IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1491 OF 2009

Dharmil Anil Bodani,
Age: 39 years,
Through his constituted Attorney,
Anil Bodani, Occ: Business,
Residing at: ELCID, Flat No. 51,
5th Floor, Ridge Road,
Malabar Hill, Mumbai – 400 006 ...Petitioner

Versus

1. State of Maharashtra
   (Thru Sr. Inspector of Police,
   Economic Offence Wing, Mumbai)

2. Govind Gupta,
   Residing at 7/A, Sunita Apartments,
   Khair Marg, Mumbai 400 006

3. Rajesh Khandelwal,
   Residing at B/1201, Bhavani Complex,
   62, Bhavani Shankar Road,
   Dadar (W), Mumbai 400 028

4. Vinod Haritwal,
   Residing at 27th floor, Mont Blanc Apts,
   Kemps Corner, Mumbai
   Nardaram A-2 Tilak Marg,
   `C' Scheme, Jaipur.

5. Ashwin Mehta,
   Residing at Shangrilla, 3rd floor,
   Carmichael Road, Mumbai 400 026 ...Respondents

Mr. Mahesh Jethmalani, Sr. Counsel with Ms. Chaitrali Pawar i/b Mr. Rahul Moghe for the Petitioner

Mr. S. K. Shinde with Ms. P. P. Shinde, A.P.P for the Respondent No.1-State

Mr. Amit Desai with Mr. Vibhav Krishna, Mr. Pankaj Sutar, Mr. Santosh Avhad i/b Jayakar & Partners for the Respondent Nos. 2

Mr. Vibhav Krishna with Mr. Tahir Pande, Mr. Devang Lakhotia i/b Juris Consillis for the Respondent Nos. 4 and 5

CORAM : REVATI MOHITE DERE, J.
RESERVED ON : 8th SEPTEMBER, 2016
PRONOUNCED ON : 27th OCTOBER, 2016

JUDGMENT :

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties. Respondents waive notice through their respective Counsel.

3. By this petition, preferred under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner (original complainant) has impugned the order dated 7th March,

2009 passed by the learned Additional Chief Metropolitan Magistrate, 19th Court at Esplanade, Mumbai, by which, the learned Magistrate was pleased to accept the `C' Summary report filed by the Investigating Officer ('I.O.') under SectI.O.n 173(2)(i) Code of Criminal Procedure ('Cr.P.C'), in CC No. 07/Summary/06, (arising out of an FIR dated 21st May, 2001, registered vide C.R No. 50 of 2001 with the EOW, CB CID, Mumbai), and as such, has sought quashing and setting aside of the same.

4. A few facts as are necessary to decide the petition are as under :

On 27th March, 2001, the petitioner (original complainant) submitted a complaint application to the Deputy Commissioner of Police, EOW, GBCB (CID), Mumbai, alleging therein, that the respondent Nos. 2, 3 and 5 i.e. Govind Gupta, Rajesh Khandelwal and Ashwin Mehta had cheated, committed criminal breach of trust, misappropriated funds and had illegally, by fabricating documents, increased the authorized share capital of M/s. Manju Meadows Pvt. Ltd. (hereinafter referred to as `MMPL'), and had dishonestly allotted shares of MMPL to Sommerville Farms Pvt. Ltd., a company owned and controlled by respondent No.2-Govind Gupta, as a result of which, Sommerville Farms Pvt. Ltd. became a majority shareholder, and the petitioner's family's shareholding in MMPL was reduced from 99.96% to 24.99%. The petitioner has set out in detail, the fraudulent acts of the respondent Nos. 2 to 5, and has alleged that the said respondents had fabricated several documents in the process, requiring thorough investigation. He has also alleged that the said respondents had misappropriated the property of MMPL and had also sold 40 horses and had secreted the proceeds of sale.

Pursuant to the said complaint application dated 27th March, 2001, the petitioner was summoned by the police, EOW, GBCB CID, Mumbai, on 20th April, 2001, and his statement was recorded. The allegations made in the said statement are similar to what was disclosed by the petitioner in the complaint application dated 27th March, 2001. In the statement dated 20th April, 2001, the petitioner (original complainant) has set out how his father, Anil Bodani came in contact with the respondent No.2-Govind Gupta in 1998, on account of their common interest in horse racing, and how their friendship developed in course of time. He has stated that the respondent No. 2-Govind Gupta and his family, were the owners of 100% paid up share capital of the Company–MMPL, having its registered office at Metro House, M.G. Road, Mumbai. He has stated that the respondent No. 5-Ashwin Mehta and respondent No. 3-Rakesh Khandelwal were the other directors of the said Company-MMPL. He has stated that MMPL was originally incorporated as M/s. Clover Agricultural and Farming Pvt. Ltd. and had an authorized share capital of Rs. 25 lakhs consisting of 25000 shares valued at Rs. 100/- each and that MMPL was in the business of live stock farming and breeding and was the owner of approximately 101.7 acres of land, at Village Shirgaon, Taluka Maval, District Pune, where MMPL has its stud farm. According to the petitioner (complainant), in September, 1998, respondent No. 2-Govind Gupta approached his father, Anil Bodani and urged him to purchase his share as well his family's share in MMPL. He has stated that initially his father was reluctant to accept the said offer, however, as the respondent No. 2 gave a rosy representation and induced his father to accept the offer, his father Anil Bodani purchased the shares of MMPL. He has stated that before the shares were purchased, his father demanded the audited balance-sheet and other relevant documents of MMPL, as on 31st March, 1998. He has stated that his father, on examining the balance-sheet and other documents furnished by the respondent No.2-Govind Gupta, found that certain amounts were shown in the balance-sheet, as due from MMPL to Sommerville Farms Pvt. Ltd. (Rs. 67,97,470/-) and to Ajit Investments (Rs. 1,27,08,069/-). The said two companies i.e. Sommerville Farms Pvt. Ltd. and Ajit Investments were owned and controlled by respondent No. 2-Govind Gupta and his nominees. He has stated that on being asked about the said liabilities, respondent No. 2- Govind Gupta and his wife represented that the said liabilities were their personal liabilities and responsibilities and that they would be personally liable for repaying the said amounts. The said fact was also subsequently confirmed by respondent No. 2-Govind Gupta and his wife, in writing, by handing over letters to that effect. The concerned entities i.e. Sommerville Farms Pvt. Ltd. and Ajit Investments also confirmed that MMPL would not be held responsible for the payment of their liabilities, as Govind Gupta and his wife were personally liable and responsible for the same. Copies of the said letters dated 23rd November, 1998 received from the said entities were placed on record. He has stated that based on the said representation, his parents purchased 99.96% of shares i.e. 24990 shares out of 25000 shares of MMPL by entering into a Share Purchase Agreement, and as such became the majority shareholders of MMPL on 27th October, 1998.

According to the petitioner, on his parents becoming the majority shareholders of MMPL, the respondent No.2-Govind Gupta and the other directors assured the petitioner's (complainant's) parents that all the major policy decisions would be taken by the Board of Directors, with the concurrence of his father, Anil Bodani. He has stated that respondent No. 2-Govind Gupta specifically requested his father to allow him to continue as the Director of MMPL and also requested that his nominees i.e. Ashwin Mehta and Rajesh Khandelwal be permitted to stay in, as the Directors of MMPL. The petitioner (complainant) has stated that in view of the close, warm and friendly relations, his father did not demand the immediate resignation of the Directors of MMPL and in good faith, considering the request of the respondent No. 2-Govind Gupta, entrusted the control and management of assets and affairs of MMPL to respondent No. 2-Govind Gupta, respondent No. 3-Rajesh Khandelwal and respondent No. 5-Ashwin Mehta. The said respondents (Directors) assured the petitioner's father, that they would submit their resignation as and when demanded by him. He has stated that his father, Anil Bodani was also appointed as a Director of MMPL. According to the petitioner, his father infused additional funds in MMPL from time to time, so as to meet its working capital requirements, at the request of the respondent No. 2-Govind Gupta. He has stated that MMPL had also created specific mortgages of its specific property in favour of his father.

