IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2253 OF 2014

Nazir Mussa,]
British National, Age 63 years,]
son of Gulam Hussain Mohammed]
Hussain, residing at Batchworth Lane,]
Northwood Middlesex, United Kingdom,]
presently at Mumbai.] ..**PETITIONER.**

Versus

1] The Commissioner of Police,]
Mumbai Police Head Quarters,]
Crawford Market, Mumbai.]
]
]
2] The Additional Commissioner of]
Police – Economic Offences Wing,]
Mumbai Police Head Quarters,]
Crawford Market, Mumbai.]
]
]
3] The Senior Inspector of Police,]
Economic Offences Wing-III]
Mumbai Police Head Quarters,]
Crawford Market, Mumbai.]
]
]
4] The Investigating Officer Mr.]
Subhash Borate,]
Economic Offences Wing - III]
Mumbai Police Head Quarters,]
Crawford Market, Mumbai.]
]

5] The Investigating Officer Mr. Mohan Mane, Economic Offences Wing - III Mumbai Police Head Quarters, Crawford Market, Mumbai.	]	
6] Shobhit Rajan, Age : 49 years, Occupation : Business, residing at Naivedya, 85, Carter Road, Bandra (W), Mumbai – 400 050.	]	
7] State of Maharashtra.	]	..**RESPONDENTS.**

Ms. Fereshte Sethna, Mr. Manoj Taneja, Mr. Chirag Dave, Mr. Shantanu Singh, Ms. Anooja Menon, Ms. Kushboo Shah, Adhiraj Malhotra i/b Dutt Menon Dunmorr Sett for the Petitioner.

Mr. J. P. Yagnik, APP for the State [Respondent Nos.1 to 5.]

Mr. Amit Desai, Senior Advocate with Mr. Vibhav Krishna i/b Juris Consillis for Respondent No. 6.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Judgment Reserved on : **July 14,, 2015**.
Judgment Pronounced on : **October 23, 2015**.

Oral Judgment [Per Ranjit More, J.] :

. The Petitioner who is arraigned as accused no.3 in a complaint filed by Respondent No.6, has invoked the extra-ordinary and inherent jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, *interalia*, seeking following reliefs :

[a] The proceedings of Complaint Case No. 234/SW/ 2013 and MECR No.1 of 2013 registered with Khar Police Station which was later on transferred to Economic Offences Wing and re-numbered as MECR No.11 of 2013 by EoW, Unit-III, Mumbai be quashed and set aside;

[b] The look out circular issued against the Petitioner by the Commissioner of Police, Mumbai be quashed and set aside; and

[c] A direction be given to the Respondents to pay jointly and severally the punitive damages to the Petitioner for causing illegal arrest and detention of the Petitioner.

2. The accusations against the accused in subject complaint and MECR are about the commission of offences punishable under sections, 420, 464, 465, 467, 468, 474, 477A, 417, 418, 109, 120B and 34 of the Indian Penal Code, 1860.

3. The case of the Petitioner in brief, as can be discerned from the petition is as under :

[A] That, the Petitioner is a British National residing in UK and by profession he is a Chartered Accountant. Sometime in 1999, Mr. Alnoor Jamal, (arraigned as accused no.1) a Canadian National, based in Keniya, learnt from Mr. Pramod Lele, the Chairman and MD of Parke Davis that Parke Davis had proposed to sell its immovable property at Sakinaka, Mumbai. The deal was finalised on 19th August 1999, whereunder Jamal agreed to buy the said property from Park Davis for Rs.49 crores.

[B] That, to develop the said property, Jamal was looking for a local partner based in Mumbai. Mr. Lele arranged a meeting of Jamal with Mr. Shobit Rajan (Complainant). In the said meeting, Jamal was told by Rajan that though he did not have requisite financial capacity and resources, he has intricate industry knowledge to develop the property to international standards. Rajan also made various false representations as to the financial contributions for development of property and induced Jamal to induct himself as a joint venture partner.

[C] Rajan introduced one Mr. Pravin Vepari, a Chartered Accountant to Jamal for the purpose of incorporating suitable corporate vehicle for undertaking the development project and who would also take care of Jamal's interests. By making various representations as to the protection of Jamal's interests Mr. Pravin Vepari and Rajan induced Jamal to enter into a shareholders' agreement dated 23rd December 1999 with Rajan, conferring upon Rajan and Jamal equal stakes in Pantheon.

[D] Based on representations made by Rajan and Vepari as to 50% equity shareholding entitlement in Pantheon, Jamal contributed Rs.2.45 crores towards his part of Earnest Money to be paid to Park Davis. Then came to be executed on 3rd February 2000, the Memorandum of Intended Transfer between Pantheon and Parke Davis for the purchase of said property.

