IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1638 OF 2002

1. The Stock Exchange, Mumbai
   P.J.Towers, Dalal Street,
   Mumbai 400 001

2. R.C.Mathur
   Former Executive Director of
   The Stock Exchange, Mumbai.
   P.J.Towers, Dalal Street,
   Fort, Mumbai 400 001

3. J.J.Bhatt,
   Director- Listing & Marketing
   Operations of
   The Stock Exchange, Mumbai.
   P.J.Towers, Dalal Street,
   Fort, Mumbai 400 001 ..Applicants
   (org. Accused Nos.1, 2 and 3)

v/s.

1. Mahesh Ratilal Shah
   Proprietor,
   Pooja Investments & Financial Management,
   Office No.3, 1st Floor,
   Hasim Building, Office No.38/40,
   Veer Nariman Road,
   Opp. Akbarallys,
   Fort, Mumbai 400 023.

2. Ashwin C. Choksi , Clg. No. 57-A,
   3rd floor, Bhupen Chambers,

9 Dalal Street, Mumbai 400 001

3. Ashwin C. Choksi ,
Proprietor of M/s. Ashwin C. Choksi
57-A, 3rd floor, Bhupen Chambers,
9 Dalal Street, Mumbai 400 001

4. Suresh Rathi & Co. Clg. No.727,
Parekh Vora Chambers,
N.M.Road, Fort, Mumbai 400 001

5. Suresh N. Rathi,
partner of
Suresh Rathi & Co.
Parekh Vora Chambers,
N.M.Road, Fort, Mumbai 400 001

6. Nand Kishore Rathi,
Partner of
Suresh Rathi & Co.
Parekh Vora Chambers,
N.M.Road, Fort, Mumbai 400 001

7. Shashi Rathi,
partner of
Suresh Rathi & Co.
Parekh Vora Chambers,
N.M.Road, Fort, Mumbai 400 001

8. Naman Securities & Finance Pvt. Ltd.
CLG No. 515
Kotak House, 1st Floor,
Barrck Road,
Opp. Mumbai Hospital
Mumbai 400 020

9. Jayesh Shah,
Director
Naman Securities & Finance Pvt. Ltd.
Kotak House, 1st Floor,
Barrack Road,
Opp. Mumbai Hospital
Mumbai 400 020

10. Umesh M. Merchant
Director of M/s.
Naman Securities & Finance Pvt. Ltd.
Kotak House, 1st Floor,
Barrack Road,
Opp. Mumbai Hospital
Mumbai 400 020

11.Dhanesh T. Gandhi Clg. No.144,
R-545, Rotunda Bldg.,
5th Floor, Bombay Samachar Marg,
Mumbai 400 001.

12. Dhanesh T. Gandhi
proprietor of
M/s.Dharmesh T. Gandhi
R-545, Rotunda Bldg.,
5th Floor, Bombay Samachar Marg,
Mumbai 400 001

13. Subhash V. Shah, CLG No. 747
32B, Khatau Bldg.
A.D.Mody Marg,
Fort, Mumbai 400 001

1. Subhash V. Shah
Proprietor of M/s.
Subhash V. Shah

32B, Khatau Bldg.
A.D.Mody Marg,
Fort, Mumbai 400 001

15. Active Finstock Pvt. Ltd.,
Clg. No. 036
60-C, Bhupen Chambers,
Dalal Street, Mumbai 400 001

16. Bal Chand Singhi,
Director of M/s.
Active Fins Stock Pvt. Ltd.,
CLG No.036, 60-C, Bhupen Chambers,
Dalal Street, Mumbai 400 001

17. Jaysingh S. Kothari
Director of M/s.
Active Fins Stock Pvt. Ltd.,
60-C, Bhupen Chambers,
Dalal Street, Mumbai 400 001

18. Mahendra A. Shah,
Kamer Bldg, Room No.30,
4th floor, 38 Cawasji Patel Street,
Mumbai 400 001

19. Mahendra A. Shah
proprietor of
Mahendra A. Shah,
Kamer Bldg, Room No.30,
4th floor, 38 Cawasji Patel Street,
Mumbai 400 001

