

(2008) 03 BOM CK 0122

Bombay High Court (Aurangabad Bench)

Case No: Criminal Writ Petition No. 1222 of 2007 (Bombay) Criminal Writ Petition No. 460 of 2007 (Aurangabad)

Astec Life Sciences Ltd. a Public
Limited company and Others

APPELLANT

Vs

The State of Maharashtra, The
Senior Inspector of Police, Crime
Branch, Nath Bio-gene (I) Ltd.
and Additional Commissioner of
Police, (E.O.W.) G.B.C.B., CID

RESPONDENT

Date of Decision: March 12, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 415, 463, 482
- Insecticides Act, 1968 - Section 29
- Insecticides Rules, 1971 - Rule 9
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 34, 406, 420, 468, 471

Hon'ble Judges: S.P. Kukday, J; P.V. Hardas, J

Bench: Division Bench

Advocate: Subhash Zhaa and R.S. Shinde, for the Appellant; P.M. Shinde, APP for Respondent Nos. 1, 2 and 4 and D.V. Soman, for the Respondent

Final Decision: Allowed

Judgement

S.P. Kukday, J.

Rule, made returnable forthwith, with the consent of parties. Counsels for respective parties waive notice. M/s Astec Life Sciences Limited (petitioner No. 1) , its Managing Director Mr. Ashok Vishwanath Hiremath (petitioner No. 2), Directors Dr. P.L. Tiwari and Mr. Laxmikant Kabra (petitioner Nos. 3 and 4), Managing Executive, Laxminarayan Alur (petitioner No. 5), Manager of Regulatory Affairs Mr. Ramesh

Pingle (petitioner No. 6) and Mr. K.V. Rao (petitioner No. 7) have filed this petition under Article 226 of the Constitution of India for quashing First Information Report registered by Waluj Police Station for the offences punishable under Sections 406, 420, 468 and 471 r/w 34 of the Indian Penal Code on the basis of complaint filed by Nath Bio-genes (Respondent No. 3) Aurangabad.

2. M/s Astec Life Sciences (petitioner No. 1) manufactures insecticides, drug intermediates and agro chemicals at its plant in MIDC Dombivali, District Thane. The company has another plant at Mahad District Raigad. Petitioner No. 1 company supplies its products to the customers from domestic market and exports them for the customers based in USA, UK, Europe and other foreign countries. It has its own quality control department where every product is tested, to ensure that it conforms to the required standard. Petitioner No. 1 entered into a contract with Nath Bio-gene (I) Limited of Aurangabad (Respondent No. 3) for sale of 3134 Kilograms of Imida cloprid 48% FS worth Rs. 27,41,389/-. The product was tested in the laboratory of petitioner No. 1 company and was delivered to Nath Bio-genes (Respondent No. 3) during 31st January 2007 to 12th April, 2007. Under Clause 3 of the purchase order (ExhibitE) respondent No. 3 was to accept the delivery only after inspection of the consignment and testing the product for quality, till then the consignment was to be treated as delivered for approval by respondent No. 3. After delivery of the goods, Respondent No. 3 issued four cheques for Rs. 8,75,000/ towards part payment. Petitioner No. 1 deposited cheques issued by respondent No. 1 towards part payment of the purchase price with Colaba branch of State Bank of Hyderabad on 5th June and 15th June 2007. As these cheques deposited with State Bank of Hyderabad on 5th June 2007 and 15th June 2007 were dishonoured, Astec served Nath Bio-genes with notice dated 23rd June 2007 u/s 138 of the Negotiable Instruments Act, 1881, for securing payment. On 15th of June 2007, Respondent No. 3 convened a meeting. Officers of respondent No. 3 bullied Ramesh Pingle (Petitioner No. 6), K.V. Rao (Petitioner No. 7) and L.D.Alur (Petitioner No. 5) for signing the minutes showing that Imidacloprid supplied by the Astec was substandard. These representatives of petitioner No. 1 denied correctness of the findings regarding quality of Imidacloprid arrived at by respondent No. 3. Representatives of the petitioner No. 1 Company were virtually confined and were threatened. Under coercion they made an endorsement on the reverse of the sheet that they are not authorized to sign the minutes. Instead of making payment Nath Bio-genes filed false and frivolous complaint with Waluj Police Station on 27th June 2007, alleging that the petitioners have committed offences punishable under Sections 406, 420, 468 and 471 r/w 34 of the Indian Penal Code.

