THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition Nos.3479 and 3480 and 3548 of 2015

COMMON ORDER :

The accused of Cr.No.221 of 2015 of Kushaiguda Police Station, Cyberabad, Ranga Reddy district, are the petitioners respectively in the three quash petitions viz., A1 to 7 (in Crl.P.No.3548 of 2015) A8 to 12(in Crl.P.No.3480 of 2015) and A13 to 16 (in Crl.P.No.3479 of 2015). The crime registered was for the offences punishable under Sections 420, 406, 506 and 120-B of I.P.C. read with 156(3) of Cr.P.C.

2) It is in fact, a private complaint filed on 20.03.2015, before the learned XX Metropolitan Magistrate, Malkajgiri by the defacto-complainant-cum-2nd respondent entity by name M/s.Kadevi Industries Limited (formerly known as Kadevi Engineering Cooperative Private Limited), represented by its Company Secretary by name C.Srinivasan (**for short, 'Kadevi'**), against the accused persons A.1 to A.16 supra viz; A.1)-M/s. Lanco Infratech limited, Software Units Lay out, High Tech city (**for short, 'Lanco'**), A.2)-M/s.Venkatesh Babu Gangarap, Managing Director of Lanco, A.3)-Mr.Manohar, Chief Executive Officer of Lanco, A.4)-Mr.Medikonda Suresh, Executive Director of Lanco, A.5)-Mr.S.D.Patnaik, Vice President, Lanco, A.6)-Mr.Nishchal, DGM Procurement of Lanco, A.7)-Mr.Akshay Kirti, Assistant Manager of Lanco (to say the A.1 to A.7 are Lanco and the persons allegedly concerned with the management of its affairs if any), A.8)-Jabalpur Transmission Company Limited, the Mira Corporate Suite (for short, 'JTC Ltd'), A.9)-Sri Kattunga Srinivasa Rao, Director of JTC Ltd, A.10)-Sri Anupam Jindal, Director of JTC Ltd, A.11)-Ajay Bhardwaj, Director/Chief Operating Officer and Business Head of JTC Ltd, A.12)-Pankaj Priyadarshi, Director of JTC Ltd, A.13)-Rajat Pradhan, Manager-HOD-Project Management, Q &I of JTC Ltd, A.14)-Mr.Kishore Amritraj, Assistant Manager, Q & I of JTC Ltd, A.15)-Jaganmohan Rao, Project Director of JTC Ltd, and A.16)-Puneet Chauhan, Manager-Commercial of JTC Ltd (A.8 to A.16 are JTC Ltd and the persons concerned with management of its affairs if any).

2(a). The private complaint also speaks the background of Kadevi/Complainant company represented by its Company Secretary and Power of Attorney Holder that it started business in the year 1964, as a Defence Oriented Electronic Industry for manufacture of communication Antennae, Pneumatic Telescopic Masts, self-supporting and Guyed Towers, Counterpoise Earth Systems etc., that in the course of time, further extended into large scale industry with several manufacturing and Service divisions, including manufacture and installation of transmission and telecom towers, that it is a certified ISO 9001-2000 Company by NQA–UKAS (National Quality Assurance United Kingdom Accreditation Service) for Design, Development, Manufacture, Supply and Servicing of Communication Antennae and support systems- such as Pneumatic Telescopic Masts and Towers and also ISO 14001-2004 Company by NQA-UKAS for Environmental Management Systems, for safety in the operations, products and services and is also certified by OHSAS 18001-2007 for its management commitment towards health, safety and wellbeing of its employees. It is one of the largest towers manufacturing companies in India, having supplied and erected over 10,000/- towers of various designs of Angular GBT & RTT, and Hybrid Tubular GBT &RTT in the last few years to all the leading cellular operators and telecom infrastructure companies like, Reliance Jio, Tata Teleservices, Vodafone, Idea, Aircel, Uninor, Airtel, Essar, Indus, VIOM, ATC, BSNL etc., and that with its rich experience, Kadevi became widely known.

2(b). It is further averred in the private complaint in relation to the alleged offence and its background and alleged role of accused that- ***A.1(Lanco) sent an enquiry for supply of 765 KV TL towers in the project being executed by A.8(JTC Ltd) and Kadevi submitted its first quotation on 05.10.2013 for supply of tower parts and as part of the process, Sterlite's (parent company of A.8-JTC Ltd) Quality Assurance(QA) team visited the Kadevi's manufacturing facilities for due diligence and quality inspection and on complete satisfaction of QA, Sterlite has accorded vendor approval to Kadevi. Based on further discussions and correspondence, Lanco/A.1 placed order for supply of 4,555 MT, for Rs.32,90,71,120.10/-ps of tower material on 11.12.2013. As per the terms of the Purchase Order(Annexure-3), A.1/Lanco was to open a Letter of Credit(LC) as and when an inspection call was made by Kadevi.*** **whereas A.1/Lanco having opened LC for the first lot of consignment against which material was duly supplied, however, failed to open L.Cs. for subsequent supplies even required by purchase order conditions** and this specific, critical and primary requirement for the supply has not been complied with by the A.1 to 7 which is the first and foremost basis for tricking the Complainant-Kadevi into litigation to make A.1 to A.7 responsible. ***Further A.9 to A.16 of A.8*** intervened between Kadevi and Lanco, having seen even the deteriorating financial position of Lanco, by ***given false assurance to Kadevi to make payment for supply of tower materials by a letter of comfort (Annexure-4)***. Kadevi having trusted and believed the false promise of A.8 to A.16 on the strength of the comfort letter, further invested Rs.16 crores in manufacturing the **material, that was inspected by A.13 and A.14**. Thereby A.8 to A.16 are also responsible for the wrong doing of Lanco.