20. Gaurang M. Gandhi,
Clg. No.211, 1218 Maker Chambers,
V. Nariman Point,

Mumbai 400 021

21. Gaurang M. Gandhi,
proprietor of
M/s. Gaurang M. Gandhi,
1218 Maker Chambers,
V. Nariman Point,
Mumbai 400 021

22. The State of Maharashtra ..Respondents
(Resp. No.1 Org. Complainant
Resp. Nos.2 to 21 Org. Acc.
Nos.5 to 25)

WITH
CRIMINAL APPLICATION NO.1639 of 2002

1) The Stock Exchange Mumbai,
P.J. Towers, Dalal Street,
Mumbai-400 001.

2) R.C. Mathur,
Former Executive Director of the
Stock Exchange, Mumbai, P.J.
Towers, Dalal Street, Fort,
Mumbai-400 001.

3) J.J. Bhatt
Director-Listing and Market
Operations, of the Stock
Exchange, Mumbai, P.J. Towers,
Dalal Street, Fort, Mumbai- 400
001. ...Applicants
(Original Accused Nos.1 to 3)

Versus

1A) The State of Maharashtra

1) Mahesh Ratilal Shah,
Proprietor, Pooja Investments &
Financial Management, Office
No.3, 1st Floor, Hasim Building,
Office No.38/40, Veer Narman
Road, Opp. Akbarallys, Fort,
Mumbai-400023.

2) Suresh Rathi & Co. CLG.
No.727
Parekh Vora Chambers, N.M.
Road, Fort, Mumbai-400 001.

3) Suresh N. Rathi Partner of
Suresh Rathi & Co. Parekh Vora
Chambers, N.M. Road, Fort,
Mumbai- 400001

4) Nand Kishore Rathi, Partner of
Suresh Rathi & Co. Parekh Vora
Chambers, N.M. Road, Fort,
Mumbai 400 001.

5) Shashi Rathi Partner of Suresh
Rathi & Co. Parekh Vora
Chambers, N.M. Road, Fort,
Mumbai-400 001.

6) Dhanesh T. Gandhi, CLG.
No.144 R-545, Rotunda Bldg. 5th
floor, Bombay Samachar Marg,
Mumbai-400 001.

7) Dhanesh T. Gandhi, Proprietor
of Messrs. Dharmesh T. Gandhi R-

545, Rotunda Bldg., 5th Floor,
Bombay Samachar Marg,
Mumbai- 400 001.

8) Anagram Stock Broking Ltd.
CLG No.027, 204, Dalamal
Towers, Free Press Journal Marg,
Nariman Point, Mumbai-400 001.

9) Bhavesh Shah, Director of
Anagram Stock Broking Ltd. 204,
Dalamal Towers, Free Press
Journal Marg, Nariman Point,
Mumbai-400 001.

10) Hemant Moghe, Director of
Anagram Stock Broking Ltd., 204,
Dalamal Towers, Free Press
Journal Marg, Nariman Point,
Mumbai- 400 001.

11) Jasvantlal Chhotalal & Co.,
CLG No.340, Bhupen Chambers,
Gr. Floor, Dalal Street, Fort,
Mumbai-400 001.

12. Jasvantlal C. Parekh, Partner
of Jasvantlal Chhotalal & Co. The
Vice President of the Stcok
Exchange Mumbai, Bhupen
Chambers, Ground Floor, Dalal
Street, Fort, Mumbai- 400 001.

13. Dhirajlal C. Parekh, Partner of
Jasvantlal Chhotalal & Co.
Bhupen Chambers, Gr. Floor,
Dalal Street, Fort,

Mumbai- 400 001.

14. N. Mohanlal Nagardas, CLG. No.532, R-604, Rotunda Bldg., 6th Floor, Bombay Samachar Marg, Mumbai- 400001.

15. Navnitlal M. Shah, Partner of N. Mohanlal Nagardas, R-604, Rotunda, Bldg., 6th Floor, Bombay Samachar Marg, Mumbai- 400 001.