According to the petitioner (complainant), in the course of updates relating to the business and affairs of MMPL, they were assured that the business and affairs of MMPL were improving. He has stated that since 1998, as his father was facing serious health issues, in view of the assurances given by the aforesaid respondents-directors, that the business affairs of MMPL were improving, and in view of the family relations, and the trust and confidence, his father had in respondent No. 2-Govind Gupta, his father permitted the existing management team of the respondent No. 2-Govind Gupta, to continue to run the business of MMPL.

In early September, 2000, the petitioner's (complainant's) father asked for details of MMPL's financial statements, such as the balance-sheet, Profit and Loss Account, etc. as on 30th August, 2000, pursuant to which, respondent No. 2-Govind Gupta submitted copies of the said financial statements. On going through the same, the petitioner's father realised, that the said financial statements did not declare the true and correct picture of the business affairs of MMPL. It was noticed that there was a sharp deterioration in the financial condition of MMPL and that some of the transactions/items were suspicious. The petitioner has enlisted the six suspicious transactions in his statement, which are ;

> *“1. Century Finance Corporation Ltd. was shown as a creditor of the company to the tune of Rs. 7,46,680/-. On enquiry it was disclosed that the said loan was utilized for purchase the Mercedes car No. RJ 14-3 G-0595 which was gifted by Shri Govind Gupta to his son-in-law.*
>
> *2. Rs. 1.74 crores given to Gyan Impex was shown as not recoverable and that it would ultimately have to be written as bad debt. (Discreet enquiries revealed that it was a mere book entry and suspected to be a Hawala Transaction).*
>
> *3. Sundry debtors had ballooned from about 76 lakhs at the time of take over of the equity stake to approximately to Rs. 2.64 crores as on 31/08/2000.*
>
> *4. The company's accounts showed that substantial sums were due and payable to the entities owned and controlled by Shri Gupta and his Nominees namely M/s. Sommerville Farms Pvt. Ltd.*

> *(Rs. 2,02,63,302) M/s. Gupta Emerald Mines Pvt. Ltd. (Rs. 89,54,126) and Gupta Livestock Breeding and Research Farm (Rs. 1,02,61,000/-).*
>
> *5. Besides borrowing from the bank the company resorted heavy borrowing from the shareholders and inter corporate deposits amounting to Rs. 319.81 lakhs."*

According to the petitioner (complainant), the borrowings which were shown, were not reflected in the sales turnover of MMPL, which did not increase, but to the contrary, declined in case of the original business of MMPL. It was also revealed that the heavily borrowed funds had been diverted in the trading business of gemstones and jewellery, when in fact, the business of gemstones and jewellery was not disclosed in the object clause of MMPL. According to the petitioner (complainant), the 6th suspicious transaction, was;

> *"6. From the figures of the Sundry debtors it was seen that the entire sale of Gem and jewelry of Rs. 207.09 lakhs was done to some of the related parties only."*

From the figures of the sundry debtors, it was seen that the entire sale of gems and jewellery of Rs. 207.09 lakhs was done to some of the related parties only. According to the petitioner (complainant), when they inquired with the respondent No. 2-Govind Gupta about the suspicious character of the six listed transactions, the respondent No. 2-Govind Gupta stated that one of the transaction which was enlisted at Serial No. 4, was his own personal liability and responsibility and accordingly submitted a letter to that effect on 10th October, 2000. As far as the other suspicious transactions reflected in the financial statements were concerned, respondent No. 2-Govind Gupta could not give any satisfactory explanation. In view of the mismanagement and doubtful transactions and considering the fact that key management and operational decisions were taken without the concurrence and authority of the petitioner's father, the petitioner's father asked respondent No. 2- Govind Gupta and his nominees i.e. Ashwin Mehta and Rajesh Khandelwal to resign vide letter dated 16th November, 2000, as was assured by them earlier. According to the petitioner, inspite of repeated reminders, respondent Nos. 2, 3 and 5 i.e. Govind Gupta, Rajesh Khandelwal and Ashwin Mehta, refused to submit their resignation, pursuant to which, an extra ordinary general meeting was requisitioned and held on 9th January, 2001 to pass necessary resolutions.

During the said meeting held on 9th January, 2001, the petitioner (complainant) was surprised to learn that the company's authorized share capital was increased from Rs. 25 lakhs to 1.50 crores, without their knowledge, without giving any intimation or notice to his parents, despite they being the majority shareholders of MMPL. He also learnt that respondent No. 2-Govind Gupta and his nominees had illegally allotted 75000 shares to Sommerville Farms Pvt. Ltd., by converting part of the loan due to Sommerville Farms Pvt. Ltd. (a concern owned and controlled by Govind Gupta and his aforesaid nominees) into equity capital, by preparing forged and fabricated documents and by increasing the authorized capital of MMPL. According to the petitioner (complainant), when they challenged the legality of the said act of increasing the authorized capital of MMPL, in the absence of the majority shareholders i.e. his parents, who were 99.96% shareholders of MMPL, the aforesaid respondents claimed that notice was sent to the shareholders, intimating them of the Annual General Meeting of 30th September, 2000. It was claimed that the said notice was sent on 4th September, 2000 Under Certificate of Posting (UPC). According to the petitioner (complainant), the said document allegedly sent under UPC was a forged and fabricated document. He has further stated that until the requisitioned meeting was held on 9th January, 2001, none of the aforesaid respondents had even once disclosed to them, the particulars of alteration of the share capital and reconstitution of the Board of Directors of MMPL. The petitioner (complainant) has alleged that as a result of the illegal increase in the authorized capital of MMPL, Sommerville Farms Pvt. Ltd. who did not even hold a single share in MMPL, became a majority shareholder and the petitioner's parent's equity stake in MMPL was reduced to that of a minority shareholder i.e. from 99.96% to 24.99%. According to the petitioner, this act of increasing the authorized capital of MMPL, was a willful and deliberate act, done with the intent of keeping the petitioner's family out of MMPL and to enable the aforesaid respondents to pass the special resolution, which was prejudicial to petitioner's family's interest and MMPL's interest.