2(c). It is further averred that after approved Proto (Annexure-5) and subsequent inspection, **materials were cleared by the QA of A.8, but subsequently rejected the same material after three months of supply by disowning the accused own QA certification**; that it is not possible for any inspection agency to inspect 600 MT of material comprising thousands of parts in just two dates; **A.14** of JTC Ltd. took a few photographs out of thousands of tower parts and made that as the ground for rejection even though same are rectifiable and **A.14 abruptly left the premises without information to Kadevi, very much against the Code of Inspection Practices**. The accused sent a false QA report that too, after one week of repeated follow ups, without sharing the same with Kadevi and even before commencing inspection, **A.5 of Lanco verbally threatened to blacklist the complainant** which shows not only criminal intention of A.5 but also the sanctity of A.8's quality certification is vitiated. Thus from the beginning of the transaction, the intention of the accused are very clear to cheat and defraud Kadevi by causing wrongful loss and to enrich themselves. **A.8-JTC Ltd instructed Kadevi to take up 1100 MT of material to manufacture (Annexure-8) and rejected entire lot later wantonly knowing well that Kadevi by then already manufactured over 50,000 such towers from date of its inspection**. The criminal attitude and conspiracy of **A.13** became evident when A13 sent a mail to Kadevi to supply entire rejected quality of 1100 MT comprising several thousands of parts to another vendor on whom, another order was placed by A.8-JTC Ltd which shows criminal attitude of accused. **A.8-JTC Ltd having given comfort letter by promising part payment for supplies made to**

it, requested Kadevi to go ahead with the further manufacture of towers. Every time Kadevi called A.8-JTC Ltd for payment of outstanding dues, the accused backed out on the assurance unethically stating validity of the comfort letter has been elapsed while it continued to inspect the manufactured material and asking Kadevi to continue to supply. A.8 did not pay for the material supplied and A.1 and A.8 imposed impossible timelines to manufacture and demanded an additional 10% (Annexure-7) Performance Guarantee to cover the condition and A.5 and A.8 frightened the Managing Director of the Complainant repeatedly and on umpteen number of times with threats of encashing the Bank Guarantees and literally invoked the Bank Guarantees and **A.1 evaded the Complainant's dues of 8.69 crores(Annexure-8),** did not lift the stocks worth Rs.7.72 crores (Annexure-9) and illegally tried to encash Bank Guarantees worth of Rs.8.5 crores.

2(d). It is further averred therefrom that A.1 to A.16 collectively resorted to pay a deaf year, refused to listen, utterly avoided to give appointment for meetings and ignored to even reply to the mails of the Complainant to resolve the issues amicably while simultaneously trying to cause further damage to Kadevi and on 11.02.2014, a meeting was called at Delhi by A.1-Lanco along with A.8-JTC Ltd and Kadevi was asked to complete the balance supplies of 1700 MT worth 11 crores with an impossible delivery condition of one month. Complainant-Kadevi, having taken the tough task, agreed to do so, subject to opening of LCs by Lanco and this was accepted by Lanco in the meeting and also recorded in the minutes of meeting dated 01.02.2014(Annexure-10). A.8-JTC Ltd issued Comfort Letter in that meeting to Kadevi for payment if Lanco fails to make payment for the supplies and within two days after the above meeting, Lanco to the utter shock and dismay of Kadevi once again defaulted and informed to Kadevi of inability to open LC (Annexure-11) quoting its serious constraints. The A.1 to A.16 thereby jointly and collectively with sole intention of deceiving Kadevi enticed it to believe that the supplies would promptly be reciprocated with prompt payments as a Letter of Comfort was already given and to make Kadevi further believe that they really meant what they assured. A.8-JTC Ltd in concurrence with A.1-Lanco made two wireless payments (RTGS) but only after vigorous follow ups by Kadevi and that too, after a long delay. While Kadevi took the Comfort letter in right spirit, the A.1 to A.16 supra knew well of no intention to make payment howsoever demanded by Kadevi as A.1 to A.16 have already scripted a playwright to find some silly reasons that could be blown up into strong objections to reject the supplies later.

2(e). It is further averred that before the arbitrary rejection of the material, Complainant-Kadevi points out to the prevailing accepted industrial practice of when towers are taken up for mass manufacture to a tune of more than one lakh tower parts, a few items are prone to rectification or rejection which is a regular happening for any company in the industry which would be either rectified or replenished before dispatch and that it had specifically agreed to a condition of latent defect after the agreed warrantee period which was also mentioned in the order.