3. The petitioners maintain that the product was duly tested in their laboratory before dispatching the consignment to respondent No. 3. As per the terms of the purchase order, the contract was to conclude only after the product was tested and approved by respondent No. 3. Till the tests were performed, the goods were to be with the consignee on approval basis. As respondent No. 3 has not carried out the

tests, the petitioners can not be blamed. From the sequence of events it is apparent that respondent No. 3 has raised a controversy and has filed a criminal complaint against the petitioners with ulterior motive to avoid payment of the purchase price. According to the petitioner No. 1 it is a reputed company and is engaged in supplying its products to customers from National and International Markets. Standard of the quality control tests for the domestic and international market are the same. Products of petitioner No. 1 company were not rejected in the international or the domestic markets. Quality of Imidacloprid supplied by petitioner No. 1 to Nath Bio-genes was not inferior. Respondent No. 3 has filed complaint against petitioners with ulterior motive to avoid payment of the price. No offence is disclosed by the recitals of F.I.R. even at this stage. On this premise the petitioners have filed present petition for quashing complaint filed by Nath Biogenes with Waluj Police on 27th June 2007.

4. Respondent No. 3 propounds that on the basis of experiments conducted by K.S. Pike, G.L. Reed, C.T. Graf and D.Allison of Irrigated Agricultural Research and Extension Centre, Washington State University, Annual Report published by the Directorate of Seed, New Delhi, in 2004-2005 and experiments conducted by other Institutes engaged in research on the subject, B.T. Cotton seeds are treated with Imidacloprid 48% FS which protects the seed from insects, Provax (a fungicide) which protects the seeds from fungus and polymer which acts as a binder and ensures that the coating remains intact. The seeds are then sold to the farmers from different States including Punjab, Haryana and Rajasthan. The seeds are generally sown by the cultivators during the month of April and May. After using the seeds in the year 2007 the cultivators started making complaint to respondent No. 3 about the inferior quality of the seeds as the seedlings started yellowing within 15 days of the sowing. There was leaf burning, leaf scorching and mortality of the seedlings resulting in loss of crop. As the seeds were of inferior quality 40,000 to 50,000 farmers were put to loss, which is approximately quantified at Rs. 50.00 crores. On receipt of the complaints, representatives of respondent No. 3, Keptura, Sampatti and petitioner No. 1 visited the fields in the regions from where the complaints were received for investigation. Thereafter a joint meeting of the representatives of all these companies was convened at the office of respondent No. 3 and it was decided to conduct necessary tests to identify which product is responsible for the catastrophe. The seeds were sown in different plots of respondent No. 3 reserved for conducting the experiments. After the tests, respondent No. 3 acquainted the representatives of the three companies at the meeting convened at the office of respondent No. 3 on 15th June 2007 with the results of the tests which disclosed that Imidacloprid was responsible for the debacle as the product was substandard. After due deliberations Minutes of the meeting were prepared. Representatives of Chemtura and Sampatti signed the minutes but Ramesh Pingle (respondent No. 6), K.V. Rao (respondent No. 7) and L.D. Alur (respondent No. 5) , representing petitioner No. 1, refused to sign the minutes on the premise that they have no

authority to do so. However, after persuasion these gentlemen signed the minutes on the reverse side making an endorsement that they would submit the minutes duly signed by them after authorization from the Managing Director.

