



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Principal Seat at Guwahati

Criminal Petition No. 554/2021

- 1. Kishor Bhattacharjee**
S/o Late Keteki Ranjan Bhattacharjee,
R/o Second Floor, Flat 8A, HJ 20,
SL Sarani, Joramandir, P.O. & P.S. Baguiati,
Kolkata- 700159

- 2. Papun Bhattacharjee**
W/o Kishor Bhattacharyee
S/o Late Keteki Ranjan Bhattacharjee,
R/o Second Floor, Flat 8A, HJ 20,
SL Sarani, Joramandir, P.O. & P.S. Baguiati,
Kolkata- 700159

...PETITIONERS

VERSUS

- 1. The State of Assam,**
Represented by the P.P. Assam.

- 2. Shri Keshab Ch. Das**
S/o Late Mukunda Ram Das
R/o House No. 3, Bye Lane No. 7
Shadabor Avenue, P.S. – Geetanagar,

Guwahati, Kamrup (M) Assam
Pin- 781021

...RESPONDENT

**...BEFORE...
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the petitioner :- Mr. M.K. Choudhury, Sr. Adv.,
Mr. S. Khound.

For the respondent No.1 :- Mr. D. Das, Addl. P.P.

For the respondent No.2 :- Mr. A. R. Bhuyan

Date of Hearing : 10.10.2023

Date of Judgment and Order : 07.11.2023

JUDGMENT & ORDER (CAV)

Heard Mr. M.K. Choudhury, learned Sr. Counsel assisted by Mr. S. Khound, learned counsel for the petitioner. Also heard Mr. D. Das, learned Addl. P.P. for the respondent No.1, i.e. State of Assam and Mr. A.R. Bhuyan, learned counsel for the private respondent No.2.

2. This petition, under Section 482 of the Code of Criminal Procedure, 1973 is preferred by Shri Kishor Bhattacharjee and Smti Papun Bhattacharjee for quashing the First Information Report of

Geetanagar P.S. Case No.308/2019, registered under sections 120B/385/420/468/34 IPC, lodged by informant Keshab Ch. Das on 25.07.2019.

3. The background facts, leading to filing of the present petition, is briefly stated as under:-

“On 25.07.2019, one Keshab Ch. Das of Zoo Narengi Road, Guwahati, lodged one F.I.R. with the Geetanagar Police Station, alleging inter alia amongst others that on 24.07.2019, at about 11 am, two persons came to his residence and introduced themselves as Shri Kishor Bhattacharjee and Smti Papun Bhattacharjee and since he and his wife were absent, they handed over to his son some papers and demanded a sum of Rs.14,25,000/- and asked his son to make payment immediately else they would take action against him. On 25.07.2019, while he reached home then he had gone through the papers and found that the said two persons had fraudulently made the said papers of his Firm and the signatures thereon are also not of him. It is also stated that Kishor Bhattacharjee was working as Asstt. Manager in Canara Bank Zonal Office situated at G.S. Road, Guwahati and he was familiar to him as he had availed business loans from Canara Bank from the year 2005 to 2008 and Kishor Bhattacharjee had dealt with all his papers relating to his business loan in the name of K.C. Das & Associates and Brahmaputra Coach Builders and at that time he was demanding bribe from him and then he had reported the matter to the Zonal

Manager. It is also stated that Kishor Bhattacharjee had misused the signatures of many customers and misappropriated bank money for which he was officially suspended and dismissed from the bank job in the year 2008-2009. It is also stated that he was not aware of Kunal Kumar Pant, Notary Officer and Advocate - Mr. M.M. Alam, who had identified the money receipt and he never visited any Notary Office in Kolkata and he had never put any reference number in the money receipt and the same was false and the letter head of his Firm and the seal and his signature thereon all are forged.

Upon the said FIR, the Officer-in-Charge, Geetanagar Police Station has registered a case, being Geetanagar P.S. Case No.308/2019, under sections 120(B)/385/420/468/341 IPC, and endorsed S.I. Pranab Baishya to investigate the same. The I.O. then started the investigation by visiting the place of occurrence and examining the witnesses.”

4. Being highly aggrieved, the petitioners have preferred the present petition on the following grounds:-

- (i) That, the allegations made in the FIR, dated 25.07.2019, even if taken on their face value and accepted in its entirety, do not disclose commission of any offence under section 468/471 IPC, by the petitioners;
- (ii) That, the FIR dated 25.07.2019 is the counterblast of Criminal Complaints filed by the petitioners against the respondent No.2;

- (iii) That, the respondent No.2 had taken a sum of Rs.7,00,000/- from the petitioner on different dates in the year 2006 and another sum of Rs.14,25,000/- in the year 2011 and 2012 and issued Money Receipts, which bears his signatures and the signature of the witness, and that there is no elements to constitute any of the ingredients of the offences under section 420/385/468/120(B)/34 IPC against the petitioners;
- (iv) That, there is no whisper of allegations in the FIR against the present petitioners for commission of the offence under which the present case has been registered and that the petitioners have no *mens-rea*, which would bring their action within ambit of culpability of the offences mentioned in the FIR;
- (v) That, the FIR, so lodged against the petitioner is an abuse of the process of the court and therefore, it is contended to allow the petition.

