

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

Crl.Rev.Pet.No. 1927 of 2014 ()

AGAINST THE ORDER IN CC 549/2014 of J.M.F.C-I,VAIKOM, DATED 23-04-2014

REVISION PETITIONER(S):

1. **A.S.PATEL,
NADASHA, 52-HILL ROAD, BAN(B) WEST,
MUMBAI - 400 050, MAHARASHTRA,
[CHAIRMAN, PATEL REAL ESTATE DEVELOPERS PVT. LTD.,
18, 4TH CROSS LANE, KALASIPALAYAM, NEW EXTENSION,
BANGALORE - 560 002.]**
2. **RAJESH PILLAI, NADASHA, 52-HILL ROAD, BAN(B) WEST,
MUMBAI - 400 050, MAHARASHTRA,
[DIRECTOR, PATEL ROAD ESTATE DEVELOPERS PVT. LTD.,
NATASHA 152, HILL ROAD, BANDRA WEST,
MUMBAI - 400 050.]**
3. **S. PRADEEPKUMAR,
49/1337 PONJIKARA HOUSE, ELAMAKARA P.O., KOCHI-26,
EDAPPALLY, NORTH VILLAGE, KANAYANNUR TALUK, ERNAKULAM.
[ENGINEER, PATEL READ ESTATE DEVELOPERS PVT. LTD., 49/1337,
ELAMAKKARA P.O., KOCHI-26.]**

**BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA**

RESPONDENT(S):

1. **THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
2. **P.K. KURIAKOSE, S/O.KURIAKOSE, PAZHEMADOM VEEDU,
PADINJAREKARA, P.O. NADUVILEKARA, VALLAKOM VILLAGE,
VAIKOM - 686 671.**

**R1 BY PUBLIC PROSECUTOR SMT. V.H. JASMINE.
R2 BY ADVS. SRI.B.RAMAN PILLAI (SR.)
SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
SMT.SARITHA THOMAS**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
10.04.2015, THE COURT ON 28.04.2015 PASSED THE FOLLOWING:**

APPENDIX

PETITIONERS EXHIBITS :

- ANNEXURE-A :** COPY OF DETAILS OF TRANSACTION BETWEEN THE PETITIONER'S COMPANIES AND THE 2ND RESPONDENT.
- ANNEXURE-B :** COPY OF DETAILS OF PAYMENTS TO THE 2ND RESPONDENT FROM 07.08.2009 TO 03.02.2011.
- ANNEXURE-C :** COPY OF DETAILS OF REGISTERED SALE DEEDS AND EXPENSES INCURRED FOR THE PERIOD 17.02.2007 TO 06.08.2009.
- ANNEXURE-D :** COPY OF DETAILS OF REGISTERED SALE DEEDS AND EXPENSES INCURRED FOR THE PERIOD FROM 07.08.2009 TO 21.01.2011 AT Rs.59,000/- PER CENT.
- ANNEXURE-E :** COPY OF SALE DEED NO.2355/2009
- ANNEXURE-F :** COPY OF SALE DEED NO.2356 OF 2009
- ANNEXURE-G :** COPY OF SALE DEED NO.2953/2010.

RESPONDENTS EXHIBITS :

- ANNEXURE-R2(a) :** COPY OF THE BANK STATEMENT OF ICICI M.G.ROAD BRANCH IN RESPECT OF A/C.No.001001507490 FOR THE PERIOD FROM 18.12.07 TO 30.06.08.
- ANNEXURE-R2(b) :** COPY OF THE BANK STATEMENT OF ICICI M.G.ROAD BRANCH IN RESPECT OF A/C.No.001001541485 FOR THE PERIOD FROM 08.02.08 TO 30.07.08.
- ANNEXURE-R2(c) :** COPY OF THE BANK STATEMENT OF UNION BANK, M.G.ROAD BRANCH A/C.No.425902010618106 FOR THE PERIOD FROM 01.04.09 TO 11.06.10.
- ANNEXURE-R2(c1) :** COPY OF THE BANK STATEMENT OF UNION BANK, M.G.ROAD BRANCH A/C.No.425902010618106 FOR THE PERIOD FROM 08.08.08 TO 03.08.09.