5. Respondent No. 3 profess to have acted on the Analysis reports furnished by petitioner No. 1 company and to have used Imidacloprid 48% FS with provax and Polymer for treating the seeds. The seeds were then sold in the market. After the investigation, when it was found that Imidacloprid supplied by petitioner No. 1 company was responsible for the debacle, Respondent No. 3 conducted inquiries. The inquiries disclosed that the company had no authority to manufacture and sale Imidacloprid, as licence of petitioner No. 1 was cancelled by the Deputy Director of Agriculture. In spite of this petitioner No. 1 entered into an agreement of sale of the product and with requisite knowledge, executed forged documents of sale with an intention to cheat and cheated respondent No. 3 by supplying goods of inferior quality. On this premise respondent No. 3 maintain that the complaint filed with Waluj Police discloses commission of a cognizable offence. Respondent No. 3 has further clarified that after it was found that the product supplied by petitioner No. 1 was responsible for causing loss to the farming community, it had intimated the Bank for stopping payment and had communicated this fact to petitioner No. 1.

6. In response to the notice Respondent No. 4 Additional Commissioner of Police, (Economic Offences Wing) of C.I.D. has filed an affidavit in reply. According to Respondent No. 4, licence of petitioner No. 1 had been cancelled by the competent authority. Without having an authority to manufacture and sale the product, petitioner No. 1 executed an agreement and sold substandard product to respondent No. 3 with an intention to cheat and cheated the complainant by supplying substandard goods. The investigation carried out so far disclose that sample of the disposed batch is found to be substandard. As the First Information Report discloses commission of offence, investigation was first carried out by MIDC Waluj Police Station and Local Crime Branch. Thereafter, the investigation is transferred to Economic Offences Wing at Mumbai and is in progress. Bail Petition No. 1371 of 2007 filed by the petitioner has been disposed off by Ad-hoc Assistant Sessions Judge, Aurangabad on the ground that the Sessions Court has no jurisdiction to entertain the petition. The petitioner thus filed Bail Petition No. 1249 of 2007 in the Sessions Court at Mumbai. This bail petition is disposed off with the direction to approach Additional Chief Metropolitan Magistrate having jurisdiction. According to Respondent No. 4 as the complaint prima facie discloses commission of cognizable offence the petition for quashing the complaint is misconceived and deserves to be dismissed. It is further contended that as the investigation is being carried out by Economic Offences Wing at Mumbai, this Court has no jurisdiction to entertain the petition.

7. Both the parties have argued the matter at length. Learned Counsel for the petitioner Shri Subhash Zha propound that the false and frivolous allegations are

levelled against the petitioners with ulterior motive of avoiding payment for the goods. Learned Counsel would argue that cancellation of the licence of petitioner No. 1 during the relevant period has no nexus with the commercial transaction between the parties. This is not the first transaction by Astec with Nath Bio-genes, there were series of transactions between the parties without there being any complaint regarding quality of the goods till now. Thus at the most the Company can be prosecuted for selling the pesticide without licence but the infraction of the relevant statutory provisions can not ipso facto lead to the conclusion that there was either an intention to cheat or an intention to commit forgery. In support of the theory propounded by him, learned Counsel has placed reliance on the decision of this Court in *Kora Srinivas Rao Krishnamurthy and Anr. v. State of Maharashtra and Ors.* 2001 (5) LJSOFT 70. Referring to the principles governing the offence of forgery and cheating, learned Counsel emphasized that mens rea is an essential ingredient of these offences. Learned Counsel would argue that there is no whisper in the complaint that petitioners had fraudulent intent from the beginning or that execution of the document embodying the terms of the contract between the parties is influenced by any misrepresentation on the part of the petitioners. On the contrary, the fact that the parties have inserted a clause in the agreement that the goods are to remain with respondent No. 3 on approval basis till the respondent carries out test to verify that the goods conform to the desired standard. This fact does establish bonafides of the petitioner. It is contended that a representation which is neither claimed nor alleged to be dishonest or fraudulent does not amount to cheating. For this proposition, reliance is placed on the ruling of the Apex Court In [Abdul Fazal Siddiqui Vs. Fatehchand Hirawat and Another,](#) . Referring to the principles adverted by him, learned Counsel Shri Zha contends that the complaint deserves to be quashed as it does not disclose commission of cognizable offence.

