possibility of utilizing the currently developed honeycomb structures...."

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Thus, it is clear that before the said letter was sent to TIFAC, all the details were discussed and well within the knowledge of NIMRA and NIMRA proposed for modification of the canning process and evidently there was no dishonest intention on the part of the appellants and no criminal liability could be attributed to the appellants.

19. It is also pertinent to note that Article 21 of technology transfer agreement dated 18.06.1999 contains arbitration clause. On 30.12.2007, the respondent invoked arbitration as provided in Article 21.1 of the technology transfer agreement and Dr. T. Ramasamy (sole arbitrator) was appointed. On 06.02.2008, respondent filed an Arbitration Petition No.42/2008 under sub-section (2) of Section 14 of the Arbitration and Conciliation Act before the High Court of Andhra Pradesh praying to substitute Dr. T. Ramasamy alleging that he is known to appellant No.3. In view of objection raised by the respondent, Dr. T. Ramasamy recused himself from hearing the matter. Subsequently, ARCI filed an Arbitration Petition No.78/2008 before the High Court of Delhi for appointment of an independent arbitrator to resolve the existing disputes between ARCI and the respondent. The said arbitration petition was dismissed as

withdrawn by an order dated 08.07.2008. It was submitted at the Bar that an independent arbitrator was in fact appointed to resolve disputes between ARCI and the respondent and arbitrator has passed the award which again is the subject matter of challenge before the High Court.

20. By analysis of terms and conditions of the agreement between the parties, the dispute between the parties appears to be purely of civil nature. It is settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In *Anil Mahajan vs. Bhor Industries Ltd.* & Anr. (2005) 10 SCC 228, this Court held as under:-

> "**6**. .....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.
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> **7**. .....
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> **8.** 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.... 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."

21. In *M/s Indian Oil Corporation vs. NEPC India Ltd. & Ors.,* (2006) 6 SCC 736, this court observed that civil liability cannot be converted into criminal liability and held as under:-

"**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, 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* 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."

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22. Learned counsel for the respondent submitted that any defence to be taken by the appellants is to be raised only during the course of trial and is not to be raised in the initial stage of the prosecution. In support of his contention, the learned counsel placed reliance upon *Trisuns Chemical Industry vs. Rajesh Agarwal & Ors.* (1999) 8 SCC 686; *Rajesh Bajaj vs. State NCT of Delhi and Ors.* (1999) 3 SCC 259; *P. Swaroopa Rani vs. M.Hari Narayana Alias Hari Babu* (2008) 5 SCC 765 and *Iridium India Telecom Ltd. vs. Motorola Incorporated & Ors.* (2011) 1 SCC 74. Learned counsel for the respondent further submitted that when the Magistrate has taken cognizance of an offence and the power of the High Court to interfere is only to a limited extent, the High Court cannot substitute its view for the summoning order passed by the Magistrate. In support of this contention, learned counsel placed reliance upon the decisions of this Court in *Fiona Shrikhande vs. State of Maharashtra & Anr.* (2013) 14 SCC 44; *Bhushan Kumar & Anr. vs. State (NCT) of Delhi & Anr.* (2012) 5 SCC 424 and Smt. *Nagawwa vs. Veeranna Shivalingappa Konjalgi* & Ors. (1976) 3 SCC 736.

23. The above decisions reiterate the well-settled principles that while exercising inherent jurisdiction under Section 482 Cr.P.C., it is not for the High Court to appreciate the evidence and its truthfulness or sufficiency inasmuch as it is the function of the trial court. High Court's inherent powers, be it, civil or criminal matters, is designed to achieve a salutary public purpose and that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If the averments in the complaint do not constitute an offence, the court would be justified in quashing the proceedings in the interest of justice.

24. Second appellant-Dr. S.V. Joshi was the Associate Director. Third appellant Dr. G. Sunderarajan was the Director of ARCI and both of them were acting in their official capacity. Appellants No. 2 and 3 neither acted in their personal capacity nor stood to receive any personal monetary benefits from the transfer of said technology. Appellants No.2 and 3 were representatives of ARCI which is a grant-in-aid research and development institute under the Ministry of Science and Technology, Government of India and hence previous sanction as mandated under Section 197 Cr.P.C. must have been obtained before proceeding against them as their act was only in discharge

of their official duties. In this regard, our attention was drawn to a communication from Ministry of Science and Technology indicating that for initiating criminal proceeding against appellants No. 2 and 3, permission is required and the said communication reads as under:

> " ..... They have both been appointed by the Government of India and are governed by all rules and regulations of the Government of India....
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> It is further stated that we have examined all the actions taken by Dr. G. Sundararajan and S.V. Joshi in relation to the activities pertaining to the Technology Transfer Agreement dated 18/06/1999 between ARCI and M/s Nimra Cerglass, Hyderabad and are of firm view that these actions were taken by the above officers while discharging their official duty in good faith and in the best interest of ARCI.
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> Therefore, for initiating criminal proceeding against Dr. G. Sundararajan and Dr. S.V.Joshi, Government of India permission is required."

The alleged acts of the appellants No. 2 and 3 were committed while acting in discharge of their official duties, sanction from the competent authority was necessary before initiating the criminal prosecution against them. Since we have held that from the averments in the complaint, the essential ingredients of dishonest intention is not made out, we are not inclined to further elaborate upon this point.

25. As per the terms of the technology transfer agreement, ARCI has to conduct performance guarantee tests and in those

tests when ARCI was unsuccessful in achieving the targeted specifications, ARCI cannot be said to have acted with dishonest intention to cheat the respondent. Appellants-ARCI is a structure of Scientists, Team Leader and Associate Director and it is the team leader who actually executes the project, the job of Associate Director and Director is to monitor/review progress of the project. Appellants No.2 and 3 who were the Associate Director and Director of ARCI respectively were only monitoring the progress of the project cannot be said to have committed the offence of cheating. In the facts of the present case, in our view, the allegations in the complaint do not constitute the offence alleged and continuation of the criminal proceeding is not just and proper and in the interest of the justice, the same is liable to be quashed.

26. In the result, the impugned order is set aside and this appeal is allowed. The criminal proceedings against appellants No.1 to 3 in CC No. 840 of 2008 on the file of II Metropolitan Magistrate at Cyberabad, is quashed.

.....J.
(J.S. KHEHAR)

.....J.
(R. BANUMATHI)

New Delhi;
September 22, 2015