[E] Rajan made representations to Jamal that one Nilesh Parekh wielded considerable influence with the reality division of Tata Group and Parekh's induction on the board of Pantheon would facilitate the development of the said property, obliterating costs. Mr. Nilesh Parekh also made similar representations and also represented to Jamal that he would induct the reality division of Tata Groupof Companies into Jamal's business venture thereby ensuring that funding requirements for the said project would stand substantially dispensed with. Rajan and Nilesh, thus, induced Jamal to induct Nilesh on the board of directors of Pantheon, conferring 1/3rd equity stake in Pantheon in favour of Nilesh Parekh. Resultantly, Jamal's equity stake in Pantheon was reduced to 33.33% from 50%.

[F] As part of his obligations and responsibilities to raise funds for acquiring the said property, in February 2001 Rajan approached various banks and financial institutions. Based on Rajan's declared net-worth to the tune of Rs.67 lacs, banks declined to extend financial support. Jamal, therefore, requested the Petitioner to prepare the net worth certificate of his assets. Based on information provided by Jamal, the Petitioner certified the net-worth of Jamal to be US$42.844 million. Later, the ICICI Bank sanctioned loan to Pantheon, paving the way for completing the transaction for acquisition of the said property.

[G] After acquisition of the property, Rajan and Parekh represented to Jamal that one Mr. Bharat Doshi had financial expertise in the real estate industry and also that the financial requirements relating to refurbishment were around Rs.15 crores and for that purpose Mr. Bharat Doshi should be inducted in Pantheon. Believing on the representations of Rajan and Parekh, Jamal agreed to dilute his 5% stake in Pantheon in favour of said Bharat Doshi. Thus, the equity stake of Jamal in Pantheon stood reduced to 28.33%.

[H] On the representations of Rajan, Jamal put the Share Certificates of his 28.33% stake in Pantheon in the custody of Vepari, who had agreed to retain the same in trust. However, Vepari illegally delivered Jamal's share certificates to Rajan, which were ultimately retrieved by Jamal from Rajan by filing proceedings before the Company Law Board.

[I] During the course of the legal proceedings adopted by Jamal and Akkadin against Rajan for his illegal and oppressive actions and for mismanagement in Pantheon, Jamal caused search to be made in the office of Registrar of Companies. At that time Jamal came to know about various fraudulent and dishonest acts of Rajan. Further it was revealed in the said search that Rajan has manipulated and fabricated the records of Pantheon, usurpting Jamal's and Akkadin's shareholding in Pantheon. Jamal and Akkadin therefore filed various criminal proceedings against Rajan. Process has been issued in three cases and investigation is being carried out in one CR by Sakinaka Police Station.

[J] It is the case of the Petitioner that as a counter-blast and retaliatory measures, Rajan has filed the present false complaint, purely as a means to coerce Jamal to withdraw the pending criminal cases.

[K] As far as the net worth certificate is concerned, the case of the Petitioner is that the same is issued by him in his professional capacity as Chartered Accountant and the same is genuine. There is no question of any representation by the Petitioner and at any rate with a view to cheat Rajan or as a consequence thereof any cheating is committed by the Petitioner.

[L] It is the case of the Petitioner that after registration of FIR pursuant to the order passed by Magistrate under section 156(3) of the Code, the Petitioner was illegally arrested and kept in detention.

4. Before recording the submissions of the respective parties, it is necessary to make reference to the complaint and allegations made therein by Respondent No.6-Rajan. The allegations, in brief, are that in the latter part of 1998, Parke Davis

was desirous to sell their Sakinaka property. He had discussions and negotiations with Mr. Pramod Lele, MD of Parke Davis. Jamal had come in contact with Mr. Lele and expressed his desire to invest funds in India. Consequently, Mr. Lele introduced Jamal to Rajan. Accordingly, agreement was executed on 23rd December 1999 between Jamal and Rajan. Under the said agreement, it was agreed that said property is to be purchased and developed by the joint venture company–Pantheon. The purchase price was Rs.49 crores. Rajan and Jamal contributed their respective share towards earnest money. MoU between Pantheon and Parke Davis was executed on 3rd February 2000 by paying 10% Earnest money. The balance amount was to be made before 21st June 2000. Jamal avoided to contribute towards balance purchase price and therefore, Nilesh Parekh of Tata Group was required to be inducted by executing a supplementary agreement dated 15th June 2000 between Jamal, Rajan and Mr. Parekh whereunder each one was given 1/3rd share in Pantheon. Jamal did not pay his share in purchase price and therefore loans were required to be raised from ICICI bank and burden of this loan was shouldered by Rajan, putting at stake his personal properties.

Despite knowledge of personal loans taken by Rajan for the project, Jamal did not make the promised payment as a result of which Rajan and Nilesh were forced to introduce Bharat Joshi into Pantheon, who agreed to contribute Rs.15 crores for the development of Phase-I, which diluted their stake in Pantheon to 28.33% each.