The petitioner (complainant) has also alleged that the respondents had sold MMPL's property i.e. about 40 horses privately, without consent and proper authority and that the sale proceeds received from the said transaction, was shown much below the price that was obtained by them and as such the amounts received were siphoned off, by the said respondents. According to the petitioner (complainant), Govind Gupta, Ashwin Mehta and Rajesh Khandelwal, in their fiduciary position as Directors, having being entrusted with, and having dominion over the affairs and assets of MMPL, entered into conspiracy with each other and with the director-Shri Vinod Haritwal of Sommerville Farms Pvt. Ltd., to reduce his parent's majority shareholding to minority i.e. from 99.96% to 24.99%, with the object of acquiring ownership over MMPL and its assets. It is alleged by the petitioner, that in pursuit of the same, the respondent Nos. 2 to 5, dishonestly and fraudulently forged and prepared false documents and falsified books of accounts, by illegally allotting 75000 shares to Sommerville Farms Pvt. Ltd., of which, the said respondents were also directors, thereby, increasing the authorized share capital of Sommerville Farms Pvt. Ltd., which was detrimental to MMPL and the petitioner's family's interest. It is also alleged that the aforesaid respondents misused their office as directors and through a series of steps, like heavy borrowings, conversion of personal liabilities, created fictitious personal liabilities against MMPL, when infact, they were not the liabilities of MMPL at all, gifted MMPL's assets (Mercedes car) to relatives, transferred huge amounts to the credit of their own companies and disposed of MMPL's property i.e. 40 horses and also colluded with some of the debtors, namely M/s. Gyan Apex by abandoning their debts to be recovered and as such made wrongful gains and profits to the tune of Rs. 6 to 7 crores, and thereafter, utilized the same for their personal use, and as such, misappropriated the said money and duped the petitioner's family.

5. On the basis of the aforesaid statement, recorded by the EOW, GBCB CID, Mumbai, the FIR was registered vide C.R No. 50 of 2001, on 21st May, 2001, as against the respondent Nos. 2 to 5, alleging offences punishable under Sections 409, 465, 467, 468, 471, 474, 477, 477(A) r/w 120(B) of the Indian Penal Code ('IPC').

6. Pursuant to the registration of the aforesaid offences, the respondent No.2-Govind Gupta, Respondent No.3-Rajesh Khandelwal and Respondent No.4-Vinod Haritwal were arrested by the EOW on 22nd May, 2001 and were enlarged on bail subsequently, by the learned Metropolitan Magistrate. It appears that the learned Prosecutor preferred an application seeking stay of the order granting bail. The said application was granted

and the order granting bail, was stayed. It appears that thereafter, the police preferred an application and sought vacation of the stay, pursuant to which the stay was vacated. The learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, in its order dated 22nd May, 2001 observed, "It appears that till passing of the said order police were in favour of the complainant. However it further appears that after staying the bail order the interest of police has been changed. Now they want to favour accused for best reasons known to them. This incident discloses ridiculous behaviour of police. Anyhow as police don't want to detain accused further I pass following order. ......"

7. As far as respondent No.5-Ashwin Mehta is concerned, he preferred an Anticipatory Bail Application in the Sessions Court. It appears that the I.O., PI Shri Kilje had filed a reply dated 30th November, 2014, stating therein, that charge-sheet is being submitted against the accused in the appropriate Court, pursuant to which, the respondent No. 5-Ashwin Mehta was granted anticipatory bail. It appears that initially, the investigation was conducted by PI Shri Avdhoot Chavan and PI Shri Kijle, who, as Investigating Officers, recorded statements of several witnesses and

seized several documents of the concerned companies. Subsequently, the I.O. changed and the investigation of the said case was taken over by Shri Subhash Surve. On 7th April, 2006, the Sr. PI, EOW, Mumbai, filed a C-Summary report in the Court of the learned Metropolitan Magistrate, praying therein, for closure of the case, essentially on the ground that the allegations were civil in nature.

8. On 4th December, 2006, the petitioner filed a detailed protest petition opposing the summary report filed by the respondent No. 1 and dealt with each of the allegations. According to the petitioner, the police had willfully suppressed material statements and documents, though the same were available with the I.O. and had submitted only some statements. The petitioner prayed for production of certain documents, which were intentionally and deliberately suppressed by the police and not produced alongwith the final report filed before the Additional Chief Metropolitan Magistrate, 19th Court at Esplanade, Mumbai. The list of documents sought was annexed to the said protest petition at `Annexure A'. The documents sought for by the petitioner were several (more than 80), including statements of material witnesses and material documents.

9. The petitioner brought to the notice of the learned Magistrate, that the police had deliberately not submitted certain crucial documents and statements alongwith the police report, with the intention of shielding the respondent Nos. 2 to 5. The petitioner also pointed out that during investigation, statements of the employees of the Post Office were recorded to show forgery of the UPC, however, despite the same, the I.O. had suppressed the same. The petitioner had also preferred an application under Section 91 of the Cr.P.C for production of documents, which was allowed by the learned Magistrate, pursuant to which, the I.O. produced certain documents in the Court. However, five crucial documents were excluded. The learned Additional Chief Metropolitan Magistrate again gave directions to the I.O. to supply the remaining documents. According to the petitioner, while taking inspection of the supplied documents, the petitioner was shocked and surprised to see the last sentence in the statement of Shri Genbhau Bhagwant Bhinge, Post Office Clerk, had been scored out. According to him, the said fact clearly showed the ulterior motive and malafide intent of the Police, to help the respondent Nos. 2 to 5, by not producing the vital statements and also by tampering with the same.

10. On 17th July, 2007, as per the directions of the learned Additional Chief Metropolitan Magistrate, the I.O. produced 12 documents, except one document i.e. the investigation report submitted by ACP Inamdar to the Additional Commissioner of Police ('Additional CP') (EOW), Mumbai. The police filed an application stating that the police did not wish to produce the said report and wanted to challenge the said order of the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, directing the police to produce the said document. The learned Magistrate vide order dated 11th July, 2008 directed the Senior Inspector, EOW to supply the investigation report of ACP Inamdar to the petitioner. It appears that the police challenged the said order of the learned Metropolitan Magistrate, in this Court, by filing Criminal Writ Petition No. 1003 of 2008, however, this Court, vide order dated 15th July, 2008, was pleased to reject the said petition. Pursuant thereto, the EOW handed over the report of ACP Inamdar, to the petitioner (complainant). It appears that thereafter, the respondent Nos. 2, 3 and 4 moved an application before the learned Metropolitan Magistrate, seeking leave to be heard before passing any orders, which application was rejected by the learned

Magistrate vide order dated 3rd February, 2009. After hearing the learned A.P.P and the learned Counsel for the petitioner-complainant, the learned Additional Chief Metropolitan Magistrate, 19th Court at Esplanade, Mumbai, vide order dated 7th March, 2009, was pleased to accept the C-Summary report, filed by the I.O., EOW, GBCB, CID, Mumbai. The said order has been impugned in the present petition.

11. Mr. Jethmalani, learned Senior Counsel for the petitioner submitted that the impugned order is perverse and illegal and suffers from non-application of mind, inasmuch as, the learned Judge has not considered several documents and crucial statements of witnesses, collected and recorded during investigation, which were germane to the complaint, filed by the petitioner. He submitted that the detailed report of ACP Inamdar, which clearly showed and revealed the complicity of the respondent Nos. 2 to 5, was brushed aside by the learned Judge. He further submitted that the learned Judge had clearly erred by not taking into consideration the statements of witnesses i.e. postal authorities, which shows that the notice of the Annual General Meeting of MMPL allegedly sent by UPC was a forged and fabricated document. He submitted that the said fact was clearly