5. Mr. M.K. Choudhury, the learned Sr. Counsel for the petitioners, reiterated the points mentioned here in above during hearing. Mr. Choudhury submits that the FIR is the counterblast of the Complaint Cases lodged by the petitioner against the respondent No.2. Mr. Choudhury further submits that there was transaction of money between the petitioner and respondent No.2 and the respondent No.2 has issued cheques and the said cheques, when presented in the Bank for payment but the cheques were returned dishonoured and

therefore, the petitioners have instituted the Complaint Cases against the respondent No.2 and in the said Cases Bailable Warrants were issued against the respondent No.2 and after appearing in the said cases, in the Court at Kolkata, the respondent No.2 had filed the present FIR as counterblast. Mr. Choudhury, further submits that the present FIR is a fabricated FIR and even if the allegations made in the said FIR, if taken at their face value, had failed to disclose any case against the present petitioners and therefore, it is contended to allow this petition. Mr. Choudhury also referred following case laws to bolster his submission:-

(i) **Madhavrao Jiwajirao Scindia & Others vs. Sambhajirao Chandrojirao Angre & Others;** reported in **(1988) 1 SCC 692;**

6. On the other hand, Mr. A.R. Bhuyan, learned counsel for the respondent No.2, submits that the petitioner No.1 was serving as Canara Bank official and that the respondent No.2 had availed loan from the Canara Bank and while availing loans the respondent No.2 had issued some cheques as security and being Bank official, the petitioner No.1 had misused the same by filing false case under N.I. Act. Mr. Bhuyan further submits that the respondent No.2 had never availed any loans from the petitioners and also never issued any cheques for repayment of the said loans. It is the further submission of Mr. Bhuyan that the petitioner No.1 is a habitual offender and he was terminated from the service by the Bank and he was also convicted and sentenced by the CBI Court at Guwahati. Mr. Bhuyan

also submits that the at the very initial stage investigation of the case was stayed by this court and that unless the investigation is allowed to complete, it cannot be said at this stage that no case is made out against the petitioners. Therefore, Bhuyan has contended to dismiss the petition. Mr. Bhuyan has also referred following case laws in support of his submissions:-

(i) Sanapareddy Maheedhar Seshagiri & Another vs. State of Andhra Pradesh & Another, reported in (2007) 13 SCC 165.

(ii) M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Ors. (2021 SCC OnLine SC 315),

7. Per contra, Mr. D. Das, learned Addl. Public Prosecutor for the State respondent submits that having perused the FIR it cannot be said that no prima-facie case is made out against the petitioners under sections 120(B)/385/420/468/341 IPC, and that this is not a fit case for quashing the FIR and that the petitioner is also absconding and has not been co-operating with the I.O., and since the investigation is in nascent stage, it would be pre-mature to held that the allegations in the FIR are false. Referring to a letter of the Senior Manager of Canara Bank, dated 07.11.2019, available in the Case Diary, Mr. Das submits that the petitioners had done many fictitious debits under various head of accounts without any sanctions/approval/bills/vouchers and proceeds were siphoned off by issuing Demand Drafts to various Firms without actual supply of materials and also he had done various fraudulent alteration of amount in the slips/vouchers, wrongful debit,

withdrawal of cash which is in total violation of Bank's laid down system and procedure and he was dismissed from service on 30.03.2010, and a CBI case being RC 1(A)/2008/GWH/CBI, dated 04.01.2008, has been registered against him. Mr. Das further submits that this is not a fit case to exercise the power under section 482 Cr.P.C. and therefore, it is contended to dismiss the same.

8. In his reply, Mr. Choudhury, the learned Senior Counsel for the petitioners, submits that there is no question of absconding, as this court has stayed the further investigation of the case.

9. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and the Case Diary of Geetanagar P.S. Case No. 308/2019, so produced by Mr. D. Das, learned Addl. P.P. and also carefully gone through the case laws referred by learned counsel for both the parties.

10. When and how the FIR and Criminal proceeding is to be quashed, and the power of High Court under section 482 Cr.P.C. is elaborately dealt with in the case of **M/s Neeharika Infrastructure Pvt. Ltd. (supra)**, by a three Judges' Bench of Hon'ble Supreme Court as under:-

- (iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of

rare cases (not to be confused with the formation in the context of death penalty).

- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

- (x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;
- xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

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11. Again in the case of **Sanapareddy Maheedhar Seshagiri** (supra) referred by Mr. Bhuyan, learned counsel for the respondent No.2, it has been held that –

"26. At this stage, we may also notice the parameters laid down by this Court for exercise of power by the High Court under Section 482 Cr.P.C to give effect to any order made under the Cr.P.C or to prevent abuse of the process of any court or otherwise to secure the ends of justice. In R.P. Kapur v. State of Punjab [AIR 1960 SC 866] this Court considered the question whether in exercise of its power under Section 561A of the Code of Criminal Procedure, 1898 (Section 482 Cr.P.C. is parimateria to Section 561A of the 1898 Code), the High Court could quash

criminal case registered against the appellant who along with his mother-in-law was accused of committing offences under Section 420, 109, 114 and 120B of the Indian Penal Code. The appellant unsuccessfully filed a petition in the Punjab High Court for quashing the investigation of the First Information Report (FIR) registered against him and then filed appeal before this Court. While confirming the High Court's order this Court laid down the following proposition:

The inherent power of High Court under Section 561A, Criminal P.C. cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

27. *This Court then carved out some exceptions to the above stated rule. These are:*

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings in

respect of the offences alleged. Absence of the requisite sanction may, for instance, furnish cases under this category;

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not;

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence

the accusation made against the accused would not be sustained.

28. *In State of Haryana v Bhajanlal [1992 Supp. (1) SCC 335] this Court considered the scope of the High Court's power under Section 482 of Cr.P.C and Article 226 of the Constitution to quash the FIR registered against the respondent, referred to several judicial precedents including those of R.P.Kapoor v. State of Punjab (supra), State of Bihar v. J.A.C. Saldanha [1980 (1) SCC 554] and State of West Bengal v. Swapan Kumar Guha [1982 (1) SCC 561] and held that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, the Court identified the following cases in which the FIR or complaint can be quashed.*

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

29. *The ratio of Bhajan Lals case has been consistently followed in the subsequent judgments. In M/s Zandu Pharmaceutical Works Ltd. V. Mohd. Sharaful Haque (supra), this Court referred to a large number of precedents on the subject and observed:*

"11....The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted

on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. It if appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that even there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

In the aforementioned judgment, this Court set aside the order of the Patna High Court and quashed the summons issued

by the First Class Judicial Magistrate in Complaint Case No.1613) of 2002 on the ground that the same was barred by limitation prescribed under Section 468 (2)) Cr.P.C.

30. *In Ramesh Chand Sinhas case (supra) this Court quashed the decision of the Chief Judicial Magistrate, Patna to take cognizance of the offence allegedly committed by the appellants by observing that the same was barred by time and there were no valid grounds to extend the period of limitation invoking section 473 Cr.P.C.*

12. Thereafter, in paragraph No.31 it has been held as under:-

"A careful reading of the above noted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the court. 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 societal 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. If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 Cr.P.C.”

13. Again, in the case of **Dineshbhai Chandubhai Patel Vs. The State Of Gujarat**, reported in **(2018) 3 SCC 104**, following earlier decision in **State Of West Bengal & Ors vs Swapan Kumar Guha & Ors.**, reported in **(1982) 1 SCC 561**, it has been held that High Court cannot decide the issue arising out of the case like an investigating agency or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure. In the case of **Swapan Kumar Guha (supra)**, it was held that right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power to investigate into cognizable offences.

14. Now, to the case in hand, I find that following facts and circumstances have emerged from a bare perusal of the FIR, dated 25.07.2019:-

- (i) That, on 24.07.2019, the petitioners had visited the residence of the respondent No.2.
- (ii) That, on that day the petitioner and his wife were not present in the residence.
- (iii) That, the petitioners had introduced themselves as Kishor Bhattacharjee and Papun Bhattacharjee.

- (iv) That, both the petitioners have handed over some papers to the son of the respondent No.2 and demanded a sum of Rs.14,25,000/-, and asked his son to make payment of the same immediately or they will take action against the respondent No.2.
- (v) That, the petitioner No.2 was working in Canara Bank Zonal Office as Asstt. Manager and he had dealt with the papers of the respondent No.2, who had availed business loan in the said Bank in the name of his two Firms, namely, K.C. Das & Associates and Brahmaputra Coach Builders and the petitioner No.1 had demanded bribes from him which he had refused and reported the matter to the Zonal Manager;
- (vi) That, on 25.07.2019, on going through the papers, the respondent No.2 had found that the said two persons had fraudulently made the said papers in the name of his Firms and the signatures thereon are also not of him.
- (vii) That, the petitioner No.1 had misused the signatures of many customers and misappropriated bank money for which he was officially suspended and dismissed from the bank job in the year 2008-2009.
- (viii) That, the respondent No.2 was not aware of Kunal Kumar Pant, Notary Officer and Advocate - Mr. M.M. Alam, who had identified the money receipt and he never visited any Notary Office in Kolkata and he never put any reference

number in the money receipt and the same was false and the letter head of his Firm and the seal and his signature thereon all are forged.