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- ANNEXURE-R2(d) : COPY OF THE BANK STATEMENT OF HDFC, M.G.ROAD BRANCH, ERNAKULAM, A/C.No.15111000034364 FOR THE PERIOD FROM 18.04.09 TO 13.05.10.**
- ANNEXURE-R2(e) : COPY OF THE BANK STATEMENT OF SBT, HIGH COURT JUNCTION BRANCH, ERNAKULAM A/C.No.00000067095093930 FOR THE PERIOD FROM 01.12.09 TO 12.01.11.**
- ANNEXURE-R2(f) : COPY OF THE DETAILED STATEMENT WHICH GIVE DETAILS OF ENTIRE AMOUNTS RECEIVED FROM ACCUSED IN THE FIVE DIFFERENT ACCOUNTS OF COMPLAINANT.**
- ANNEXURE-R2(g) : COPY OF THE DATE WISE DETAILS OF AMOUNTS RECEIVED BY THE COMPLAINANT FROM ACCUSED THROUGH THE FIVE BANK ACCOUNTS.**
- ANNEXURE-R2(h) : COPY OF THE DETAILS OF THE AMOUNTS RECEIVED FROM THE ACCOUNT OF ACCUSED NO.1.**
- ANNEXURE-R2(i) : COPY OF THE AGREEMENT DATED 09.07.2010.**
- ANNEXURE-R2(j) : COPY OF THE LETTER DATED 11.12.2009 ISSUED TO COMPLAINANT.**

//True Copy//

P.A. to Judge

K. RAMAKRISHNAN, J.

Crl.R.P.No.1927of 2014

Dated this the 28th day of April, 2015

ORDER

Accused in C.C.No.549/2014 on the file of the Judicial First Class Magistrate Court-I, Vaikom, are the revision petitioners herein. The case was taken on file on the basis of a private complaint filed by the second respondent against the petitioners, alleging offences under Section 420, 120B, 468, 471 of the Indian Penal Code.

2. The case of the petitioners in the petition was that, first petitioner is the Chairman of M/s.Patel Real Estate Developers Private Limited, a company incorporated under the Companies Act, 1956 with its registered office at 18, 4th Cross Lane, Kalasipalayam, New Extension, Bangalore-560 002 and second petitioner is the director and third petitioner is the employee of the company. The company and its sister concerns namely M/s.Natasha

Constructions Private Limited, M/s.Natasha Homes Private Limited, Ms. Patel Holding Private Limited, M/s.Vaikom Builders and Properties Private Limited, M/s. Brahmamangalam Builders and Properties Private Limited and M/s. Poothotta Builders and Properties Private Limited were looking out a large extent of land for development in Chembu Village, Vaikom Taluk with water frontage. Second respondent who was engaged in real estate business informed Shri.K.K.Kuttappan, the authorised representative of the company that 51.34 acres of compact plot was available in Chembu village with water frontage belonging to 43 land owners. In pursuance of which memorandum of understanding was executed on 17.12.2007 between K.K.Kuttappan, representative of the company and its sister concern and second the respondent. Second respondent undertook to procure and register 51.34 acres of land from the land owners at the rate of ₹44,000/- per cent. The

company paid ₹50,00,000/- to the second respondent and it was agreed to pay ₹50,00,000/- to the second respondent on 31.12.2007 and another sum of ₹50,00,000/- on 05.01.2008. Second respondent on receipt of ₹1,50,00,000/- agreed to hand over copies of title deeds, Village survey map, digital survey map and other documents in respect of the said 51.34 acres within ten days thereafter.