8. Per contra, learned Counsel for respondent No. 3 Shri D.V. Soman would argue that respondent No. 3 purchased Imidacloprid from M/s Astec Chemicals Private Limited and M/s Astec Life Sciences Limited (petitioner No. 1). Licence of Astec Chemicals was already suspended and Astec Life Sciences never had a licence to manufacture Imidacloprid. The petitioners entered into a contract of sale of substandard insecticide with the knowledge that petitioner No. 1 or Astec Chemicals had no licence to manufacture Imidacloprid. Relying on the reports furnished by Astec, respondent No. 3 used the product sold by the petitioners. As the product was substandard, not only respondent No. 3 but the farming community suffered huge loss. The petitioners passed off the product to be of desired quality, though they knew that it was, in fact, of inferior quality. Shri Soman, learned Counsel for respondent No. 3 contends that the facts disclosed prima facie, show that the petitioners committed offences punishable under Sections 406, 420, 468 and 471 r/w 34 of the Indian Penal Code. Relying on the decision of the Apex Court reported in AIR 2006 SCW 3916, and AIR 2008 SCW 11, learned Counsel contends that writ jurisdiction can not be exercised to stifle investigation of an offence by the police.

9. Learned A.P.P. Shri P.M. Shinde, for respondent No. 4 would argue that licence of Astec Life Sciences Limited for manufacturing insecticides is suspended with effect from 30th August 2005. In spite of the fact that the Company had no licence, the petitioners sold Imida Cloprid which is alleged to be substandard by executing forged documents. Allegations in the First Information Report, prima facie, disclose commission of a cognizable offence, thus, no case is made out for quashment of the complaint. Learned A.P.P. Shri P.M. Shinde contends that the petition for quashing the complaint would lie to a Single Judge. It is further argued that the investigation is now transferred to Economic Offences Wing at Mumbai, therefore, Bench at Aurangabad would not have jurisdiction to entertain the petition.

10. Present petition is filed under Article 227 of the Constitution for quashing First Information Report filed by Respondent No. 3 for the offences punishable under Sections 406, 420, 468 and 471 r/w 34 of the Indian Penal Code. The High Court has powers of judicial review and can exercise extraordinary jurisdiction under Article 226 of the Constitution or u/s 482 of the Criminal Procedure Code to prevent abuse of the process of the court or otherwise to secure ends of justice. Supervisory power of the High Court under Article 227 of the Constitution is not merely administrative but is also of judicial nature. These powers are to be sparingly exercised primarily to prevent abuse of the process of the court. In an appropriate case there is no bar for the High Court to treat the petition filed under Article 226 to be one under Article 227 or even u/s 482 of the Code of Criminal Procedure if it is necessary to do so in the interest of justice. Dealing with this aspect In [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#), of the report the Apex Court observed:

22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers u/s 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code have

no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code, it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

11. In the present petition, the petitioners seek quashing of the complaint filed by respondent No. 3 mainly on the allegation that the petitioners resorted to criminal breach of trust and cheating by supplying substandard insecticide. The High Court can quash an F.I.R. or a complaint in exercise of its powers under Article 226 of the Constitution or u/s 482 of the Criminal Procedure Code if the allegations found in the F.I.R. or the complaint, taken at their face value and accepted in its entirety, does not prima facie disclose commission of a cognizable offence or make out a prima facie case against the accused or where manifestly the proceeding is actuated by malice. In *S.W. Palnitkar v. State of Bihar* (2001) 1 SCC 241, Their Lordships referred to the earlier decision in [M/s. Medchl Chemicals and Pharma P. Ltd. Vs. M/s. Biological E. Ltd. and Others](#), where it was held that

2. Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the Code to have the complaint or the charge-sheet quashed is an exception rather than a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of first information report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situation as is required under the law.