. The gravamen of allegations in the complaint is that Accused Nos.1, 3 and 6 had made various representations, promises and commitments that Accused No.1 Alnoor Jamal was a rich businessman and was ready to invest his ready surplus funds jointly with the Complainant in the purchase of Sakinaka property. These accused prevailed upon the Complainant to enter into a joint venture with Jamal with each party paying 50% for the purchase of Sakinaka real estate property, its related costs and towards subsequent construction and development of the real estate project. The Complainant was induced and made to believe that accused no.1 would bring payment for his 50% share in purchase of the real estate property and development of the project and thereby Complainant was induced to reduce his entitlement to the property from 100% ownership in the Company–Concorde Infrastructure Pvt. Ltd to 50% ownership company A-Class Builders and Developers Pvt. Limited.

Accused Nos. 1 and 3 connived, conspired and gave false declarations, commitments, assurances and promises to bring money including Rs.5 crores immediately and used fraudulent certificate as genuine to mislead and cheat ICICI Bank and others to believe that declaration contained in the certificate issued by the Petitioner [accused No.3] is true. The Petitioner had deliberately issued false certificate and made statements about the assets of accused no.1 with the knowledge that the said statements were false and incorrect and with the sole similar intention to cheat and defraud the Complainant as well as the bank and to induce the bank to believe the entries in the certificate as genuine and misrepresent the net-worth of accused No.1 and to avail wrongful gain and advantage to accused no.1.

. Accused no.1, 3 and 6 have conspired in a pre-planned manner to cheat and defraud the Complainant and the accused have extorted the Complainant and other related to Pantheon to deliver amount given for the share of accused no.1 and therefore their actions become punishable under section 384 of the Indian Penal Code, 1860. Accused Nos.1 to 6 have acted in collusion and in conspiracy and in furtherance of the deliberate design to cheat and defraud the Complainant and have prepared false, forged and fabricated accounts of accused No.2. On account of fraud, cheating, forgery, falsification of accounts, false declarations by accused no.1 in collusion with accused Nos.2 to 8, the Complainant has suffered wrongful loss and accused persons have derived wrongful gains.

5. On this complaint of Rajan, learned Metropolitan Magistrate by issuing direction under section 156(3) of the Code of Criminal Procedure, 1973 vide his order dated 16th August 2013 directed Khar Police Station to investigate the complaint. Accordingly, Khar Police Station registered MECR No. 1 of 2013. Subsequently, the investigation was transferred to the Economic Offences Wing, Unit-III, Mumbai where it was re-numbered as MECR No. 11 of 2013.

6. Ms. Sethana, learned Counsel appearing for the Petitioner has submitted that the net-worth certificate issued by the Petitioner to Jamal and which was used for raising loans for Pantheon is merely a professional opinion given by a Chartered Accountant and cannot said to be a *valuable security* within the meaning of section 30 of the Indian Penal Code, 1860. She submitted that the net-worth certificate is claimed to have been acted upon by the ICICI Bank, however, neither the said Bank nor has any other bank claimed that the said net-worth certificate is forged one or have brought any case/action against the issuer of the net-worth certificate. That apart, the record establishes that loans have been repaid. She submitted that there is no case for cheating under section 420 or falsification of accounts of Akkadian by the Petitioner.

7. The share-holding agreement was entered into by Jamal and Rajan on 23rd December 1999, which is much prior to the issuance of net-worth certificate by the Petitioner in the year 2000. She submitted that therefore on the basis of this net-worth

certificate, it cannot be said that Rajan was induced to enter into joint venture agreement, reducing his entitlement to the said property from 100% to 50%. She submitted that Nilesh Parekh and Bharat Joshi were inducted in the development of the said property by mutual agreement. She further submitted that way back in 2006, the Company Law Board directed Rajan to return 28.33% share certificates to Akkadian.

Regarding the accusations of falsification of accounts of Akkadian, Ms. Sethana submitted that at no point of time these accounts were furnished to Rajan by any person or party within Akkadian or for that matter by the Petitioner nor anyone has relied upon for any claim based on those accounts. These accounts were admittedly downloaded by Rajan from the public domain.

Ms. Sethana further submitted that Jamal is a beneficial owner of Akkadian with 99.98% equity standing in his name and balance two shares in the name of Accused No.3 and accused No. 6, who can gain no advantage by forging their own books of account particularly when accounts clearly record that there is a dispute pertaining to the said share-holding. She submitted that there is no scope for prosecuting the Petitioner for falsification of accounts of Akkadian. She submitted that there is no description in the complaint as to what loss has been sustained by Rajan and only in the MECR and that too very vaguely it is stated that loss of Rs.250 crores has been caused to Rajan. She lastly submitted that the subject complaint is a counter-blast to the complaints filed by Jamal and Akkadian against Rajan and other conspirators and even otherwise the subject complaint does not disclose the commission of any offence by the Petitioner.

8. Mr. Amit Desai, the learned Senior Counsel appearing for Rajan (Complainant) Respondent No.6 herein, submitted that allegations in the complaint bear out the case of fraud, cheating, forgery, falsification of accounts, making of false statements, entries, certificates, accounts and all this has been done and been prepared with a sole intention to show that accused No.1 and 2 having additional share in Pantheon and that

Rajan had been cheated and defrauded by accused persons and it can be seen from the complaint that Rajan has suffered wrongful loss due to reduction in his share-holding.