3. It is further agreed that, on receipt of ₹1,50,00,000/-, the second respondent shall execute an agreement for sale of 18 acres of land with second respondent and third party agreement in respect of 33.34 acres of land. It was further agreed that, on payment of ₹200 lakhs on 31.01.2008, sale deed in respect of five acres of land with water frontage and road access will be executed. The company agreed to pay the entire balance sale consideration of ₹19.16 crores in six monthly installments commencing from 09.03.2008. Pursuance to

the memorandum of understanding, the company had paid a total sum of ₹21,09,65,396/- to the second respondent. He had procured and got registered sale deeds in respect of 36.36.48 acres of land in favour of the company or its sister concern. The second respondent utilized ₹16,00,05,120/- for getting assignment of 36.36.48 acres of land at the rate of ₹44,000/- per cent and the balance amount of ₹5,09,60,804/- was with him. According to him, he had paid ₹3,78,00,000/- for the advance for the purchase of the balance land. So another agreement was executed on 29.05.2009 between the company and its sister concern with the second respondent, in which second respondent had admitted the receipt of ₹21,09,65,396/- and execution of sale deeds in respect of 36.36.48 acres of land for a sum of ₹16,00,05,120/- and balance amount of ₹5,09,60,804/- with him. It was further agreed that, for getting the remaining 20 acres of land, the amount will have to be paid

at the rate of ₹59,000/- per cent by 31.12.2009 and the balance amount with the second respondent will be utilized for that purpose. The company had agreed to pay 56.82% of the consideration to be paid for each party and the balance amount will be adjusted from the amount paid as advance to the land owners. For purchase of balance 20 acres of land, company had transferred periodical payments amounting to ₹8,51,23,096/, thus paid a total amount of ₹29,60,88,492/- and the second respondent procured and registered 17.06 acres of land and thus the total extent procured and transferred was 53.42 acres (36.36.48-1705.044 cents), worth ₹26,06,37,677/- and balance amount of ₹3,54,50,825/- was with him. Second respondent made the company to believe that, he had paid the balance amount as advance to the prospective purchasers for purchase of the land and handed over photocopies of various agreements for the sale. Later it was revealed that,

all the agreements were written in one and same stamp paper and thereby he had cheated the company by forging agreements for sale and so the company demanded the amount of ₹3,54,50,825/- and he had issued three cheques namely cheque No.750730 dated 10.03.2011 for ₹80,00,000/- drawn on ING Vysya Bank, Main branch, Ernakulan; Cheque No.750735 dated 15.04.2011 for ₹1,25,00,000/- drawn on ING Vysya Bank, Main Branch, Ernakulam and cheque No.290195 dated 18.04.2011 for ₹43,00,000/- drawn on State Bank of Travancore, Vyttila Branch and all the cheques when presented were dishonoured and complaint was filed under Section 138 of the Negotiable Instruments Act and that is pending as C.C.No.4947/2011 before the Judicial First Class Magistrate Court, Ernakulam. The company also filed suit as O.S.No.452/2012 before the Sub Court, Kottayam for realization of the amount covered by the cheques. Second

respondent filed a complaint before the police alleging that petitioner had entered into an agreement with second respondent for procurement and registration of 51.314 acres of land at the rate of ₹44,000/- per cent and if there is enhancement of land value, second respondent had to be paid at the rate of ₹75,000/- per cent and got a memorandum of undertaking executed on 17.12.2007 and the second respondent procured and registered sale deeds in respect of 53.23.08 cents of lands and they have agreed to execute the sale deed at the rate of ₹75,000/- per cent and for the purpose of preparing agreement to that effect, obtained signatures in stamp paper worth ₹50/- and white papers and converted the same into documents showing that entire amount due for second respondent was paid. According to him, only an amount of ₹15,44,33,567/- alone was paid, but an amount of ₹28,12,31,259/- was said to have been paid. According to him, in the complaint, as per the

agreement he was agreed to pay the balance amount of ₹12,67,97,692/- and thereby they have cheated him and committed the offence punishable under Section 120B, 420, 468 and 471 of the Indian Penal Code. The complaint was forwarded to the police who registered a case as Crime No.364/2012 on 17.03.2012 and thereafter they conducted investigation and filed a refer report on 30.12.2013. They further found that, it is a civil dispute and no criminal offence has been committed. As per Annexure-A agreement, second respondent acknowledged the receipt of ₹21,09,65,396/- and agreed to execute the sale deeds in respect of the balance extent at the rate of ₹59,000/- per cent and some documents have been executed on that basis. Further the company also filed Crl.M.P.No.5012/2011 before the Judicial First Class Magistrate Court, Vaikom, against the second respondent alleging offences under Section 405, 409, 420, 464 and 468 of Indian Penal Code