Their Lordships further observed that if no offence is made out from the allegations made in the complaint, there should be no hesitation in exercising power u/s 482 to pass appropriate order. In [Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others](#), , the Apex Court observed:

7. 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 the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and wherein the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

12. In [Sunil Kumar Vs. M/s. Escorts Yamaha Motors Ltd. and Ors.](#), it is observed : if the necessary ingredients of the offence of cheating or criminal breach of trust have not been made out and the attendant circumstances indicate that the F.I.R. was lodged to preempt filing of a criminal complaint against the informant u/s 138 Negotiable Instruments Act, the High Court was well within its power in quashing the FIR as otherwise it would amount to an abuse of the process of the court. The crux of the postulate is that criminal liability would arise only if there is an intention to commit criminal breach of trust and cheating at the inception. In that case mere fact that the transaction has a civil profile would not frustrate trial for commission of an offence of cheating and criminal breach of trust. In [Trisuns Chemical Industry Vs. Rajesh Agarwal and others.](#), the Supreme Court observed that quashing of FIR or a complaint in the exercise of inherent powers of the High Court should be limited to very extreme exception. Merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. It is further observed that the investigating agency should have the freedom to go into the gamut of allegations and to reach its own conclusion. The power to quash the complaint can not be exercised to scuttle the investigation of an offence by the investigating agency. In *State of Karnataka v. Pastor P. Raju* AIR (2006) SCW 3916 the Apex Court observed that inherent power of the High Court can be exercised to prevent abuse of the process of any court or otherwise to secure ends of justice. This power can be exercised to quash the criminal proceeding pending in any court but the power can not be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. Similar view is taken by the Apex Court in *Sanapareddy Maheedhar Seshagiri and Anr. v. State of Andhra Pradesh* AIR (2008) SCW 11 of the report the Court observed - "In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and social interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore while deciding a petition filed for quashing the FIR or complaint or restraining the competent authority from investigating the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect."

13. Criminal breach of trust involves dishonest misappropriation by a person in whom the trust is reposed as to the custody or management of the property in respect of which breach of trust is alleged. Essential ingredients of the offence are (i) a person should have been entrusted with the property or dominion over the property (ii) said person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose off that property or willfully suffer

any other person to do so; (iii) 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 a person has made, touching discharge of such trust. The offence consists of one of four positive acts, to wit, misappropriation, conversion, user or disposal of property. Neither failure to account nor breach of contract, however dishonest, can amount to an offence of criminal breach of trust.

14. Cheating involves deception of a person with fraudulent or dishonest intention to induce him to deliver any property or to give consent for retention of the property by any person. Definition of cheating comprises of two separate clauses. First clause deals with fraudulent or dishonest inducement to deliver any property to any person or to consent that any person shall retain any property. The second clause deals with act of intentional inducement to a 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. In cases based on contract, there is subtle distinction between a mere breach of contract and offence of cheating. Mere breach of contract does not amount to an offence of cheating unless fraudulent or dishonest intention is shown to exist from the beginning of the transaction. In *G.V. Rao v. L.H.V. Prasad* : 2000CriLJ3487 , the Apex Court observed:

7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrao Manilal Akhaney v. State of Bombay*, a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "mens rea" on the part of that person, must be established. It was also observed in *Mahadeo Prasad v. State of W.B.* that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.

15. Referring to the distinction between mere breach of contract and offence of cheating In [Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another](#) , Their Lordships observed in para 15 of the report:

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.