15. The Case Diary also indicates that the I.O. had examined as many as four witnesses and collected some materials in support of the allegations made in the FIR. It also appears that the I.O. has issued notice to the Senior Manager, Canara Bank on 05.11.2019, and pursuant to the said Notice, the Senior Manager has issued one letter to the Officer -In- Charge, Geetanagar P.S. on 07.11.2019, indicating therein that the petitioner had done many fictitious debits under various head of accounts without any sanctions/approval/bills/vouchers and the proceeds were siphoned off by issuing Demand Drafts to various Firms without actual supply of materials and also he had done various fraudulent alteration of amount in the slips/vouchers, wrongful debit, withdrawal of cash which is in total violation of Bank's laid down system and procedure and he was dismissed from service on 30.03.2010 and a CBI case, being RC 1(A)/2008/GWH/CBI, dated 04.01.2008, has been registered against him.

16. It is also to be noted here that the respondent No.2 has also filed one Interlocutory Application, being I.A. No.84/2022, for vacation of the stay order dated 04.10.2021, passed by this court. In the said application at page No.59, as Annexure-V, the applicant has annexed one Judgment passed by the learned Special Judge, CBI, Assam dated 30.07.2014, in CBI Case No. RC 1(A)/2008/GWH/CBI, wherein the

petitioner No.1 was convicted under sections 120B/420/471/467 IPC and Section 13(1)(d) read with Section 13(2) of P.C. Act, and sentenced to suffer rigorous imprisonment for 2 years and fine of Rs.5000/- u/s 120B IPC and R.I. for 3 years and fine of Rs.10,000/- each u/s 420/467/471 IPC and R.I. for 3 years and fine of Rs.10,000/- each u/s 13(1)(d) read with Section 13(2) of P.C. Act, with default stipulations. These facts lends assurance to the contents of the letter of the Senior Manager, dated, 07.11.2019, of the Canara Bank, which, on the other hand, lends assurance to the allegations made in the FIR, dated 25.07.2019.

17. While these facts and circumstances, that have emerged from the FIR and from the Case Diary, are considered in the light of the principles laid down in the case of **M/s Neeharika Infrastructure Pvt. Ltd. (supra)**, as discussed herein above, this court is left unimpressed by the submission of Mr. Choudhury, the learned Sr. Counsel for the petitioner, that no case is made out and that the story, so set out in the FIR, is improbable. And accordingly, this court is unable to record concurrence with the same. In the case in hand, the allegations against the petitioners are under Sections 120B/385/420/468/34 of the IPC. The factual foundation of the said offences seems to be clearly laid in no uncertain terms in the FIR. And further it appears from the Case Diary that sufficient materials are collected by the I.O. during investigation, in support of the same.

18. I have also considered the other submission of Mr. Choudhury and gone through the case law **Madhavrao Jiwajirao Scindia & Others (supra)** referred by Mr. Choudhury, learned Sr. Counsel for the petitioner, wherein, at paragraph No.7, it has been held as under:-

“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 in to 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 where in the opinion of the court chances of an ultimate conviction is 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.”

19. Since herein this case the investigation is in nascent stage, it cannot be said at this stage that the chances of ultimate conviction is bleak and no useful purpose will be served by allowing to continue with the investigation. There is nothing on the record to suggest that the legal process is utilised for any oblique purpose. Though it was argued strenuously by Mr. Choudhury, the learned Sr. Counsel for the petitioners that the FIR is the counterblast of the complaint cases filed by the petitioners against the respondent No.2, yet, in the given facts

and circumstances of the case in hand, and as discussed herein above, the said submission left this court unimpressed. Therefore, the ratio laid down in the case law, referred by Mr. Choudhury, would not advance the case of the petitioners.

20. On the other hand, I find substances in the submission of Mr. Bhuyan, learned counsel for the respondent No.2 and Mr. Das, learned Addl. P.P. and the case laws referred by Mr. Bhuyan, also strengthen his submissions. Therefore, this court is inclined to record concurrence with their submissions.

21. In the result, I find no merit in this petition and accordingly, the same stands dismissed. The parties have to bear their own costs. Stay granted earlier, stands vacated.

JUDGE

Comparing Assistant