borne out by the statements of Genbhau Bhagwant Bhinge (post Office Clerk) and Shri Mahindra Bajirao Gajbhiye (Chief Post Master). He further submitted that what was shocking in the facts of the present case, is the manner in which the police had investigated the case in hand. Mr. Jethmalani, relied on several police notings, which shows that initially permission was sought to file charge-sheet in the said case, as the investigation revealed the commission of offences by respondent Nos. 2 to 5, which permission was granted, however, subsequently, the said decision was reviewed and the report was overturned by the Additional CP (EOW), on a representation made by the respondent Nos. 2 and 5. Learned Senior Counsel for the petitioner submitted that the very Additional CP (EOW), who had initially approved the filing of charge-sheet as against the respondent Nos. 2 to 5, had subsequently, gone back on the same and handed over the investigation to another Officer and later opined that no offence was disclosed and recommended filing of a B-Summary Report. Learned Senior Counsel submitted that the learned Magistrate erred in accepting the C-Summary report, by ignoring the overwhelming material on record. He submitted; (i) that the respondent Nos. 2 to 5 had committed criminal breach of trust and had misappropriated the monies of MMPL to the tune of 6 to 7 crores by dealing with the property of MMPL clandestinely; (ii) that despite the letters dated 20th November, 1998 and 10th October, 2000 written by respondent No. 2-Govind Gupta and his wife stating therein, that their liabilities to Sommerville Farms Pvt. Ltd. and Ajit Investments were their personal liabilities, the respondent No.2-Govind Gupta adjusted the loan due by him and his wife to Sommerville Farms Pvt. Ltd., by allotting shares of MMPL to Sommerville Farms Pvt. Ltd., (iii) that the minutes of the meeting dated 30th September, 2000 by which there was transfer of shares to the tune of 75% of MMPL to Sommerville Farms Pvt Ltd., had never taken place and that the minutes of the said meeting were forged and fabricated. He submitted that the object of the said meeting was to remove the petitioner's parents from the majority shareholding of MMPL and reduce them to a minority shareholding; and (iv) that the alleged letter/notice sent to the petitioner's parents under UPC, calling for a meeting on 30th September, 2000, was a fake document and that there are statements of witnesses, which would reveal that there was tampering with the postal stamps. He submitted that the statements of Shri Bhinge and Shri Gajbhiye, both, officers from the post office, clinched the issue, inasmuch as, both have stated that the originals do not match. Learned Senior

Counsel submitted that there was no reason for the petitioner's father, not to attend the meeting of 30th September, 2000, if he had received notice of the same, considering the fact, that he was a majority shareholder of MMPL and was repeatedly asking the said respondents to resign, due to the suspicious transactions revealed in the balance-sheet. He further submitted that the object of transfer of shares from MMPL to Sommerville Farms Pvt. Ltd., was done with the sole purpose of diluting the shareholding of the petitioner's parents. He submitted that the balance-sheets and audit reports of Sommerville Farms Pvt. Ltd. and MMPL of 1998-1999 and of 2000 does not disclose Sommerville Farms Pvt. Ltd.'s shareholding in MMPL and therefore, the minutes of the meeting were fabricated and the transaction of transfer of share from MMPL to Sommerville Farms Pvt. Ltd. was a sham and bogus transaction. According to Mr. Jethmalani, the Share Purchase Agreement entered into by the petitioner's parents and the respondent No. 2-Govind Gupta and his family, shows the intent of the parties. He submitted that despite Sommerville Farms Pvt. Ltd. not having a single share in MMPL, 75% of the shares of MMPL were transferred in its name. He submitted that considering the overwhelming material on record, the impugned order be quashed and set-aside and the police be directed to file a charge-sheet under Section 173 as against the respondent Nos. 2 to 5 and if required, be permitted to investigate the case further.

12. Mr. Jethmalani also submitted that the learned Magistrate had in para 25 of the impugned order observed that the Additional CP (EOW) had set aside ACP Inamdar's Report, on the ground that the report was based on presumptions, rather than proof/evidence. He submitted that the learned Magistrate placed heavy reliance on the Additional CP's Report, rebutting ACP Inamdar's report on every point, when infact, the Additional CP's Report was not a part of the closure report nor was it placed on record of the learned Magistrate nor argued.

13. As far as prayer clause (ii) of the petition, seeking transfer of investigation is concerned, Mr. Jethmalani does not press the said relief, as the concerned Officers who were dealing with the case are no more in the Crime Branch Office.

14. Considering the material on record and the manner in which the investigation had progressed, back and forth, the Government Pleader

and Public Prosecutor was asked to appear in the said petition. Mr. Shinde, the learned Government Pleader and Public Prosecutor submitted a compilation of documents, in particular, the statements of certain witnesses i.e. Vinod Anand, Vinod Haritwal, Javed Tapia and Dwarkaprasad Khandelwal and certain documents i.e. Share Purchase Agreement dated 27th October, 1998, Agreement of Debt dated 27th October, 1998, Minutes of Meeting dated 30th September, 1999, two letters dated 23rd November, 1998 and three letters dated 10th October, 2000 to MMPL and notings of the Officers of the Crime Branch, etc. Learned Public Prosecutor submitted that certain material documents and statements were not placed in the closure report, which would have had a bearing on the decision of the case. He submitted that some of the statements show that no meetings were held by MMPL and that the minutes of the earlier meetings were drawn subsequently. He submitted that the statements of postal authorities shows that there was something amiss and that the possibility of postal stamps being forged and fabricated, cannot be ruled out. He also submitted that the acts of respondent Nos. 2 to 5 were clearly contrary to the Share Purchase Agreement dated 27th October, 1998 entered into between the petitioner's parents on the one hand and respondent No. 2-Govind Gupta and his family on the other. He fairly submitted that the learned Magistrate had not considered the statements of material witnesses and some vital documents and that the C-Summary Report filed by the police did not actually reflect the material that was collected by the police during investigation. He submitted that not only is there sufficient material to file charge-sheet, against the respondent Nos. 2 to 5, but there are certain areas which would require further investigation to be conducted under Section 173(8) of the Cr.P.C.

15. Mr. Amit Desai, learned Senior Counsel appearing for the respondent No. 2 and Mr. Vibhav Krishna, appearing for the respondent Nos. 4 and 5 opposed the petition. Mr. Desai, learned Senior Counsel submitted that civil proceedings i.e. a Civil Suit, is pending between the parties in this Court, as well as there is a complaint pending before the Registrar of Companies (`ROC'). He submitted that the allegations of the petitioner is essentially of oppression of the minority shareholders, for which the remedy is not Criminal Courts but Civil Courts. He submitted that all the issues raised in the complaint/FIR, pertain to management and mismanagement of the affairs of the company, and as such, are matters

which will fall within the realm of Civil Courts/Company Law Board ('CLB'). He submitted that the FIR/complaint was lodged by the petitioner two months after the petitioner failed to obtain any ad-interim relief in the civil proceedings and that too, without disclosing the pendency of the proceedings in this Court and before the CLB. Mr. Desai submitted that the I.O. is the master of facts and as such, after considering the `material on record', the I.O. Shri Surve decided to file the closure report. According to him, as there was difference of opinion, within the Crime Branch, the matter went right upto the Commissioner of Police and as such, it was a decision taken at the highest administrative level. According to the learned Senior Counsel, the said process of filing C-Summary was sanctioned at the highest level of the Additional CP (EOW), Joint Commissioner and the Commissioner of Police and hence no interference was warranted. He submitted that the allegations in the FIR can be inquired into by the ROC under Section 234 of the Companies Act, by conducting an inquiry. He submitted that having failed to get any relief in the complaint lodged with the ROC, as well as in the Civil Suit, the petitioner lodged the FIR/complaint, as against the respondent Nos. 2 to 5. He submitted that the UPC, which is alleged to be forged, is an issue which will arise in the Civil

Court, and as is infact, an issue before the Civil Court and that the same requires adjudication. Learned Senior Counsel further submitted that the petitioner's father despite having a majority shareholding in MMPL, had allowed the respondent Nos. 2 to 5, to run the same, as it was not a transaction as alleged by the petitioner. He submitted that the meeting of 30th September, 2000 and the Minutes of the Meeting are not part of the FIR/complaint. He submitted that infact, even the petitioner had not raised any issue with regard to the minute book. According to Mr. Desai, the State Chief Examiner's report shows that he was unable to give any opinion with regard to the stamps on the UPC. He submitted that the closure report, can neither be termed as perverse or improper, inasmuch as, the learned Magistrate has considered the report and all the documents and statements and has passed the order dated 7th March, 2009.