He further submitted that the Petitioner was also responsible for promises, assurance and representations made by Jamal to Rajan which were recorded in the agreement dated 23rd December 1999 and thereafter the Petitioner had issued false net-worth certificate containing false entries which was used for the purpose of bolstering the claim of Jamal as a global businessman with financial credit and goodwill and which was used for the purpose of deceiving the bank and Rajan at the time of sanction of loan by ICICI Bank. He submitted that the Petitioner is the maternal uncle of Jamal and he was 50% stakeholder of Akkadian till November 2005.

Mr. Desai further submitted that the net-worth certificate has been issued for the purpose of cheating which is supported by the argument that false statement has been made by the Petitioner in the net-worth certificate that he was a practicing Chartered Accountant at the time of issuance of net-worth certificate. He submitted that Rajan has produced before the Court and Investigating Officer the Directory of the Institute of Chartered Accountants of England and Wales for the year 2001 which listed members upto August 2000 and it did not include the name of the Petitioner herein as member. It was further submitted that the net-worth certificate bears the name and signature of the Petitioner in ink and also contains the date 1.6.2000 in ink, however, in the letter dated 15th July 2014 addressed to the IO, the Petitioner has stated that he had caused the drawing up of his signature and name on the said certificate by authorising the signing and placing his name thereon due to his temporary non availability on 1st June 2000. The contradictions and inconsistencies in this regard generate suspicion which is required to be investigated. It is submitted that the Petitioner has not explained as to who had placed his signature in ink on the net-worth certificate. He further submitted that signature on the net-worth certificate does not tally with the signature of the Petitioner on various other documents and correspondences addressed by the Petitioner. From the evidence so far collected, it emerges that there are suspicious circumstances to support the offence of cheating. Mr.

Desai further submitted that it is not necessary to reproduce the ingredients of offence in the complaint.

He lastly submitted that the Court should be slow in exercising its power under Article 226 of the Constitution of India while interfering with the order directing investigation under section 156(3). To buttress his submissions, Mr. Desai relied upon following decisions :

1] Rajesh Bajaj v. State of NCT of Delhi [AIR 1999 SC 1216]

2] Rupan Deol Bajaj (Mrs) & Anr. Vs. Kanwar Pal Singh & Anr [AIR 1996 SC 309]

3] State of Maharashtra vs. Sayed Mohammed Masood and Anr. [(2010) CRLJ 461]

4] CBI v. Ravi Shankar Srivastava [(2006) 7 SCC 188]

5] Trisuns Chemical Industries v. Rajesh Agarwal [AIR 1999 SC 3499]

9. Ms. Sethana, in rejoinder submitted that new allegation that the Petitioner is not a chartered accountant is a last resort assertion, to assail the net-worth certificate dated 1st June 2000 in which no single incongruity is alleged specifically. This assertion is contrary to the assertion made in the complaint. It is submitted that the Petitioner had placed on record professional certificate which shows that the Petitioner was a

Chartered Accountant as on 1st January 2000. She submitted that letter dated 14th May 2007 issued by the Benevolent Association of Chartered Accountants to the family of Petitioner showing the Petitioner as "demised", is clearly an error in their records. So far as the allegation regarding the Petitioner's signature on net-worth certificate is concerned, Ms. Sethana submitted that the Petitioner has undertaken full responsibility for the certificate and its contents in entirety. The Petitioner caused another to write out his name which is perfectly acceptable practice globally amongst leading chartered accountants. Regarding the allegation that the Petitioner is owner of 50% equity in Akkadian, she submitted that if that be so, Jamal need not have funded Rs.2.45 crores towards earnest money. There is no allegation that the Petitioner failed to bring funds for the project. She further submitted that Register of Holdings in Akkadian reflects 99.98% shares are held by Jamal and the Petitioner is having only one share therefore the claim that the Petitioner is owner to the extent of 50% in Akkadian are not correct.

10. Learned APP for the State submitted that the

Petitioner attended the Office of EoW on 2nd June 2014 and told that he will return back for investigation and will extend all the necessary co-operation in investigation. Since despite assurances the Petitioner did not co-operate in the investigation, the Petitioner was required to be arrested on 10th June 2014. She submitted that arrest and detention is perfectly legal and no damages need be awarded to the Petitioner by this Court in exercise of jurisdiction under Article 226 of the Constitution of India or section 482 of the Code of Criminal Procedure, 1973. She submitted that the Petitioner has been very non co-operative in the investigation.

11. The allegations against the Petitioner with regard to the offence punishable under sections 465, 467, 468, 471 and 474 of the Indian Penal Code, 1860 are in respect of the net-worth certificate issued by him as practicing chartered accountant for net-worth of the accused no.1. The Petitioner had issued and handed over the said certificate to accused no.1 who had used it for obtaining loan from ICICI Bank.