16. Offence of forgery involves making of a false document or part of it. Such making has to be with the intent (i) to cause damage or injury to either public or any person or (ii) to support any claim or title or (iii) to cause any person to part with his property or (iv) to cause any person to enter into express or implied contract or (v) to commit fraud or that fraud may be committed. Making of a false document simpliciter, does amount to forgery. Fraud is an integral part of forgery. The offence of forgery is complete if a false document is made with intent to commit fraud although it may not have been made with any one or other intents specified in Section 463. Where there is intent to deceive and by means of deceit to obtain an advantage, there is fraud, and if the document is fabricated with such intent it amounts to forgery.

17. Having referred to the principles governing the issues involved, we now turn to the facts of the present case. Astec entered into a contract with Nath Biogenes for sale of 3134 Kilograms of Imidacloprid 48% FS. Nath Biogenes placed first order for purchase of Imidacloprid with M/s Astec Life Sciences Limited on 29th January 2007 on the basis of quotation dated 10th January 2007 for 2000 kilograms of Imidacloprid 48% FS of red colour. Second order for 650 Kilograms was placed on 6th March 2007 on the basis of quotation dated 29th January 2007. The terms of the agreement were agreed between the parties at the time of the transaction. Third, fourth, fifth and sixth term, inter alia, provided that "3. The delivery of goods by the supplier to the company will not constitute acceptance by the company of the said goods. Only after inspection and satisfactory test by the company, acceptance of the goods will be completed and communicated to the supplier and till that time the goods (shall) remain with the company on suppliers account on approval basis only; 4. All goods accepted are subject to final approval of the companys Works Inspection regarding quality, quantity and specification MRR. The Company reserves the right to reject, if further defects are noticed while assembling or processing even if the first instance the goods have been accepted by the Company and are paid for Companys decision about such rejections at whatever time made shall be final & binding upon the supplier and the supplier shall not object to it in any manner whatsoever. All packing, octroi, freight & handling cost or any other of such rejected material will be borne by the supplier; 5. The supplier shall replace the rejected material within 3 days time from the date of receipt of Companys report of MMR rejection at the place of supply specified by the Company otherwise material rejected would be bought in open market on suppliers account and the amount will be deducted from the bill or debited to suppliers account; 6. Goods supplied must be according to the sample previously approved by the Company. The Company

shall be entitled to reject the goods which in their opinion are not according to the sample. If the goods are not approved by the Company for any reason whatsoever, the Company Shall not be liable to pay any sum on account of such rejected goods. "

18. Undisputedly, Astec supplied Imidacloprid, with the certificate of the Analysis carried out in their laboratory, for all the six batches. Nath Biogenes, however, did not exercise its prerogative to test the product before accepting the delivery and used it for treating Bt Cotton seed, along with provax and polymer. In the sowing season of March/April, farmers from Punjab, Rajasthan and Haryana (North India) used seed marketed by Nath Biogenes. On germination of the seed, the farmers noticed yellowing of the seedlings, leaf burning and leaf scorching, leading to the mortality of the seedlings. On getting inputs from its Bhatinda office, representatives of Nath Biogenes and Astec visited the affected areas in the month of May for inspection. On 30th May 2007 representatives of Astec, Chemtura and Sampathi Industries attended the meeting at the office of Nath Biogenes at Aurangabad. As decided in the meeting experiments were conducted to ascertain which chemical is responsible for the disaster. Result of the experiments were checked by these representatives. It was found that Imidacloprid from five batches was of the desired quality, as it produced results expected from a standard pesticide. Results produced by batch No. 070301 were, however, not satisfactory. For this batch flat bed mortality rate was between 91 to 94% and Ridge and furrow mortality rate was between 36.7 to 46.6%. The experiments disclosed that Imidacloprid from this batch was substandard and was responsible for failure of the crop. This fact is also borne out from the reports of other laboratories placed on record including the reports from the Office of the Chemist, Pesticide Testing Laboratory of the Government of Maharashtra at Aurangabad. Report of the Investigating Officer dated 5th of March, 2008 also substantiate this conclusion.