16. Mr. Vibhav Krishna supported the submissions advanced by Mr. Desai. He submitted that the complaint/FIR is false and is clearly an abuse of the process of the Court and that a civil dispute is sought to be given criminal colour. He further submitted that the final report filed by the I.O. was in accordance with the Investigation Manual of the Economic

Offences Wing. He submitted that it was the petitioner infact, who had sought external interference of the Deputy Chief Minister and Home Minister and had requested them to look into his complaint. According to Mr. Vibhav Krishna, the exercise of inherent and supervisory jurisdiction of this Court is limited, to examine the question of law and to see whether there was any perversity of approach in the order. The learned Counsel for the respondents have also filed written submissions and have tendered several judgments in support of their submission.

17. Perused the papers and all the documents/compilations tendered by the parties. Considering the manner in which the investigation in the said case had progressed, the learned Government Pleader and Public Prosecutor was asked to appear in the said petition. Learned Prosecutor has placed on record certain material statements, documents and notings of the officers who were investigating the said case. He has also tendered a copy of the case diary. At the outset, it would be necessary to mention the manner in which the investigation in the said case has progressed i.e. from seeking permission to file the charge-sheet, as the material collected disclosed the commission of offences, to granting of permission to do so

and subsequently reviewing of the said decision and later reversal of the decision, on a representation made by the respondent Nos. 2 and 5 to the Additional CP (EOW).

18. Ordinarily, it would not have been necessary to set out the notings in details, but in the peculiar facts of this case, it has become necessary. From the office notings, it appears that after the FIR was lodged, detailed investigation was carried out in the said case and several statements were recorded and material documents were seized. Every allegation of the petitioner was examined and a detailed analysis of each of the allegation, was done. The I.O., PI Kilje observed that some of the allegations required more investigation, whereas, there was enough material and merit in some of the allegations. It was observed that the allegations which were investigated in detail, warranted submission of charge-sheet against all the respondent Nos. 2 to 5, for the offences punishable under Sections 409, 420, 465, 467, 468, 471, 474, 477(A) r/w 120(B) of the IPC. Accordingly, PI Kilje , EOW, GBCB, CID, Mumbai, submitted a report and sought permission to arrest the wanted accused and submit a charge-sheet against all the respondent Nos. 2 to 5. The said

report was submitted by PI Kilje to the Sr. PI, EOW, Unit-III, GBCB, CID, Mumbai. After perusal of the said report submitted by PI Kilje, Sr.P.I., EOW, Unit – III, observed that there was sufficient evidence to submit charge-sheet against the respondent Nos. 2 to 5, and hence, para 6 of para 102 was recommended, which is for submitting charge-sheet against respondent Nos. 2 to 5 . Thereafter, the file was put up before the ACP (EOW), who, on 6th August, 2004, noted as under :

> ***"1. Perused the evidence collected against the arrested 3 accused. Since evidence available against these accused, permission may kindly be granted to submit charge-sheet.***
>
> ***2.*** *Another accused Ashwin Mehta is not arrested. Court directed to issue 72 hrs. notice to him before arrest.* ***Since evidence is available, we may issue him a notice as directed by Court and then go ahead with his arrest.***
>
> *3. Submitted for kind perusal and requisite orders pl."*
>
> (emphasis supplied)

The file was thereafter put up before the Additional C.P, (EOW), who after going through the report, noted as under :

> ***"I.O has collected, huge evidence to show that accused has deliberately manipulated records of Manju Meadows Pvt. Ltd. to deprive the complainant of his due share and has also diverted funds of Company for his personal use or other complaint annexed by him.***

In my view there is sufficient evidence on record to prove guilt of accused.

(1) Govind Gupta
(2) Jayesh Ramakant Khandelwal
(3) Ashwin Mehta
(4) Vinod Haritwal

Hence permission to file the charge-sheet may pl. be granted."

(emphasis supplied)

Thereafter, on 27th August, 2004, permission was taken from the Joint Commissioner of Police, who directed the arrest of the last accused and approved the filing of the charge-sheet against respondent Nos. 2 to 5. After the aforesaid direction to file charge-sheet was granted, it appears that there was a sudden change of stand, as is reflected in the noting. It appears that Ashwin Mehta (respondent No. 5) and Govind Gupta (respondent No. 2) made a representation to the Additional CP, (EOW) (who had earlier approved the filing of a charge-sheet against the respondents), stating that, `it was a case of loan and was a case of shark eating away the property and shares of a Company having worth more than ten crores were forced to be spent for 30 lacs on the assurance that the day loan will be returned the whole share will be returned back to Guptas'.

Pursuant to the representation made, the very Additional CP, (EOW), who had earlier approved the filing of charge-sheet, which was approved by his superiors, after noting the representation made by Ashwin Mehta (respondent No. 5) and Govind Gupta (respondent No.2), unsubstantiated by any document, asked the I.O to give point-wise reply/remarks, on Govind Gupta's representation. The said noting is dated 1st December, 2004.

