PETITIONER:
TRISUNS CHEMICAL INDUSTRY

Vs.

RESPONDENT:
RAJESH AGARWAL AND OTHERS C

DATE OF JUDGMENT: 17/09/1999

BENCH:
K.T.Thomas, M.B.Shah

JUDGMENT:

Thomas J.

Leave granted.

Chairman of the appellant company filed a complaint before the Judicial Magistrate of First Class, Gandhidham (Gujarat) alleging certain offences including the offence of cheating against another company located at Indore (Madhya pradesh) and its Directors. The Magistrate forwarded the complaint to the appellant for investigation as per his order passed under Section 156(3) of the Code of Criminal Procedure (for short the Code). The accused Directors thereupon moved the High Court of Gujarat under Section 482 of the Code for quashing the complaint. A single Judge of the High Court quashed the complaint as also the order passed by the Magistrate thereon. Complainant has, therefore, filed this appeal. The gist of the complaint is this: In the month of October 1996 the accused Directors approached him and offered to supply 5450 metric tones of Toasted Soyabean Extractions for a price of nearly four and a half crores of rupees. The rate quoted by the accused was higher than the market price. Appellant had to pay the price in advance as demanded by the accused. So the same was paid through cheques. But the accused sent the commodity which was of the most inferior and sub-standard quality. Complainant produced Xerox copies of the reports obtained from the laboratory to which samples of the commodities were sent for testing purposes. The said laboratory has remarked that the commodity was of the most inferior and sub-standard quality. The complainant suffered a loss of 17 lakhs of rupees by the aforesaid consignment alone. According to the appellant he was induced to pay the price on the representation that the best quality commodity would be supplied and the price was paid on such representation. But by supplying the most inferior quality the accused deceived the complainant and thereby the offence was committed. The above are the salient features of the allegations in the complaint. We have noted from the judgment of the learned single judge of the High Court that appellants counsel in the High Court did not turn up to argue the matter. Evidently learned judge was deprived of the advantage of getting appellants version projected. The deficiency is seen reflected in the impugned judgment also. Respondents counsel in the High Court put forward mainly two contentions. First was that the dispute is purely of a

civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of First Class, Gandhidham has no jurisdiction to entertain the complaint. Learned single judge has approved both the contentions and quashed the complaint and the order passed by the magistrate thereon. On the first count learned single judge pointed out that there was a specific clause in the Memorandum of Understating arrived between the parties that disputes, if any, arising between them in respect of any transaction can be resolved through arbitration. High Court made the following observations: Besides supplies of processed soyabean were received by the complainant company without any objection and the same have been exported by the complainant-company. The question whether the complainant-Company did suffer the loss as alleged by it are the matters to be adjudicated by the Civil Court and cannot be the subject matter of criminal prosecution."

Time and again this Court has been pointing out that quashment of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions [vide State of Haryana vs. Bhajan Lal (1992 suppl.(1) SCC 335) and Rajesh Bajaj vs. State NCT of Delhi (1999(3) SCC 259)]. In the last referred case this court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations: It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana vs. Bhajaj Lal (Supra). Learned single judge has accepted the alternative contention advanced by the respondent pertaining to want of jurisdiction for the Judicial Magistrate of First Class, Gandhidham in respect of the offence alleged in the complaint. This is what the High Court has said on that aspect: Further, there is nothing in the complaint which shows that any part of the transaction took place within the territories of the State of Gujarat. It appears that even the supply of processed soyabean was delivered to the complainant-company at the factory itself. In my view, therefore, Mr. Shah is right in contending that the court of the learned Judicial Magistrate, First Class, Gandhidham ought not to have taken cognizance of the matter and ought not to have directed to issue the process.

It is an erroneous view that the Magistrate taking

cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal courts in enquiries and trials. That chapter contains provisions regarding the place where the enquiry and trial are to take place. Section 177 says that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. But section 179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a court within whose local jurisdiction such thing has been done or such consequence has ensued.. It cannot be overlooked that the said provisions do not trammel the powers of any court to take cognizance of the offence. Power of the court to take cognizance of the offence is laid in Section 190 of the Code. Sub-sections (1)& (2) read thus: (i) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(ii) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 193 imposes a restriction on the court of sessions to take cognizance of any offence as a court of original jurisdiction. But any Magistrate of the First Class has the power to take cognizance of any offence, no matter that the offence was committed within his jurisdiction or not. The only restriction contained in Section 190 is that the power to take cognizance is subject to the provisions of this Chapter. There are 9 Sections in Chapter XIV most of which contain one or other restriction imposed on the power of a first class magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these: Except as hereinafter provided. Those words are now replaced by Subject to the provisions of this chapter. Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a judicial magistrate of first class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a magistrate of the power to take cognizance of an offence of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non-obstante clauses. Any way that is a different matter. The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that only a

magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier. Unfortunately, the High Court, without considering any of the aforesaid legal aspects rushed to the erroneous conclusion that the judicial magistrate of first class, Gandhidham has no power to take cognizance of the offences alleged merely because such offences could have been committed outside the territorial limits of the State of Gujarat. Even otherwise, without being apprised of the fuller conspectus a decision on the question of jurisdiction should not have been taken by the High Court at a grossly premature stage as this. For all the aforesaid reasons we are unable to concur with the impugned judgment. We, therefore, quash it. Learned counsel for the respondents invited our attention to the fact that all the accused persons arrayed in the complaint are residing at Indore in Madhya Pradesh and he apprehends that revival of investigation in the case would most probably embroil them in a miserable position if they are arrested. We considered that aspect in the view we now take and we also foresee such a plight for the accused. To alleviate any possible hardship for the respondents we direct that if any of the respondents is arrested in connection with the above complaint, he shall be released on bail by the arresting officer on execution of a bond to his satisfaction. However, such arrested person shall be bound to report to the investigating officer at the place and time specified for the purpose of interrogation.

The appeal is disposed of in the above terms.