12. Section 30 the Indian Penal Code, 1860 defines the term "*valuable security*" as follows :

> *""Valuable security".-- The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or who whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.*

. The net-worth certificate is merely a professional information given by the Petitioner in his capacity as Chartered Accountant and by no stretch of imagination it can be termed as a "valuable security" within the meaning of section 30 of the Indian Penal Code, 1860. To come within the ambit of valuable security, the document needs to be one which creates or purport to create, extend or transfer or restrict or extinguish any legal right of any person. By issuing the net-worth certificate to Jamal, the Petitioner, has not created or purported to create or extend or transfer or extinguish any legal right of any person. This being the position, the networth certificate does not fall within the ambit of section 30 and hence section 467 of the IPC cannot be invoked against the Petitioner.

13. Having dealt with the provisions of section 467 of IPC, let us consider the allegations levelled against the Petitioner for the offence punishable under sections 465, 468, 471 and 474 of IPC, which read thus :

> "**465. Punishment for forgery** — Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. "
>
> **468. Forgery for purpose of cheating** — Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. "
>
> **471. Using as genuine a forged document** — Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.
>
> **474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine —** Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment

> for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine. ”

14. The term *“forgery”* as used in sections 465, 467, 468, 471, 474 of IPC is defined under Section 463 of IPC as follows :

> “**463. Forgery-**
> *Whoever makes any false documents* or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery ”

15. One of the essential ingredients of offence punishable under sections 467, 468, 471 and 474 is making of false document or electronic record. Therefore, the question is whether the Petitioner [accused no.3] in giving net-worth certificate can be said to have made and executed a false document in collusion with other accused.

16. Section 464 of IPC which defines making of false document reads thus :

464. Making a false document — A person is said to make a false document—

<u>First.</u> — Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document; or
(b) makes or transmits any electronic record or part of any electronic record; or
(c) affixes any electronic signature on any electronic record; or
(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

<u>Secondly—</u> Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

<u>Thirdly—</u> Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

17. The analysis of section 464 of IPC which defines

"*making of false document*" shows that it divides false document into three categories, namely :

[I] The person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person or by the authority of some other person by whom or by whose authority it was not made or executed.

[II] The person dishonestly or fraudulently by cancellation or otherwise alters the document in any material part without lawful authority after it has been made or executed by either himself or any other person, whether such person be living or dead at the time of such alternation.

[III] The person dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document.

18. The person is said to have made a false document

when -

(i) He made or executed a document claiming to be someone else or authorised by sone else; or
(ii) he altered or tampered with the document; or
(iii) he obtained the document by deception or from a person not in his senses.

. The net-worth certificate issued by the Petitioner does not fall under either of the three categories mentioned above. The Petitioner has issued the net-worth certificate and has taken full responsibility for the certificate in its entirety. The net-worth certificate, in our view, by no stretch of imagination can be termed to be false document within the meaning of section 464 of the Indian Penal Code, 1860. Making of a false document is a condition precedent for forgery under section 463. The commission of forgery is a condition precedent for the offences punishable under sections 465, 467, 468, 471 and 474. Since the net-worth certificate issued by the Petitioner to Jamal is not covered by the definition of "false document" within the meaning of section 464 of IPC, no offence is made out against the Petitioner for proceeding under sections 465, 467, 468, 471 or 474 of IPC

19. So far as the allegations pertaining to the commission of offence of extortion by the Petitioner is concerned it would be apt to reproduce the definition of extortion as given in section 383 of the Indian Penal Code, 1860, which reads thus :

> *"Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".*

20. The essential ingredients of the offence of extortion are :

(1) Accused must put any person in fear of any injury to that person or to any other person.

(2) The putting of such person in fear must be intentional.

(3) The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which can be converted into valuable security.

(4) Such inducement must be made dishonestly.

21. Perusal of the entire complaint does not disclose

any allegation that the Petitioner put the Complainant or any other person in fear of any injury. In this regard, the allegations are that the Petitioner along with accused Nos.1 and 6, have conspired in a preplanned manner to defraud and cheat the Complainant and the accused have extorted the Complainant and other related to Pantheon to pay even for the share of accused no.1. These allegation cannot be said to constitute the offence of extortion punishable under section 384 of IPC.