16. Ketan N. Shah, Partner of N. Mohanlal Nagardas, R-604, Rotunda, Bldg., 6th floor, Bombay Samachar Marg, Mumbai 400 001.

17. Sumat Prasad Jain, CLG No.: 620 14, Rajabahadur Bldg., 3rd Floor, A. Doshi Marg, Fort, Mumbai-400 001.

18. Sumat P. Jain, Proprietor of Sumat Prasad Jain, 14 Rajabahadur Bldg., 3rd Floor, A. Doshi Marg, Fort, Mumbai 400 001.

19. Subhash V. Shah CLG. No.747, 32-B Khatau Building, A.D. Mody Marg, Fort, Mumbai-400 001.

20. Subhash V. Shah Proprietor of M/s. Subhash V. Shah, 32-B Khatau Building, A.D. Mody

Marg, Fort, Mumbai-400 001.

21. Gaurang M. Gandhi, CLG. No.211, 1218, Maker Chambers V. Nariman Point, Mumbai 400 021.

22. Gaurang M. Gandhi, Proprietor of M/s. Gaurang M. Gandhi, 1218 Maker Chambers V. Nariman Point, Mumbai 400 021.

23. Dipak G. Cholera, CLG. No.:160 Bandukwala Bldg. Gr. Floor, British Hotel Lane, B.S. Marg, Mumbai- 400 001.

24. Dipak G. Cholera, Proprietor of Dipak G. Cholera, Bandukwala Bldg., Gr. Floor, British Hotel Lane, B.S. Marg, Mumbai-400 001.

25. Kishor N. Choksi, CLG No.394 406, 4th floor, P.J. Towers, Dalal Street, Fort, Mumbai 400 001.

26. Kishor N. Choksi, Proprietor, of Kishor N. Choksi, 406, 4th Floor, P.J. Towers, Dalal Street, Fort, Mumbai- 400 001.

27. Dipak N. Choksi, Proprietor of Kishor N. Choksi, 406, 4th floor, P.J. Towers, Dalal Street, Fort, Mumbai- 400 001.

28. Dinesh J. Shah, CLG No.:155

R-525, Rotunda Bldg., 5th floor,
Bombay Samachar Marg, Mumbai
400 001.

...Respondents

29. Dinesh J. Shah, Proprietor of Dinesh J. Shah, R-525, Rotunda Bldg., 5th floor, Bombay Samachar Marg, Mumbai- 400 001.

(Respondent No.1 orig. complainant. Respondent Nos.2 to 29, original accused Nos.5 to 32.)

Mr. Amit Desai a/w. Sanjog Parab for the Applicant.
None for the Respondent No.1 /Complainant.
Mrs. R.M.Gadhvi APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
RESERVED ON : JUNE 23, 2016.
DATED : AUGUST 02, 2016.

JUDGMENT .

1. These applications filed under Section 482 of Cr.P.C. challenge orders dated 24th August 2000 in C.C.No.1217/S/2000 and C.C.No. 1218/S/2000 whereby the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai has issued process against the applicants (Org. accused nos.1, 2 and 3) for offence under Sections 409, 471 rw. 34 of the Indian Penal Code.

2. The applicant no.1 is a Stock Exchange, recognized under the

provisions of the Securities Contract Act, 1956 and governed by the Rules, Bye-laws and Regulations, 1957 of the Stock Exchange. The applicant nos.2 and 3 were the Executive Director/ Director of the applicant no.1 Exchange.

3. The equity shares of M/s. Presto Finance Ltd. were listed in the Stock Exchange, Mumbai w.e.f. 28.02.1996 for trading. The respondent no.1/ complainant who is a sub-broker in B.S.E. (AMI), had filed private complaints before the Metropolitan Magistrate 33rd Court, Ballard Pier, Mumbai, against the applicants and twenty others alleging that in March/April 1996 alleging that with the assistance of the broker Yogesh Mehta he had traded and purchased 96000 and 76000 shares on behalf of his clients by making prompt payment of Rs.1601580/- and 1424932.25 by cheques. The complainant further traded in all purchasing 1,89,200 and 109500 shares, the delivery of which was not given to him. By notice dt. 6.4.1996 the applicants suspended trading with effect from 8.4.1996. Upon enquiries the complainant learnt that the shares were fake, forged and thus invalid.