and that was forwarded to the police under Section 156(3) of the Code of Criminal Procedure and Crime No.868/2011 was registered on that basis and in that case also, a refer report was filed and as per the objections raised by the company, the court ordered further investigation and it is pending before the Kottayam Crime Detachment. Thereafter, the complainant filed a civil suit for realization of ₹3.54 crores from the second respondent as O.S.No.452/2012 before the Sub Court, Kottayam and that is pending. It is thereafter, the second respondent filed Crl.M.P.No.5448/2014 before the Judicial First Class Magistrate Court, Vaikom on 03.02.2014 against the petitioners and one Kuttappan and after examining the complainant and another witness, the court has taken cognizance of the case as C.C.No.549/2014 and issued process to the accused. No enquiry under Section 202 of the Criminal Procedure Code was conducted. Taking

cognizance of the case is without jurisdiction and even assuming that, the entire allegations are accepted, it is only a pure civil dispute and no criminal offence has been made out. So they filed the revision to set aside the order taking cognizance of the case.

4. Heard Sri.Sreekumamr, senior counsel appearing for the revision petitioners and Sri.B.Raman Pillai, senior counsel appearing for the second respondent and Smt. V.H. Jasmine, Public Prosecutor appearing for the first respondent.

5. The counsel for the revision petitioners submitted that, no enquiry under Section 202 of the Code of Criminal Procedure has been conducted by the learned magistrate before taking cognizance, as the accused are residing outside the jurisdiction of that magistrate court and it is mandatory to conduct such enquiry and failure to conduct the same will vitiate the proceedings. Further the

civil suit already filed is pending in respect of the transaction and even assuming that, there is any dispute regarding the payment of the amount, that has to be considered and decided by the civil court. Further the signature in the disputed agreement has been admitted by the second respondent and even if the contents of the documents were not true, it will not amount to forgery and as such no offence has been committed. He had relied on the decisions reported in **Udai Shankar Awasthi v. State of Uttar Pradesh and Another** (2013(2) SCC 435); **Shivshankar Singh v. State of Bihar and Another** (2012 (1) SCC 130); **Chandran Ratnaswami v. K.C. Palanisamy and Others** (2013(6) SCC 740); **Vir Prakash Sharma v. Anil Kumar Agarwal and Another** (2007(7) SCC 373); **Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandrojirao Angre and Others** (1988(1) SCC 692); **Zandu Pharmaceutical Works Ltd., v. Mohd.**

Sharaful Haque and Another (2005(1) SCC 122); **B. Suresh Yadav v. Sharifa Bee and Another** (2007(13) SCC 107); **Parameswaran Nair v. Surendran** (2009(1) KLT 794); **National Bank of Oman v. Barakara Abdul Aziz and Another** (2013(2) SCC 488); **Mahesh Chand v. B. Janardhan Reddy and Another** (2003(1) SCC 734); **M/s. India Carat Pvt. Ltd v. State of Karnataka and Another** (1989(2) SCC 132); **Manharibhai Muljibhai Kakadia and Another v. Shaileshbhai Mohanbhai Patel and Others** (2012(10) SCC 517); **Mohammed Ibrahim and Others v. State of Bihar and Another** (2009(8) SCC 751) in support of his case.

6. On the other hand, learned senior counsel appearing for the second respondent submitted that, since the investigating officer has not properly conducted the investigation, memo has been issued by the learned magistrate and when the magistrate was about to take

action for not completing the investigation as directed, the investigating officer, without conducting proper investigation, completed the investigation and submitted final report and since not satisfied with the investigation, he filed a protest complaint and after taking evidence the learned magistrate had satisfied that, the investigating officer had not properly conducted the investigation and so took cognizance of the case, after conducting proper enquiry under Section 202 of the Code of Criminal Procedure. There is no particular method provided by the code for conducting enquiry under Section 202 of the Code of Criminal Procedure and only after taking evidence and after satisfaction that court should issue summons and that is the nature of enquiry contemplated under Section 202 of the Code of Criminal Procedure. Further court is not at that stage entitled to evaluate the evidence and come to a conclusion as to whether the evidence is sufficient for