22. In paragraph 19 of complaint, the allegations are that accused have prepared false, fabricated and forged accounts of accused no.2 for the period 31st March 2000 to 31st March 2012. Admittedly, accused no.2 is a company in which accused no.1 is the majority stakeholder holding 99% shares. In order to attract the the offence punishable under section 477A, following ingredients must be satisfied :

> *(1) That, at the relevant time, accused was clerk, officer or servant or employed or acting in either of that capacity, and*

> (2) *That, in that capacity he destroyed, altered, mutilated or falsified any book, paper, writing, valuable security or accounts which belonged to or in in possession of his employer or has been received by from him for on behalf of his employer, and*
>
> (3) *That, he did so <u>willfully and with intent to defraud</u>.*

23. In the entire complaint, there is no allegation that accounts of accused no.2 Akkadian Company were furnished by person or party in Akkadian to the Complainant or relied upon for asserting any claim to shareholding in Pantheon on that basis. On the contrary, the Complainant himself has stated in the complaint that he has downloaded these accounts from the public domain. Be that as it may, the Petitioner is a Chartered Accountant, who has only given the net-worth certificate to Jamal. He is not clerk, officer or servant of Akkadian of which Jamal is beneficial owner and the Petitioner had only one share. Therefore, no offence punishable under section 477A of the Indian Penal Code, 1860 can be said to have been attracted.

24. This takes us to consider the allegations pertaining to cheating, i.e., the offence punishable under sections 417, 418 and 420 of IPC. Section 417 of IPC lays down punishment for cheating. Section 418 deals with punishment for cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. Section 420 lays down punishment for the cheating and dishonestly inducing the delivery of property. The condition precedent for attracting the offences falling under sections 417, 418 and 420, is cheating which is defined in section 415. Section 415 reads thus :

> "**415. Cheating.-** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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, is said to "cheat".

25. The essential ingredients of cheating are thus :

[I] Deception of person either by making false or misleading representation or by dishonest concealment or by any other act or omission

or

[ii] Fraudulent or dishonest inducement by that person to either deliver any property or to consent to the retention of that property or to intentionally induces that person to do or omit to do anythying which he would not do or omit if he were not so deceived,

and

[iii] Such act or omission causes or is likely to cause damage or harm to that person in body, mind or reputation or property.

26. The allegations in the complaint that because of the representation and inducement of accused no.1, accused no.3 (the Petitioner herein) and accused No.6, the Complainant reduced his entitlement to the property from 100% ownership in his company Concord Infrastructure Pvt. Limited to 50% ownership company A-Class builders and developers Limited (Pantheon), which was subsequently reduced to 33% in pursuance of the joint venture agreement dated 23rd June 2000 between TATA housing Private Limited and Pantheon and further reduced to 28.33% on account of giving of 15% share to Bharat

Joshi for his contribution of Rs.15 crores for the development of phase-I. Accused Nos. 1 and 2 in the year 2005 raised false claims before the Company Law Board to 13,923 shares (28% shares of Pantheon) and managed to obtain the custody of those shares to which accused Nos. 1 and 2 were not entitled and thereby acted in a fraudulent and have committed an the offence punishable under section 420 of IPC.

27. It is settled law by the catena of decisions that for establishing the offence of cheating, the Complainant is required to show that accused had fraudulent or dishonest intention at the time of making promise or representation. From his failure to keep promise subsequently, such culpable intention right at the beginning, i.e., *at the time when the promise was made*, cannot be presumed. Reference can be made to *Hira Lal Hari Lal Bhagwati vs. CBI [(2003) 5 SCC 257], Suresh vs. Mahadevppa [2005 (3) SCC 670]* and *Indian Oil Corporation vs. NEPC [(2006) 6 SCC 736] and B. Suresh Yadav v. Sharifa Bee [(2007) 13 SCC 107]*.

28. Now on the basis of allegations made in the

complaint, let us examine whether the same discloses that the Petitioner – accused no.3 had fraudulent and dishonest intention at the time of making of representation that accused no.1 was a rich businessman and was ready to invest his ready surplus funds jointly with the Complainant for the purchase of Sakinaka property. In paragraph 6 of the complaint, the Complainant has stated that agreement was entered into between himself and accused no.1 on 23rd December 1999 whereunder it was *inter alia* recorded that the land–property in question would be purchased and developed through a joint venture company A-Class Builders and Developers, [*now know as Pantheon Infrastructure Pvt. Ltd*]. It is also stated in the complaint that the aggregate purchase price to be paid to Parke Davis was Rs.49 crores and 10% earnest amount was to be paid on or before 15.1.2000. It is also stated that the Complainant had brought in Rs.2.45 crores and accused No.1 had brought in Rs.2.46 crores towards his share of earnest amount into the Company [i.e., A-Class Builders and Developers] to be paid to Parke Davis. These allegations make it abundantly clear that even assuming accused Nos. 1, 3 and 6 made various representations that accused No.1 was a rich businessman and was ready to invest his surplus funds with the Complainant-Rajan for the purchase of Sakinka property, pursuant to the alleged representations not only accused no.1 entered into agreement with Rajan on 23rd December 1999 and agreed to purchase the said property from Parke Davis for Rs.49 crores but also paid an amount of Rs.2.46 crores towards the earnest amount, i.e., 10% of the purchase price. In paragraph 10 of the complaint, the Complainant has alleged that accused no.1 in furtherance of his dishonest and ulterior motive to avoid payment towards balance purchase money suggested to the Complainant to raise funds from banks and financial institutions and supplementary agreement was required to be executed on 15.6.2000 between accused no.1, Nilesh Parekh and the Complainant whereunder it was recorded that each party shall make payment of 1/3rd of the consideration to Parke Davis, related costs of stamp duty and further amounts towards development cost.