19. The transaction between the petitioners and respondent No. 3 is purely a commercial transaction. The petitioners offered to sale Imidacloprid 48% FS and respondent No. 3 accepted the offer by taking precautions to include Clauses 3 to 6 in the contract for its protection against supply of substandard product. In the complaint there is no whisper regarding fraudulent representations on the part of the petitioners when they entered into a contract of sale of Imidacloprid with Nath Biogenes. The petitioners had sent certificate of analysis to vouch for the quality of the product. There is no allegation in the complaint that these certificates were in any manner fabricated. Even otherwise, had there been such an allegation in the complaint, even prima facie, it would not have been acceptable in view of the admitted fact that out of six batches, pesticide from only one batch was found to be of inferior quality. It is also not in dispute that Astec had marketed Imidacloprid for domestic and international consumers. There is nothing on record to show that there was any complaint from other consumers regarding the quality of the product. In this background we are not inclined to sustain theory propounded by learned Counsel for respondent No. 3 Shri D.V. Soman, that false pretence can be

inferred from the fact that inferior quality of Imidacloprid was responsible for failure of the crop. Though it is not the sole test, it is permissible to rely on the subsequent conduct of the accused to ascertain whether there was intent to deceive from the inception of the transaction, however, the subsequent events which merely disclose consequences flowing from the act, can not be placed on the same footing. Therefore, the fact that estimated loss runs into crores of rupees can not be allowed to cloud the judgment, as resultant damage or harm can not, ipso facto, imply deception. Fraudulent or dishonest intention is the gist of the offence. The person cheated must have been intentionally induced to do an act which he would not have done or omitted to do, but for the deception practiced on him. In the present case there is no material on record to suggest that the petitioners knowingly made any false representation to peddle their product. On the contrary, they accepted conditions put by Nath Biogenes to test the product for quality and to return the consignment if the quality of the product was found to be inferior. In the light of the fact that the disputed transaction was not the only transaction between the parties, we are inclined to sustain contention of learned Counsel Shri Subhash Zha that inference of fraudulent intention can not be drawn merely from the fact that one of the batches of the product supplied by the petitioners did not conform to the desired standard. Learned Counsel Shri Soman has also referred to the concealment of the fact that licence of Astec Life Sciences was suspended by the competent authority, to contend that inference of dishonesty can be drawn from the concealment. We can not subscribe to this reasoning. Dishonest concealment of a fact would amount to deception only if it results in causing wrongful loss or wrongful gain. In the present case there is no material to show existence of dishonest intention to cause loss or damage to respondent No. 3 by concealing the fact that licence to manufacture Imidacloprid was suspended, nor is there any material to establish that causing of loss was even remotely intended. As this is not a case of a single transaction to earn profit, ordinarily it would be assumed that the petitioners had an intention to promote a product of high quality. In this backdrop concealment of the fact of the licence to manufacture the product being suspended for the time being, can not amount to dishonest concealment with intent to deceive the complainant, though the petitioners may be in a vulnerable position for committing breach of Rule 9 of the Insecticide Rules, 1971, for want of ISI mark certification or other statutory provisions.

20. Learned Counsel Mr. Zha has further contended that this is an instance where complaint is filed against the petitioners to wreck vengeance and to prevent them from prosecuting respondent No. 3 for offence punishable u/s 138 of the Negotiable Instruments Act. We are not inclined to sustain this theory. In the light of the fact that Imidacloprid from one batch was indeed of inferior quality and the fact that there was sufficient bank balance in the bank account of Nath Biogenes, no motive can be attributed to the respondent No. 3. In the case of a commercial transaction distinction between civil liability and criminal liability is very subtle. The questionable