conviction; what is required is only whether a prima facie case has been made out to issue process. Further a false document has been created, mis-using the blank signed stamp paper given and that will amount to creation of false document and whether there was execution of document etc., are matter for evidence. Further, if there is matter to be considered on the basis of evidence, court should not invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings at the earlier stage. He had relied on the decisions reported in **Vijay Dhanuka and Others v. Najima Mamtaj and Others** (2014 KHC 4206) and **Rakesh and Another v. State of U.P. and Another** (2014(2) KLD 629) in support of his case.

7. Heard the learned Public Prosecutor also.

8. It is an admitted fact that, there was an agreement entered into between the representative of the first revision petitioner company Sri.Kuttappan, who

representing the company and its sister concerns and the second respondent in respect of purchase of certain properties in Chembu Village and it is also an admitted fact that as per the earlier agreement, the property has to be procured at the rate of ₹44,000/- per cent and certain amounts were paid as advance and certain sale deeds were executed in respect of certain extent of properties. It is also an admitted fact that, thereafter according to the second respondent there was an understanding between the parties that due to the enhancement of land value, the company had agreed to pay the land value at the rate of ₹75,000/- per cent and according to the revision petitioners they have agreed to pay at the rate of ₹59,000/- per cent and ₹21,09,65,396/- was paid and according to the revision petitioners an amount of ₹5,09,60,804/- was in excess with the second respondent and as per the disputed agreement/ Annexure-A, it was agreed that, 56.82 percent of the

consideration for the balance land will be paid at the rate of ₹59,000/- per cent and the balance amount with the second respondent will be adjusted towards the sale consideration for these transactions and according to the revision petitioners another amount of ₹8,51,23,096/- was also paid, totaling the amount paid to ₹29,50,88,492/-. Further it is a case of the revision petitioners that, three cheques mentioned in the revision petition were also issued towards the amount agreed to be excess with the second respondent and that when presented were dishonoured and a complaint under Section 138 of the Negotiable Instruments Act was filed and that is pending as C.C.No.4947/2011 on the file of the Judicial First Class Magistrate Court, Ernakulam. But according to the counsel for the second respondent, these cheques were given as security for the transactions for the advance amounts paid as per the agreement and that will be clear from the documents issued by the revision

petitioners themselves and those matters are to be considered by the court before which the case is now pending. It is also an admitted fact that a civil suit as O.S.No.452/2012 filed by the first revision petitioner/company for realisation of the amount from the second respondent is pending before the Sub Court, Kottayam. It is also seen admitted in the revision petition itself that, second respondent filed a complaint alleging offences under Section 120B, 420, 468 and 471 of the Indian Penal Code and that was forwarded to the police and a crime was registered as Crime No.364/2012 and after investigation a refer report was filed stating that, it is a case of pure civil nature and it is thereafter that the second respondent filed protest complaint and after taking sworn statement of the complainant and one witness, the case was taken on file as C.C.No.549/2014 and process was issued to the accused persons, which is being challenged by filing this revision. It

is also in away admitted in the revision petition itself that, the first revision petitioner company also filed Crl.M.P.No.5012/2014 before the Judicial First Class Magistrate Court, Vaikom, against the second respondent, alleging offences under Section 405, 409, 420, 464 and 468 of the Indian Penal Code and it was forwarded to the police for investigation under Section 156(3) of the Code of Criminal Procedure and a crime was registered as Crime No.868/2011 and after investigation they filed a refer report stating that, it is a case of civil dispute and on the basis of the objections raised by the company, the court ordered further investigation and that is pending with Kottayam Crime Detachment.