29. The case of the Complainant as reflected in the complaint is that despite promises and assurances, accused no.1 did not pay his share of purchase money and towards the

development of land and therefore loans were required to be raised from ICICI bank at the personal risk of the Complainant. It is also stated that accused no.1 despite knowledge about the personal loan obtained by, and mortgages, collateral and personal guarantees given by the Complainant-Rajan, did not make promised payments and continued to deceive him by making fraudulent promises, as a result the Complainant was required to induct Mr. Bharat Joshi as a shareholder, who had agreed to contribute Rs.15 crores for the development of Phase-I.

. Thus, it is the case of the Complainant that since accused no.1 did not pay for his share in the purchase money and for the development of land, Mr. Nilesh Parekh and Mr. Bharat Joshi were included, to complete the project and thereby his share was reduced from 50% to 33% and thereafter to 28%. If the allegations in the complaint are taken as a whole, it would reveal that initially accused no.1 as per the alleged representations, contributed 50% of the earnest amount, i.e., Rs.2.46 crores, however, he failed to contribute for the balance purchase money, related costs, stamp duty and development costs of the land. From these allegations it cannot be said that accused had dishonest and fraudulent intention at the time of making the said promise or representation. At the most it can be said that accused no.1 failed to keep his promises leading the business transactions going awry. The allegations, in our opinion, make out a case of the breach of promise, giving rise to a civil liability. However, these allegations by no stretch of imagination, make out offence of cheating.

30. The tenor of the complaint reveals that the Petitioner is made accused on the allegation that fraudulent and bogus net-worth certificate was given by him. It is alleged that this certificate was given to mislead and cheat the ICICI Bank and other banks and people that the declaration contained in the certificate was truthful. We have already held that the said net-wroth certificate cannot be said to be a forged document within the meaning of section 463 of IPC. Admittedly, Accused No.1 and the Complainant entered into an agreement on 23rd December 1999 thereby agreeing to purchase the Sakinaka property from Parke Davis through a joint venture Company for Rs.49 crores.

The Net- worth certificate was issued by the Petitioner in his capacity as chartered accountant on 1.6.2000, i.e., much later, and this was issued, as per the complainant's own case, to facilitate Pantheon in securing loans from the banks. This net-worth certificate is acted upon and used to obtain loan from ICICI bank. Neither the ICICI Bank nor any other bank claim this net-worth certificate to be forged one. The loans were availed by Pantheon and have been fully repaid. Not a single bank has brought any claim against Pantheon or the Complainant. In these circumstances, we fell to understand how the offence of cheating is made out on the basis of net-worth certificate.

31. The Apex Court in *B Suresh Yadav v. Sharifa Bee* (supra) has held that the powers of High Court for quashing under section 482 of the the Code of Criminal Procedure, 1973 can be exercised in a case where civil suit is pending between the parties in respect of the same subject matter and contrary stand is taken by the Complainant in civil suit. The Apex Court held that the contrary stands taken by the party in civil and criminal proceeding assume significance.

32. In the present case accused no.1 raised dispute before the Company Law Board as far as back in the year 2005 by filing Company Petition No.106 of 2005 [Exhibit- C to the affidavit-in-reply filed by the Complainant himself]. This petition was disposed of on 8th June 2009. It would be relevant to see the stand taken by the Complainant in this proceeding. Paragraph 27 of the CLB's order makes reference to the stand taken by the Complainant. It was the stand of the Complainant that *the intention of the parties was to organise funds for the project either by borrowing or otherwise and share the profits on the basis of funding by the parties and the intention was never to share the profits on the basis of shareholding*. The agreement dated 23rd December 1999 between accused no.1 and the Complainant is relevant. Clause-5 of the said agreement states *that in the event of either group not providing partly or fully the amount required for completing the sale and same is provided by other group, then, the share of the group which has not funding will be reduced in proportionate to the amount not provided, i.e., the profits will be shared by the parties in the*

proportion in which they have contributed the capital. This stand of the Respondent is completely contrary to the allegations made in the complaint. The Complainant has annexed to his complaint copy of the agreement dated 23rd December 1992. In terms of *Bhajanlal's case (supra)*, this agreement annexed to the complaint can be taken into consideration while considering the relief of quashment in exercising of powers under section 482 of the Code. We on careful consideration of the facts and circumstances of the case within the limited permissible scope under section 482 of the Code, are of the considered view that complaint does not disclose commission of either of the offence under sections 417, 418 and 420 of IPC by the Petitioner. In the light of above discussion, the case for proceeding against the Petitioner for the offence punishable under sections 109, 114 and 120B cannot be said to have been made out.

33. Before parting with the matter, we must make reference to the decisions relied upon by Mr. Desai. In *Rajesh Bajaj (supra),* the Apex Court has made following observations :

> "It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence."