Upon being appraised, the broker Yogesh Mehta made a written complaint to the applicant.

4. The complainant has stated that the applicants had listed the shares of Presto Company for trading despite knowing that the accused nos. 5 to 24 had introduced the forged and invalid shares in the market. The complainant has further stated that the applicant who had retained the cheques and shares till 30.10.1996 ought not to have paid the deposited amount of buyers to accused nos.5 to 24, since they were not legally entitled for the same. The complainant further stated that the best thing in the best interest of buyers was to return the invalid shares to the accused no.5 to 24 by withholding the already deposited amount instead of parting with it in the most dishonest way. The complainant has stated that the applicants herein had conspired with the other accused to cheat the innocent investors.

5. By order dated 06.02.1998 the learned Magistrate referred both the complaints to MRA Marg Police Station for further investigation

under Section 202 Cr.P.C. The MRA Marg police station returned the complaints for being forwarded to EOW branch. The EOW branch submitted the reports on 7.3.2007 stating that no offences were disclosed vis-a-vi the applicants herein. The learned Magistrate however, by orders dt. 24.8.2000 in both the complaints ordered to issue process against the applicants and other accused for offences under Section 409, 471 r/w. 34 IPC. Being aggrieved by the said orders, the applicants have invoked the jurisdiction of this court for quashing the said orders.

6. The learned Sr. Counsel Shri Desai has submitted that the applicant no.1 and its governing body has acted in accordance with the bye laws, rules and regulations and that no process could be issued against the applicants on the bare allegations of 'criminal conspiracy', 'mis-appropriation' or 'cheating'. He has further submitted that the report of EOW clearly exonerates the applicants and in the absence of any prima facie material to sustain the allegations, no process could be issued as against the applicants for offences under Section 409, 471

IPC. The learned Counsel for the applicants has further submitted that the impugned orders are erroneous and untenable in law.

7. The complainant was not represented by any counsel despite due service of notice. Consequently, no arguments have been advanced on behalf of the respondent no.2. I have perused the records and considered the submissions advanced by the learned Senior Counsel Shri Desai for the applicants and the learned APP for the State.

8. At the outset, it may be stated, in ***M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors, (1998) 5 SCC 749*** the Apex Court has observed that summons to an accused in a criminal case is something very serious as it puts the accused person, so summoned, to a great degree of peril of facing an unending trial, mental torture and harrassment, and therefore this should not be done in a casual manner.

9. In ***M/s. Indian Corporation vs NEPC India Ltd. & Ors. dated 20.7.2006,*** the Apex Court after considering its previous decisions on

the principles relating to exercise of jurisdiction under Section 482 of Criminal Procedure Code has reiterated the principles as under :

> "9(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.
>
> For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.
>
> (ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.
>
> (iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.
>
> (iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not

been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

> “"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."
>
> While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant.”

10. In the light of the above well settled principles, the question which falls for consideration is whether the averments in the complaints taken at its face value, make out the essential ingredients of the offence punishable under Section 409 and 471 of IPC.

11. Section 405 IPC defines criminal breach of trust as under:

> **405. Criminal breach of trust**.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

12. A plain reading of these provisions indicates that the offence of criminal breach of trust involves the following essential ingredients:

1) Entrustment with property or dominion over property.

2) Dishonest mis-appropriation of such property, or conversion to own use or disposal of the property by the person entrusted with such property.

13. Likewise, the essential ingredients of offence under Section 471 are :

1) User of forged document as genuine.

2) Such user is made fraudulently or dishonestly despite knowledge or reasons to believe that the document was forged.