It appears that the Additional CP, (EOW), discussed the matter with the Joint Commissioner of Police (Crime) and Commissioner of Police on 22nd August, 2005 and it was decided to examine the evidence afresh, in view of the new findings i.e. the representation of the respondent Nos. 2 and 5, and hence, ACP Inamdar was asked to give his independent assessment of the evidence collected. It is pertinent to note, that ACP Inamdar submitted a detailed report and noted, that after going through the allegations and evidence collected, some of the allegations disclosed the commission of offences, warranting filing of the charge-sheet against the accused, however, some of the areas required more detailed investigation. The said detailed report prepared by ACP Inamdar, dealing with each of the petitioner's allegation, was placed before the Additional CP, (EOW). Inspite of the detailed analysis made by the ACP Inamdar, Additional CP, (EOW), observed that the investigation done by the ACP Inamdar and the I.O. PI Kilje was biased. He observed that ACP Inamdar's report was based on presumptions, rather than, evidence. Accordingly, the Additional CP, (EOW), discussed ACP Inamdar's Report in detail, and noted that there was no evidence to suggest the commission of any cognizable offence, against any of the respondent Nos. 2 to 5 and that all the allegations have been proved false and that the case should be classified as B-final. The Additional CP, (EOW), observed that the I.O. had not bothered to verify the explanation offered by the accused that the I.O. had misled the Senior Officers. It was also recommended that as the I.O., PI Kilje was biased, mischievous, partial and unprofessional, departmental enquiry be initiated against him and he be placed under suspension. It was also recommended that though ACP Inamdar was asked to go through the entire evidence and give his report, his recommendations were without application of mind, taking into consideration only the complainant's version and hence, it was recommended that a letter of displeasure be issued for his unprofessional and biased report and he was directed to be transferred out of EOW. It appears that thereafter, when the file came before the Joint Commissioner of Police (Crime), after noting the difference of opinion between the I.O., ACP and the Additional CP, the Joint Commissioner of Police, requested the Assistant Director and Prosecutor to go through the case in depth and give his detailed opinion. It was noted that the file was pending for one year and it was earlier decided to file charge-sheet in the case and therefore, the case should be taken up on priority basis. Thereafter, the Prosecutor raised certain queries and requested the I.O. to investigate into some aspects. It appears that thereafter, the file went to ACP (EOW) and then to the Additional CP, (EOW). The Additional CP (EOW) noted that although the Prosecutor had raised queries, enough explanation was given by him earlier, and further noted that the allegations of sale/transfer of shares was the job of auditors and that a detailed account of horses was submitted by the respondent Nos. 2 to 5 and that no irregularity was found in the same by the auditor or by the Administrator. He noted that as per the Companies Act, investigation into the affairs of the company can be ordered only by Central Government, Courts or CLB on grounds of fraud, misfeasance and oppression and mismanagement of Company (Section 235, Section 398), wherein, a detailed procedure of investigation has been prescribed. He also noted that in a complaint of misappropriation by the directors of the company, where the complainant has approached the CLB/High Court, the police did not have any authority to carry out any investigation into the affairs of the company. It was also noted that the High Court was considering the very same facts, in Suit No. 924 of 2001 and considering the same, it was advised that the police ought not to have interfered. It was also noted that the main allegation of the petitioner (complainant) was of majority shareholding being reduced to minority status and whether it was a malafide act or not, was a matter which ought to be taken up with the CLB and that the High Court, the ROC and the CLB was better equipped to handle the said issue. Again, when the file was sent to the office of the Assistant Director and Public Prosecutor, it was observed by the Public Prosecutor that his suggestion for collection of evidence on some aspects, was not complied with. PI Kilje sought permission from Additional CP (EOW) to travel to Jaipur and Pune, which was kept pending and finally Additional CP (EOW) recommended the transfer of PI Kilje from EOW to Special Branch. The Assistant Director and Public Prosecutor on 14th February, 2006, noted that though he had suggested to collect evidence on some points, the same was not complied. He has noted that the evidence collected till date was not sufficient to submit a charge-sheet against any of the respondent Nos.2 to 5. He observed that the material on record showed that the dispute between the parties was civil in nature, that the dispute was pending before the High Court and therefore opined that C-final report be submitted. Thereafter, PI Surve (new I.O.) carried out the investigation with regard to queries raised by the Assistant Director and Public Prosecutor. He has noted that all the documents collected explained the queries raised by the Public Prosecutor and since the PP had mentioned, no cognizable offence was made out, sought permission to file closure report. Thereafter, the file went to Senior PI, Unit-III, EOW and then to the Assistant Commissioner of Police-I, wherein, they have only noted that PI Surve had complied with the instructions of Chief PP. The file was thereafter put up before the Additional CP, EOW, who noted that the I.O. has verified the sale of horses and has not found anything incriminating, nor was any substance found in the transfer of cars. Accordingly, Additional CP (EOW) noted, `Hence, in my view, all allegations regarding misuse of company's fund, purchase of cars, sale of horses on personal account were found to be false. Hence, it is requested that case be filed as `B'-final with prosecution and appropriate action as suggested be taken against I.O.' The file was thereafter, put up before the Joint CP (Crime), who noted, `Please refer para 170 and compliance report. For opinion Chief PP'. (Para 170 is the noting of Assistant Director and PP dated 14th February, 2006).

Pursuant to the Joint CP's noting, the file was again put up before the Assistant Director and PP on 20th March, 2006, who opined that the evidence on record shows that the accused had committed an offence of criminal breach of trust punishable under Section 409 of the IPC and charge-sheet be submitted accordingly. The Public Prosecutor's opinion was overruled and the Joint CP (Crime) recommended as under;

> *"A) Closure of the case as `C' (Civil).*
>
> *B) Since senior officers themselves and legal expert i.e. the Ch. P.P. have revised their opinion, considering the complicated issues of company affairs, it shall not be proper to hold PI S.B. Kilje or ACP S.R. Inamdar responsible for any default.*
>
> *C) The case has undergone prolonged investigation with a variety of recommendations by different officers, it is thus submitted to Commissioner of Police, for final decision."*

The Joint CP (Crime) noted that the financial dealing between the parties were civil in nature and that no criminal offence was disclosed.

As the High Court and ROC were seized of the matter, it was recommended as aforesaid. The Commissioner of Police approved the recommendation 'A', but as far as 'B' was concerned, observed that PI Kilje was responsible for slipshod investigation and directed issuance of show-cause to him for stoppage of increment for one year.

19. It appears that the Additional CP, (EOW), who had initially recommended the filing of charge-sheet against respondent Nos. 2 to 5, which was approved by the Joint CP (Crime), later, on a representation made by respondent Nos. 2 and 5, asked the I.O. to verify the respondents' case and submit para-wise comments. Thereafter, the Additional CP, (EOW) discussed the matter with Joint CP (Crime) and CP on 22nd August, 2005 and noted that it decided to examine the matter afresh, in view of the new findings. Accordingly, it was decided to ask ACP Inamdar to give his independent assessment of the evidence. Accordingly, ACP Inamdar submitted a detailed report dealing with every allegation. According to ACP Inamdar's Report, some of the allegations disclosed the commission of an offence; whereas, some allegations required further investigation. The said report of ACP Inamdar was shot down by the Additional CP (EOW), as

being biased, one-sided and without any material on record. The Additional CP (EOW) thereafter dealt with every finding of ACP Inamdar's Report and noted that no offence was disclosed against the respondent Nos. 2 to 5; that the Civil Courts, ROC and CLB were competent to deal with the petitioner's complaint. The Additional CP (EOW) recommended filing of `B' Summary Report and later even recommended filing of `B' Summary with prosecution. Ofcourse, subsequently, what was recommended was filing of `C' Summary report.

20. A perusal of ACP Inamdar's report shows that he had minutely considered all the allegations and the material in support thereof and given his opinion on every allegation based on the available material on record. On going through the said report, the Additional CP (EOW), shot down the findings of ACP Inamdar and has literally given a finding of acquittal in favour of the respondent Nos. 2 to 5. The findings of the Additional CP (Crime) are contrary to the material on record, which was collected during investigation. The Additional CP, (EOW), seems to have also been carried away with the fact, that the civil dispute was pending in the High Court, ROC and CLB and that the said Courts/authorities were better equipped to

deal with the questions in hand. A perusal of the case diary produced shows the movement of investigation. From a perusal of the case diary, it also appears that the I.O. PI Kilje could not later properly investigate some of the areas, as was asked by the Police Prosecutor, as the papers of investigation were in the custody of the Additional CP (EOW), from September, 2005 till I.O. PI Kilje was ultimately transferred at the behest of the Additional CP (EOW). The case diary shows that though PI Kilje sought permission from Additional CP (EOW), to go to Jaipur and Pune, for investigation on points raised by the PP, he was not granted permission. The case diary also throws light on the detailed investigation done by PI Kilje.