. In the present case, the allegations of the forgery are based on the net-worth certificate and since the said net-worth certificate does not fall within the definition of "false document", offence cannot be said to have been made out. Likewise the complaint does not disclose offence of extortion as well as falsification of accounts by the Petitioner. So far as the allegations pertaining to cheating are concerned, the same are contrary to the Complainant's own stand before the Company Law Board proceedings as well as the recitals in the agreement dated 23rd December 1999 which is annexed to the complaint. This goes to the root of the matter. Hence, ratio in Rajesh Bajaj's case (supra) is of no help to Mr. Desai.

34. In *Rupan Bajaj (supra),* the Apex Court held that the High Court is not justified in embarking upon an enquiry as to the probability. There is no dispute about this proposition. However, in the present case we have come to the conclusion that the complaint does not disclose the offence. Therefore, decision in Rupan Bajaj can be of no avail to refuse the prayer for quashing.

35. In *Sayed Mohammed Masood (supra)*, it was held that the Court can look into the material collected during the course of investigation. There is no dispute about this proposition also. However, after going through the material collected by the police during the investigation, we have found that investigation carried out so far does not disclose commission of any offence.

36. In *CBI v. Ravi Shankar (supra)*, the Apex Court held that the allegations of malafide against the informant is of secondary consequence. In the instant case, we are inclined to quash the complaint on the ground that the same does not

disclose the commission of offence, therefore, this decision is also not applicable to the present case.

37. In *Rajesh Agarwal (supra)*, the Apex Court held that the quashing of FIR or a complaint in exercise of inherent powers of the High Court should be limited to very extreme exceptions. Provision incorporated in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence of fraudulent representation and cheating. This decision is also not applicable.

38. Further, we must make reference to the submission of Mr. Desai that the Petitioner's name does not appear in the list of Members of Chartered Accountants as per the Directory of the Institute of Chartered Accountants of England and Wales for the year 2001 which listed members upto August 2000. We are unable to accept this submission. Firstly, the Complainant asserted in the complaint that the Petitioner is a Chartered Accountant. The Petitioner has also produced the Certificate of Membership to that effect before the Investigating Officer and

copy of the same placed on record. It is the stand of the Petitioner that he caused another to write out his name on the net-worth certificate. As submitted by Ms. Sethana, it is perfectly acceptable practice globally amongst the leading Chartered Accountants. The Petitioner has taken full responsibility for the contents of the said net-worth certificate in its entirety. It is also worth to mention that the net-worth certificate was given in the year 2001 and the dispute about its legality is raised after 13 years and that too during the course of hearing of this petition. We are, therefore, unable to accept the submission of Mr. Desai.

39. Taking totality of the facts and circumstances of the case into consideration, we are of the considered opinion that as far as the Petitioner is concerned, there is no case made out for proceeding against him. The case of the Petitioner is covered by clause (1) of *Bhajanlal's case* (supra), which read thus :

> *"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."*

40. In the backdrop of above discussion, we are of the

view that this petition succeed as far as quashing of the proceedings as against the Petitioner is concerned. Hence, the the proceedings of Complaint Case No. 234/SW/ 2013 and MECR No.1 of 2013 registered with Khar Police Station which was later on transferred to Economic Offences Wing and re-numbered as MECR No.11 of 2013 by EoW, Unit-III, Mumbai are hereby quashed qua the Petitioner only and the look out circular issued against the Petitioner by the Commissioner of Police, Mumbai is hereby quashed and set aside.

41. So far prayer of the Petitioner for grant of punitive compensation for illegal arrest and detention is concerned, we find that the MECR was registered on the basis of the order passed by learned Metropolitan Magistrate directing an investigation under section 156(3) of the Code of Criminal Procedure, 1973. The stand of the Investigating Officer is that accused was called on to attend the office on 2nd June 2014, accordingly, the Petitioner attended the office of EoW but he did not record his statement. He assured to attend the office of EoW on next date and co-operate in investigation. The learned APP for the State claims that the Petitioner however did not co-operate in

the investigation and despite calls and notices he did not remain present for investigation and therefore ultimately the Petitioner was required to be arrested. In these circumstances, the relief of compensation cannot be granted unless the allegations of the Petitioner regarding unlawful arrest vis-a-vis the contentions of learned APP are examined and inquired into. We in the exercise of jurisdiction under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 are not inclined to examine the records and ascertain the veracity of the statement made by the Petitioner. Suffice to say, the Petitioner is at liberty to make a representation before the Commissioner of Police who shall inquire into the Petitioner's grievance of illegal arrest and take appropriate decision and action in accordance with law within three months from the date of receipt of such representation.

42. Under the circumstances and in view of the discussion supra, the petition is partly allowed in terms of prayer clauses (a) and (b) qua the Petitioner.

[SMT. ANUJA PRABHUDESSAI, J.] **[RANJIT MORE, J.]**