14. In the instant case, the applicant no.1 herein is a Stock Exchange recognized under the provisions of Security Contract (Regulation) Act, 1956. The activities of the applicant no.1 are governed by rules, bye laws and regulations of the Stock Exchange, Mumbai. The main object of the applicant no.1 as set out in Exchange Rules, Bye-laws and regulations is to support and protect (in the public interest) the character and status of progress of dealers and to further their interest both of brokers and dealers as well as of the public interested in securities, to assist, regulate and control (in the public interest. The exchange primarily provides facilities for trading in shares and other securities which are listed/quoted on the exchange and also provides facilities for settling such trades/purchases/sales by payment of purchase price and delivery of the concerned shares/securities on "net".

15. As per the procedure, the shares and securities are traded in exchange on every trading day. Under bye-law 191 of the Exchange Rules, the Exchange does not recognize as parties to any bargain in the market other than its own members and every member is directly and primarily liable to every other member with whom he effects a bargain for its due fulfillment in accordance with the Rules.

16. The bargain bye-law 192 further provides that all bargains at the stock exchange are regulated by rules, bye-laws and regulations of the exchange. As per the said rules and regulations each member broker is liable to fulfill/ perform his obligations to a contract by paying money for shares bought by him and by delivering shares which were sold. In case of 'bad delivery' i.e. in the event the shares delivered by a member do not meet the description, and cannot be transferred either due to technical defect or on account of shares being forged, fabricated, hypothecated etc, the introducing member/broker is primarily responsible to rectify the defect or to replace the bad delivery shares

with an equivalent numbers of other good delivery shares of the same company. If the broker/member fails to rectify the defect or replace the shares, the exchange is required to conduct an auction, purchase the requisite number of shares on the selling members account, and deliver the same to the buying members. If the shares of the company are not available in the market due to delisting of the company, or suspension of scrip etc, the transaction is closed out by the Exchange and compensation is paid to the buying member on the selling member's account, in accordance with the fixed prescribed formula. As regards the market settlement as approved by the Central Government as well as SEBI, the member is required to maintain the requisite capital for the purpose of conducting the transaction on the floor of the Exchange. This amount is reflected on the Valan account of the member broker. The said account is like a ledger account and it reflects a type of credit and debit position of money and securities of the member broker. As per the norms the member is statutorily required to maintain the credit balance to discharge his obligation and in the event of bad delivery or in order to fulfill market obligation unless there is any order passed by any Regulatory Authority or Court.

17. Reverting to the facts of the present case, the averments in the complaints reveal that equity shares of Presto Finance Ltd. Company were listed for trading on the applicant no.1 stock exchange w.e.f. 28.2.1996. The ASE had informed the applicants that it had received complaints against the company Presto Finance Ltd. and that it intended conducting investigation. The said ASE had also informed the applicant exchange that it had suspended trading of equity shares of the said company for a period of three days.

18. The scrip of the company was listed between 28.2.1996 and 8.4.1996 during which period regular trading activities in connection with the scrip was done on the floor of the applicant no.1 exchange. The applicant no.1 exchange having received information from ASE that some defective/ duplicate/ invalid share certificates of the said company were circulating in the exchange and in the market, the applicant no.1 vide notice dt. 6.4.96 suspended trading of the scrip

w.e.f. 9.4.96. The applicant no.1 exchange vide notice dt. 9.4.96 informed the members that the trading which had taken place on 9.4.96 were deemed to be canceled, and further by notice dt 12.4.96 informed its members that defective/duplicate/invalid shares had been introduced. The applicant no.1 further informed its members that the board of the applicant no.1 had decided to retain the shares of the said company and consequent payments for settlement in the clearing house of the applicant no.1 till further instructions. The applicant no.1 also requested the members who had delivered the said scrips to deposit their cheques at the standard rate in the clearing house of the applicant no.1 exchange and the members who had received shares of Prestor company were requested to deposit the same by giving full details in form 11 and 12.

19. The correspondence placed on record by the applicants, the genuineness of which is not disputed also reveals that the applicant no.1 Exchange had brought these facts to the notice of SEBI with a request to initiate inquiry into the matter on urgent basis. By letter dt.