act may amount to a civil wrong and a criminal offence. In such a case the aggrieved person can pursue civil and criminal remedies available to him. However, if the act is predominantly a civil wrong, it is not permissible to institute criminal proceeding against the adversary, for pressurizing him. We are not oblivious to the predicament of respondent No. 3. However, though the circumstances of the present case do not justify launching of a criminal prosecution, it is open for respondent No. 3 to have recourse to the civil remedies available to it for the purpose of redressal of its grievances. Learned Counsel Shri D.V. Soman has referred to the fact that Astec Chemicals had no licence to manufacture Imidacloprid and the licence of Astec Life Sciences was suspended by Deputy Director of Agriculture, Thane Division with effect from 30th August 2005, to contend that concealment of this fact by the petitioners does indicate existence of dishonest intention. We are not inclined to sustain this contention in view of the absence of material to suggest that concealment on the part of the petitioners was with an intention to cause loss or damage to respondent No. 4. Breach of the provisions of Central Excise Rules, 2002 or for the breach of Section 29 of the Insecticide Act, 1968, may visit Petitioner Company with penal consequences, but the infraction of these provisions does not amount to either cheating or criminal breach of trust.

21. Referring to the allegations in the FIR that the petitioners purposefully stamped the Invoice, with the stamp of Astec Life Sciences Ltd. to represent that the pesticide is supplied by Astec Life Sciences though it was supplied by Astec Chemicals Pvt. Ltd. from its Thane unit; learned Counsel Shri Soman contends that the petitioners have committed forgery of the document. To establish offence of forgery it must be shown that the petitioners made a false document and that such making was with the intent of causing loss or damage to respondent No. 3 or to cause respondent No. 3 to part with the property or to induce it to enter into a contract for purchasing the pesticide. Existence of dishonest or fraudulent intent on the part of the forger has to be established. Fraudulent intent can be presumed if there is an intention to deceive and by means of deceit to obtain an advantage. In the present case there is nothing beyond the allegation that the petitioners used rubber stamp of Astec Life Sciences though the goods were in fact supplied by Astec Chemicals. The petitioners have placed an affidavit dated 19th of October 2007 sworn by petitioner No. 6 in respect of the change in the name of the company from Astec Chemicals Private Limited to Astec Life Sciences Private Limited and thereafter to Astec Life Sciences Limited to show transition from private limited company to public limited company. Certificates dated 3rd March 2006 and 27th April 2006 issued by the Registrar of Companies are placed on record. In the paragraph 5 of the affidavit petitioner No. 6 states that manufacturing licence of the Dombivali plant alone was suspended. Licence for Mahad plant was valid. In the absence of the averment that the stamping was done with dishonest or fraudulent intention to cause loss or damage or for inducement to secure a contract, it is difficult to envisage how the allegations of forgery can be substantiated. Careful consideration of the material on record

would show that Astec had regular dealings with Nath Bio-genes and had no necessity to resort to the device of fabricating the invoice. In the light of the facts of the present case, as none of the ingredients of forgery are satisfied even at the prima facie stage, it is not possible for us to subscribe to the view that use of the rubber stamp of Astec Life Sciences on the invoice does amount to forgery of the invoices issued by the petitioners.

22. Learned Assistant Government Pleader Shri P.M. Shinde did argue that this Court has no jurisdiction to entertain the petition as the investigation is transferred to the Economic Offences Wing, Mumbai. We do not deem it necessary to dilate on this aspect as the issue is already decided by the Mumbai Bench of this Court. Nor is it necessary to dilate on the aspect of the jurisdiction of the Division Bench to decide the petition. Ordinarily the petition would lie to the single Bench, however, as another petition filed by respondent No. 3, this petition was being dealt with it. Respondent No. 3 subsequently withdrew that Cri. writ petition No. 434/2007 but as this writ petition was heard, it is being decided by the Division Bench.

23. In the light of the fact that Astec Life Sciences had series of dealing with Nath Bio-genes and that only one batch of Imidacloprid was found to be of inferior quality, in our considered opinion, the averments of the FIR do not disclose commission of cognizable offence, even if they are assumed to be true. In the light of this finding FIR dated 27th June, 2007 filed by respondent No. 3 with MIDC Waluj Police Station deserves to be quashed. The petition is thus allowed. Rule is made absolute in terms of prayer Clause (a) with no order as to the costs.