21. *Prima facie,* it appears that though there was sufficient material to file charge-sheet against the respondent Nos. 2 to 5, a decision was taken to file a C-Summary report in the Court of Additional Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. A perusal of the said report shows what were the nature of allegations made in the FIR and the findings on each of the allegations. It was observed that as the petitioner had failed to get any interim relief in his favour, the aforesaid FIR was lodged by the

petitioner. It was also observed that all the allegations and transactions mentioned in the Civil Suit were identical to what was stated in the FIR and that the documentary and oral evidence disclosed that the case was purely civil in nature and accordingly prayed that the `C'-Summary Report be accepted and the respondent Nos. 2 to 5 be discharged under Section 169 Cr.P.C. It appears that pursuant to the said report filed by the PI, EOW, Crime Branch, seeking classification of C-Summary, the petitioner filed a protest petition. It appears that the petitioner was required to file several applications before the learned Magistrate for securing documents and statements that were recorded during the course of investigation. The petitioner had also sought ACP Inamdar's Report. The learned Magistrate was pleased to direct the I.O. to furnish the documents/report etc. to the petitioner. It also appears that in the final C-Summary report, some of the important statements which would have had a bearing on the allegations made in the FIR, were not disclosed. It also appears that some of the statements of the postal authorities and statements of the employees were not disclosed/mentioned in the C-Summary report. It is thus evident, that the police had indeed suppressed some vital material from the Court, while submitting the C-Summary report, which had a bearing on the case. The learned Magistrate, after hearing the parties, accepted the C-Summary report and the accused were set at liberty under Section 169 Cr. P.C. vide order dated 7th March, 2009.

22. It is well settled that the facts in a given case may give rise to multiple proceedings-civil, criminal, etc. Merely because a party has availed of a civil remedy, does not disentitle him from filing a criminal prosecution and vice-versa. Ultimately, whether the facts give rise to a civil/criminal remedy, would entirely depend on the facts and circumstances of each case. The facts in the present case show, that the petitioner had approached the Civil Court to enforce his right as available to him under the civil law and the ROC under the Companies Act. The petitioner has in his FIR/complaint alleged forgery, criminal breach of trust, misappropriation of funds, fabrication of documents, etc., and for which, criminal law would have to be set in motion. In the facts of the present case, what is alleged is fabrication of documents pertaining to an alleged meeting held by MMPL, on 30th September, 2000 and of documents submitted pursuant to the same, with the ROC. It is also alleged that the notice of the AGM allegedly sent to the petitioner's parents by UPC, was a

forged and fabricated document, etc. The prosecution has collected sufficient material/evidence to show the complicity of the respondent Nos. 2 to 5, for the alleged offences of criminal breach of trust, criminal misappropriation, forgery, etc. The learned Magistrate has failed to consider the material statements and documents collected in the said case.

23. A perusal of the impugned order dated 7th March, 2-009 shows that the learned Magistrate had observed that there was nothing on record to take cognizance of the offence in view of the reply filed by the I.O and that the allegations were civil in nature. The impugned order only deals with some of the statements, in particular, of the postal authority and not the entire material which also has a bearing on the said case. Infact, it appears that the learned Magistrate had clearly misread the statements of some of the witnesses. The Magistrate had failed to consider the statements of Genbhau Bhagwant Bhinge, Post Office Clerk and Shri Mahindra Bajirao Gajbhiye, the Chief Post Master, in its correct perspective. It also appears that the learned Magistrate had also not considered material documents, having a bearing on the said case.

24. It is pertinent to note, that a Share Purchase Agreement was entered into between petitioner's parents (Anil Bodani and Chandrika Bodani) on one hand and the respondent No.2-Govind Gupta, Manju Gupta, Radhika Gupta, Meera Gupta, Akshat Gupta and Vikram Gupta (existing shareholders of MMPL) on the other. Respondent No. 2-Govind Gupta and his family members were holding 100% equity shares in MMPL. Out of the said 100% shareholding, respondent No. 2 and his family sold 99.96% equity stake in MMPL, to the petitioner's parents for a consideration of Rs. 29,98,800/-. Under one of the clauses of the said Agreement, all decisions of the management and running of MMPL were to be taken by the Board of Directors of MMPL, with the concurrence of petitioner's father, Anil Bodani. One of the clause also shows that the confirming parties i.e. the existing directors of MMPL would forthwith submit their resignation from the Board of Directors of MMPL, as and when petitioner's father, Anil Bodani so directs. It also appears from the said Agreement, that the equity stake in MMPL was held only by the respondent No. 2-Govind Gupta and his family members and that Sommerville Farms Pvt. Ltd. did not have an equity stake in MMPL. It also appears that two letters dated 23rd November, 1998 were sent by respondent No.2-Govind Gupta

and Manju Gupta on behalf of Sommerville Farms Pvt. Ltd. and Ajit Investments to MMPL stating therein, that the amount of Rs. 67 odd lakhs and Rs. 1 Crore 27 odd lakhs was their personal liability and that Sommerville Farms Pvt. Ltd. and Ajit Investments will not hold MMPL responsible for the payment of the said amounts. The said letters have also been signed by the respondent No.2-Govind Gupta and his wife Manju Gupta confirming that they were personally liable for the repayment to the said two companies.

25. In addition, respondent No. 2-Govind Gupta issued two letters dated 10th October, 2000 to MMPL, stating therein, that the amount of Rs. 1,02,61,000/- to be paid to Gupta Livestock Breeding and Research Farm as on 31st August, 2000 was his personal liability and responsibility as well as the amount of Rs. 2,02,63,302/- to be paid to Sommerville Farms Pvt. Ltd. as on 31st August, 2000 was his personal liability and responsibility. It is pertinent to note, that the said letters dated 10th October, 2000 were written by respondent No. 2-Govind Gupta, after the alleged meeting of 30th September, 2000, i.e. when Sommerville Farms Pvt. Ltd.'s loans were already adjusted and Sommerville Farms Pvt. Ltd. was made a

75% majority shareholder in MMPL. Similarly, respondent No. 2-Govind Gupta had issued another letter dated 10th October, 2000 to MMPL confirming therein, that an amount of Rs. 89 lakhs odd payable to Gupta Livestock Breeding and Research Farm as on 31st August, 2000 was his personal liability and responsibility.

26. It is pertinent to note that the Minutes of the alleged meeting dated 30th September, 2000 shows, that the only members present for the Annual General Meeting were, respondent No.2-Govind Gupta, and Sommerville Farms Pvt. Ltd. through their Director Vinod Haritwal. It is in this meeting, that the Chairman of the said meeting, Govind Gupta (Respondent No. 2) increased the authorised share capital of MMPL from the existing share capital of Rs. 25,00,000/- to Rs. 1,50,00,000/- and it was agreed that Sommerville Farms Pvt. Ltd. would convert part of their outstanding loan of Rs. 2,02,63,302/- into equity shares of MMPL.

27. The learned Judge has failed to consider all the aforesaid material documents. It is evident that respondent No. 2-Govind Gupta wrote these letters dated 10th October, 2000, accepting his personal liability

after the alleged meeting of 30th September, 2000, despite being well aware that in the said AGM chaired by him, MMPL had adjusted part of the loan due to Sommerville Farms Pvt. Ltd. into equity shares of MMPL. It also appears from the Share Purchase Agreement that Sommerville Farms Pvt. Ltd. was not a shareholder of MMPL at the relevant time, yet Vinod Haritwal, Director of Sommerville Farms Pvt. Ltd. attended the alleged meeting of 30th September, 2000, in which the share capital of MMPL was increased and Sommerville Farms Pvt. Ltd. was given 75% shareholding in MMPL, by adjusting the loan due to Sommerville Farms Pvt. Ltd. The learned Magistrate has failed to consider the statements of the petitioner's father, Anil Bodani, who had reiterated the aforesaid; nor has he considered the statement of Vinod Anand, who was working with MMPL since February, 1993 as well as its associate companies i.e. Sommerville Farms Pvt. Ltd. and Gupta Livestock Breeding and Research Farm. It appears from the statement of Vinod Anand that he joined MMPL in February, 1993 as a Senior Executive and was looking after the import applications with DGFT New Delhi, Ministry of Agriculture, etc. and other import related work. He has stated that in 1998, respondent No. 2-Govind Gupta and his family sold 99.96% shares to the petitioner's family by virtue of a Share