16.4.1996 the applicant no.1 exchange had brought these facts to the notice of Sr. Inspector of Police CID, Mumbai and requested to investigate the matter and to take appropriate action. Pursuant to the said complaint crime No. 69 of 1996 was registered and the investigation was initiated. The copy of the said letter was also forwarded to SEBI for necessary action. In the course of the investigation of the said crime, at the request of the Investigating officer, the applicant no.1 handed over all the required documents including duplicate share certificates along with transfer deeds with a request to return the same after completion of the investigation.

20. The documents placed on record reveal that the High Court of Gujrat had passed an order of winding up of said Presto Company. By notices dt. 25.10. 1996 and 26.10.1996 the applicant no.1 informed the members about the said order. The applicant no.1 decided to release the other shares of the company to the concerned buyer members valan account by adjusting the debit in the members valan account. The buyer and seller members were called upon to collect

the relevant shares as well as the amount. Accordingly, an amount o Rs.57,46,515/- was paid by the clearing house to about 90 selling members.

21. The averments in the complaints vis-à-vis the documents which are placed on record prima facie indicate that Presto Finance Ltd. had perpetuated fraud by circulating fake and duplicate share certificates in the market and pursuant to the complaint lodged by the applicant no.1 exchange, crime was registered against the said company. It is pertinent to note that the applicant who is a sub-broker had no privity of contract with the applicant no.1 Exchange. He had purchased the shares through Yogesh Mehta, a member of BSE, who had already filed a private complaint C.C.No.518/S/2000 against the applicant exchange and its Directors alleging criminal conspiracy. The complainant in the present case is a witness in C.C.No.518/S/2000 filed by Yogesh. The complaint Nos.1217/S/2000 and 1218/S/2000 relate to the same facts as alleged by Yogesh. Be that as it may, the records reveal that the learned Magistrate after recording the

verification statements of respondent no.1 had referred the complaints to the concerned police station under Section 202(ii) of Cr.P.C. The said complaints was subsequently forwarded to the Economic Offence Wing, CID. The Economic Offence Wing filed a detail report before the Magistrate on 7.5.2000 stating that the complaints did not disclose any offence under Section 409 and 471 r/w.34 of IPC . The learned Magistrate rejected the report and issued process under Section 409 and 471 r/w. 34 of IPC. The competency of the Magistrate to reject the report and to issue process is not in question. It is also not in dispute that while issuing the process, the Magistrate is not required to give elaborate reasons or pass detailed order. Nevertheless, it is incumbent upon the Magistrate to apply his mind and ascertain whether the complaint and the material placed before him prima facie disclose essential ingredients of alleged offence and whether there are sufficient grounds to proceed against the accused.

22. In the instant case, the complaints and the statement under Section 200 of Cr.P.C. do not reveal essential ingredients of offence

under Section 406 and 471 r/w. 34 of IPC, viz. entrustment and consequent misappropriation and user of forged documents as genuine documents. The complaints and the statements under Section 200 Cr.P.C. do not indicate that the applicants had listed the share certificates despite knowing that the same were duplicate, fake or invalid. On the contrary, the records prima facie indicate that as soon as the applicant was informed that the fake/duplicate shares of Presto Company were circulated, the applicant suspended trading and acted promptly and diligently in accordance with the procedure under the Rules, Bye-laws and Regulations of the exchange.

23. The complaints alongwith the annexures and the verification statement, taken at its face value do no directly or indirectly indicate entrustment of money or property to the applicant no.1 and consequent mis-appropriation or dishonest inducement and cheating. Furthermore, the complaints do not prima facie indicate that the applicants had circulated the said shares as genuine despite knowing that the said shares were fake, duplicate and invalid. This being the

case, there was no justification for issuing process against the applicants for offences under Section 409, 471 r/w. 34 of IPC. Despite which the learned Magistrate has ordered issuance of process against these applicants mechanically and without application of mind. Allowing the proceedings to continue against these applicants will be abuse of process of law. Hence the order cannot be sustained .

24. Under the circumstances and in view of the discussion supra, the applications are allowed. The impugned Orders dt. 24.8.2000 in C.C.Nos.1217/S/2000 and 1218/S/2000 passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai are hereby quashed and set aside qua the applicants.

(ANUJA PRABHUDESSAI, J.)