9. Section 202 of the Code of Criminal Procedure reads as follows:

202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is

residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the magistrate may, if he think fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

10. There is no dispute regarding the proposition that, if the accused are residing outside the jurisdiction of the magistrate court where the complaint was filed, then before issuing process, court has to conduct enquiry under Section 202 of the Code of Criminal Procedure and if the

court is satisfied that there is prima facie case made out to proceed against the accused, then the court can issue process under Section 204 of the Code of Criminal Procedure and if the court is not satisfied that there is prima facie case made out for proceeding against the accused, then court can reject the complaint under Section 203 of the Code of Criminal Procedure. It is also settled law that, conducting enquiry in such cases under Section 202 of the Code of Criminal Procedure is mandatory, but in the decision reported in **Vijay Dhanuka and Others v. Najima Mamtaj and Others (2014 KHC 4206)**, the Hon'ble Supreme Court has held that, "every enquiry other than a trial conducted by the magistrate or court is an enquiry, no specific mode or manner of enquiry is provided under Section 202 of the Code of Criminal Procedure. In the enquiry envisaged under Section 202 of the Code, the witnesses are examined where as under Section 200 of the

Code, the examination of the complainant only is necessary with the option of examining the witnesses present if any. This exercise by the magistrate for the purpose of deciding whether or not there is sufficient ground for proceed against the accused is nothing but an enquiry envisaged under Section 202 of the Code. In this case, as we are stated earlier, the magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of the process". The same view has been reiterated in the decision reported in **Rakesh and Another v. State of U.P. and Another** (2014(2) KLD 629).

11. Further it is settled law that, once the refer report has been filed, the magistrate can either accept the refer report and in such cases, second complaint filed by the complainant can be enquired into by the magistrate under Section 200 and 202 of the Code of Criminal

Procedure and if the court is satisfied that, there is prima facie material made out for proceeding against the accused, then issue process to the accused. So entertaining the second complaint on the same subject matter on making out irregularities in the investigation to the satisfaction of the magistrate is not barred in such circumstances. This is the gist of the decisions laid by and the decisions referred to and relied on by the counsel for the revision petitioners. There is no dispute regarding the proposition that, if the case made out is predominantly of civil nature, then court can quash the proceedings invoking the power under Section 482 of the Code of Criminal Procedure. It is also settled law that, even going by the allegations in the complaint, if there is no criminal offence made out, then court can invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings to avoid abuse of process of court. But in the decision reported in

Arun Bhandary v. State of U.P. and Others (2013(1) Supreme 131), the Supreme Court has held that, power possessed by High Court under Section 482 of the Code of Criminal Procedure are very wide and the very plentitude of the power requires great caution in its exercise. The court must be careful to see that, its discretion in exercise of the power is based on sound principles and such inherent powers should not be exercised to stifle a legitimate prosecution. It is not proper for the High Court to analyze 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 arrived 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 could not be proceeded with. Further in the decision reported in **Ravindra Kumar Madhanlal Goenka and Another v. Rugmini Ram Raghav Spinners Pvt.**

Ltd., (AIR 2009 SC 2383), it has been observed that, alternate civil remedy is not a ground to quash the criminal complaint, if an offence is made out. This was followed in the decision reported in **Vijayender Kumar and Others v. State of Rajasthan and Another** (2014(1) KLD 312). It is also settled law that, if the entire dispute arrived are matters to be considered on the basis of evidence in detail, then the High Court should not invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings at the initial stage itself and it has to be done by the trial court and take independent decision on the basis of the materials produced before that court. (See **Taramani Parakh v. State of M.P. and Others** [2015(2) KHCSN 32 (SC)]). Further the documents if any produced by the complainant are not expected to be considered by the court while exercising the jurisdiction under Section 397 and 401 of the Code of Criminal Procedure, while

considering the legality of the action taken by the magistrate for taking cognizance of the offence on the basis of the materials produced before it. Those documents are matters to be considered in defence, that has to be raised by the accused before the court and that court has to consider the same and arrive at an independent conclusion on those aspects. It is true that, unless a false document as defined under Section 464 of Indian Penal Code is made out, no offence of forgery under Section 465 or 468 or using the forged document under Section 471 will be attracted. The question whether when the execution of document itself is in dispute, then, it is matter to be considered by the court, as to whether the allegation that certain admissions said to have been made in the document relied on by the accused for the purpose of causing loss to the complainant, created on a blank stamped paper will amount to forgery or creation of false document etc., are matters to be

considered by the court on the basis of evidence and that cannot be considered by this court while exercising the power under Section 482 of the Code of Criminal Procedure or considering the legality of the action of the court in taking cognizance of the case on the basis of evidence adduced by the complainant at the initial stage itself while exercising the revisional power under Section 397 and 401 of the Code of Criminal Procedure.