Purchase Agreement. He has stated that he was aware that by virtue of the said Agreement, the petitioner's father, Anil Bodani was entitled to several rights in the affairs and powers of the Board and that no major policy decisions could be taken, without his concurrence and that he could seek resignation of the Board, as and when so required. He has stated that he was aware that on petitioner's father becoming 99.96% shareholder, he infused some funds in the form of debt. Vinod Anand had specifically stated that he had not noticed any board meeting, AGM/EGM of MMPL until 2001 and that he had only seen the first AGM/EGM, which was held in Ghia Hall Rampat Road, Behind Museum, Mumbai, when the petitioner was told that their resolutions were defeated because they were in minority. He has stated that he learnt all the shareholding pattern of MMPL only in 2001 and that till 2001, he was not aware that Sommerville Farms Pvt. Ltd. was a majority shareholder in MMPL. The said witness has specifically stated that no Board meetings/AGM/EGM was held till 2001. Vinod Anand has also identified the signatures of respondent No. 2-Govind Gupta on the letters dated 23rd November, 1998 and the letters dated 10th October, 2000. He has further stated that the respondent No. 2-Govind Gupta, respondent No. 3-Rajesh Khandelwal and Respondent No. 5-Ashwin Mehta were in full control of the affairs of the MMPL and that he has not seen or heard that the petitioner's father, Anil Bodani was called for any meeting of the Board or General Meeting.

28. A perusal of the statement of Javed Tapia shows that he was the original owner of M/s. Clover Holding and Trading Pvt. Ltd., which was subsequently named as MMPL; M/s. Sommerville Farms Pvt. Ltd.; and M/s. Tapia Live Stock Breeding and Research Farms. He has stated that in 1992, they transferred the said companies to respondent No.2-Govind Gupta and others and at the time of transferring the ownership, they had handed over all the records of the said companies to Mr. Gupta, right from its inception. He has stated that when he was shown certain documents, in particular, the MMPL's Annual General Meeting/Extra Ordinary General Meeting Book, he has identified that the said book contained some signatures of him. He has stated that the said book was prepared and his signatures were taken on the same later, since the proceedings were of his time. He has stated the handwriting in this book appears to be of someone and not from their staff. As far as the share register of Sommerville is concerned, he has stated that the same does not contain any of Tapia's

signature. According to Tapia, he would not say whether the said register was theirs. He has further stated that when PI Kilje showed him a folio No. 10 of the share register, the said folio bears the name of M/s. Sommerville Farms Pvt. Ltd. He has stated that `the said folio 10 is having address of Banoo Mansion, which is not the address of our time'. He has stated that the pages of the said register were also different colour pages, i.e. all pages were not same or alike and hence, he has stated that the register was not theirs. He has also stated that similarly, wherever Tapia's reference was there, there were no signatures of any Tapia on the register.

29. The statement of Dwarkaprasad Ramlal Khandelwal, an employee of MMPL shows that he had joined MMPL in April, 1995. He has stated that during his tenure in MMPL of 7 years, he had not attended any board meeting or AGM or EGM of MMPL. He has stated that he was entrusted with the responsibility of writing of books of account, such as journals, sales and purchase registers, ledgers, cash book, etc. The statement of Dwarkaprasad Ramlal Khandelwal shows that when he was shown the Minute Book of Sommerville Farms Pvt. Ltd., the said Minute book was not in his handwriting. He has identified the handwriting of the

working director Rajesh Khandelwal, who had written Minutes dated 22nd March, 1993 and has also identified the signature in the Minute Book. The said witness was also shown the Minute Book of the AGM/EGM of MMPL in original. After observing the entire Minute Book, he had stated that the Minute Book contains his handwriting and that he had written the minutes of the meeting dated 28th February, 1992, 10th August, 1993 and so on till 30th September, 1998. He has stated that after 30th September, 1998, the minutes have not been written by him. He has stated that he had written the minutes of MMPL on the instructions of Rajesh Khandelwal and had copied it from the material given to him. He has stated that to the best of his knowledge, he had written the said Minute Book, during the period 2001-2002 before he left the job. It is thus evident from the aforesaid statement of Dwarkaprasad Ramlal Khandelwal that he had written the Minute Book for the year 1992 onwards to 1998 in the year 2001-2002, on the instructions of Rajesh Khandelwal.

30. In addition to the aforesaid, there are statements of the officers from the post office from where the UPC was allegedly sent. The statement of Genbhau Bhinge shows that he was posted at Kalbadevi Post Office,

Mumbai as an Assistant. He has stated that PI Kilje had shown him the original stamp impression dated 5th September, 2000, which was seized by the police from their office. He has stated that police also showed him an Under Certificate of Posting (UPC) page which was seized by the police under a panchnama. The said piece of paper (UPC article) bears the typewritten address of the petitioner's parents. He has stated that it can be seen that the said four postal stamps of Rs. 1/- each were affixed thereon and a stamped seal which is similar to the postal stamp seal was affixed. Shri Bhinge has stated that he took the said UPC in his hands from PI Kilje and on inspecting the same, has formally stated as under :

> *"1. More stamps have been affixed on the UCP; 2. If myself or any other employee of the post would have received the said article, then they or myself would have given a number to the said article and would have signed the same, and would have engraved stamp number 5 on the said article. Wrong stamp was engraved on the said article and I say that I have not taken the said article in my possession. In the said stamp, the stamp code 05 is not affixed along with the date."*

31. What is pertinent to note, is that a sentence of the said witness stating that `the said UPC has not been done from Kalbadevi Office' has been struck of.

32. The statement of Mahendra Bajirao Gajbhiye, Chief Post Master has also not been considered in its correct perspective. He has stated that he had handed over the original specimen of the postal stamps and seal dated 5th September, 2000 to PI Kilje as well as original stamp impression of 16 different stamps being used in Kalbadevi Head Post Office. It is pertinent to note, that Mahendra Gajbhiye in his statement dated 24th February, 2004 has stated that when he was shown the original UPC acknowledgment dated 5th September, 2000 and was asked whether the stamp impression of Kalbadevi Post Office on the said acknowledgment is of their post office or otherwise, he carefully observed the said acknowledgment and stated that the said acknowledgment receipt does not bear the stamp and impression of their post office. He has stated that some of the features of their stamps are missing from the impressions on the acknowledgment dated 5th September, 2000, for example, embossment, stamp code number, the signature of the person accepting the same, etc. He has stated that it was a bogus stamp impression.

33. These are some of the crucial facts which seem to have been completely overlooked by the learned Magistrate.

34. It is well settled that the High Court in its writ jurisdiction and under its inherent power, can interfere with an order, if the same is found to be perverse, unsustainable, contrary to law, and also contrary to the documents/material on record. In the facts, as stated above, the impugned order of the Magistrate is clearly perverse, unsustainable and contrary to the material on record, requiring it to be quashed and set-aside.

35. Accordingly, the impugned order is quashed and set-aside. The respondent No.1 i.e. EOW, GBCB, CID, is directed to file a charge-sheet as against the respondent Nos. 2 to 5, within six weeks from today. Needless to state, that the respondent No.1 is always at liberty to apply for further investigation under Section 173(8) of the Cr.P.C., if so required.

36. Rule is made absolute on the aforesaid terms.

37. At 3:30 p.m., Mr. Vibhav Krishna requests for stay of the order. Since the complaint is of 2001, the request for stay is rejected.

38. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.