12. In this case, admittedly there were lots of disputes between the parties, in respect of which civil and criminal cases are pending. The first revision petitioner also filed a complaint against the second respondent alleging commission of criminal offence including cheating and criminal breach of trust and that is also pending investigation, according to the allegations in the revision petition itself. So under the circumstances, it cannot be said at this stage that, on the basis of the allegations made

against each other, no criminal offence has been committed prima facie for the purpose of proceeding against the revision petitioners. Further in this case, the investigation conducted by the investigating officer was monitored by the court below and only after the complainant filed a petition against the inaction on the part of the investigating officer and after issuing memo to the investigating officer for not proceeding with the investigation properly, the investigating officer had filed a refer report in this case. It is on that basis, when protest complaint was filed, the learned magistrate had decided to conduct enquiry under Sections 200 and 202 of the Code of Criminal Procedure, and after examination of the complainant, posted the case for examination of the witnesses and after examining one witness and after hearing the complainant that the court below had decided to issue process to the accused under Section 204 of the Code of Criminal Procedure. So it cannot

be said that, the learned magistrate had not conducted the enquiry required under Section 202 of the Code of Criminal Procedure before issuing process to the accused. On going through the allegations in the complaint and also the evidence of the complainant, it cannot be said that no prima facie case has been made out to proceed against the accused persons and whether it is sufficient for conviction or even for framing charges has to be considered by that court on the basis of further evidence to be adduced by the complainant under Section 244 of the Code of Criminal Procedure and also after hearing under Section 245 of the Code of Criminal Procedure and framing charge thereafter. There is no illegality committed by the court below in conducting the enquiry and forming an opinion of making out a prima facie case to proceed against the accused on the basis of the allegations made out. The documents produced by the revision petitioner before this court are

matters to be considered by the court at the time of enquiry under Section 244 of the Code of Criminal Procedure or at the time of considering the defence of the accused at the later state of the trial. If on the basis of evidence and after hearing both sides under Section 245 of the Code of Criminal Procedure, if the court is satisfied that, there is no material to frame charge, then the court can discharge the accused and even at that time the revision petitioners will be getting an opportunity to project their case and that can be considered by the magistrate. It is a revision filed against taking cognizance. This court is only to consider as to whether there is any illegality committed by the court below in issuing process. The powers under Section 397 of the Code of Criminal Procedure and Section 482 of the Code of Criminal Procedure are standing a different footing and the powers of revisional court, while exercising the revisional jurisdiction is very limited and not wide as

provided under Section 482 of the Code of Criminal Procedure as well. So under the circumstances and on the basis of the evidence available on record, it cannot be said that, the magistrate has committed any illegality in taking cognizance of the case and issuing process to the accused warranting interference at the hands of this court, using the revisiosnal jurisdiction. The right of the revision petitioners to raise all their contentions during the course of enquiry under Section 244 and 245 of the Code of Criminal Procedure is not lost to them and they can raise all their contentions before the trial court and the trial court can consider and dispose of these objections in accordance with law. So this court finds no merit in the revision at this stage to set aside the order taking cognizance of the case and issuing process to the accused. So the revision lacks merits and the same is liable to be dismissed.

In the result, the revision fails and the same is

hereby dismissed. The lower court can consider the application for personal exemption, if any, filed by the petitioners during the course of enquiry before that court, after taking bail by the petitioners and if such petition is filed, the learned magistrate is directed to consider and dispose of those applications in accordance with law. Parties are directed to appear before the court below on 26.06.2015. Interim order of stay granted and extended from time to time is vacated and the stay against Crl.M.A.No.6986/2014 is hereby dismissed.

Office is directed to communicate this order to the concerned court at the earliest.

Sd/-

K. RAMAKRISHNAN, JUDGE

/true copy/

P.A to Judge

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