2(f). The further averment is real enactment started when Lanco was invited by Kadevi for inspection of the manufacture goods and its certification before supply and criminal intent of Lanco became evident with proto (sample of product that will be taken up for mass manufacture after thorough inspection) was fully inspected by A.8-JTC Ltd on 100% basis, approved in writing and based on which Kadevi manufactured towers and having so intentionally, deliberately and with criminal and distorted mind to cause all kinds of troubles to Kadevi, they started rejecting the manufactured goods by finding fault to the 3rd decimal, knowing well that Kadevi had supplied towers for decades with more complex designs than that of Lanco's and JTC Ltd's specifications and history of Kadevi, that because of the goof up of Lanco with callous and scant respect to honour commitments, Kadevi had to seek adhoc and stand alone credit facility from its bankers and supplied 557 empty material worth of Rs.4 crores for which JTC Ltd agreed to directly pay to Kadevi. The goof up of Lanco caused huge financial loss to Kadevi and it had to supply at the agreed PO price irrespective of the cost incurred in its manufacturing.

2(g). It is also averred that as part of arm twisting tactics and only against Kadevi's interest, all the A.1 to A.16 through A.1-Lanco unilaterally declared that they would retain another 10% of the order value towards performance guarantee which was never contemplated anytime before and this untenable new condition has caused serious financial burden to Complainant-Kadevi which has already been incurring continuous losses due to indifferent attitude of A.1 to A.16. Between June to July 2014 Kadevi further supplied 544 MT material after inspection by JTC Ltd and its officer- A.14, to Lanco-A.1 at their warehouse, but Lanco has not made payment to Kadevi for that till date.

2(h). It is further averred that Kadevi already supplied 1355 MT which was duly inspected and cleared by JTC Ltd and having got installed and in the event of Lanco had no intention to procure the balance material from Kadevi, why it did not short close the balance quantity of the purchase order forthwith and settle the outstanding dues to Kadevi. The materials which were inspected and cleared for dispatch by A.8-JTC Ltd and its official-A.13 and A.14 were again rejected on the instigation of A.1-Lanco which is indicative of Lanco's grudge against Kadevi to put into any problematic situation. When A.8-JTC Ltd itself had cleared the material after inspection, the intervention of A.1-Lanco to instigate A.8-JTC Ltd to reject the material displays the deceitful attitude of Lanco and this is the glaring evidence of vengeful attitude of A.1 to A.16, also when the representative of Lanco suddenly took a flight and landed in Kadevi's factory (while the inspection was in progress and material was being cleared for dispatch), without Kadevi's knowledge for inspection of material uninvited and instigated the A.14 of JTC Ltd to reject whole lot of material under inspection and the inspection activity was abruptly ended and all the inspectors' vanished from the scene without informing Kadevi and A.8-JTC Ltd also did not record its observations though it is normal procedure in any inspection. A.14 and A.13 of A8-JTC Ltd, after one week from Complainant-Kadevi's repeated follow up sent inspection report mentioning nil quality to their acceptance. The inspectors' did not take the signature of Kadevi's representative which is though the normal practice. A.14 of JTC Ltd informed verbally to Kadevi's representative when visited office of JTC Ltd in November,2014 that had the mandate to reject the material and that is the precise reason for rejection of Kadevi's material and A.14 threatened on 18.07.2014 at 11.30 A.M. at the company's yard in Hyderabad saying "Kadevi people are unfit, I have instruction to reject the entire lot, and don't teach me inspection procedure you Chutiya" which is nothing but a clear case of criminal intimidation putting Kadevi into wrongful losses by the accused in their trying to enrich themselves. A.8-JTC Ltd accepted the earlier consignments of tower material without raising any quality deficiency, however, suddenly started complaining about quality of subsequent lots offered for inspection, obviously instigated by A.1 to A.7 with intent to cause disharmony and hatred between Kadevi and JTC Ltd at the instigation of Lanco-A.1. A.5 of A1 sent an invocation demand to Kadevi's bankers i.e. Axis Bank, Hyderabad demanding encashment of Bank Guarantees which Kadevi came to know through bankers and subsequently for the reasons best known to themselves, Lanco withdrew the encashment request. Kadevi had a meeting at one of their offices in Gurgaon on 30.06.2014 for further discussions, that A.1-Lanco and its officers-A.3 and A.4 had every option to short close the order and settle the accounts if they do not want to continue with purchase order, however, on the contra to it, Lanco pressurised Kadevi to complete the supply (balance order) of 1100 MT in 18 days time, else to recover an additional 10% of order value and to that extent entered into an agreement, with the foregoing acts of the A.1 to A.7 and A.13 to A.15. Complainant-Kadevi believes that all the accused plotted conspiracy and on 01.07.2014, Lanco in concurrence with JTC Ltd concluded to supply 1100MT (500 ready+600 new) by 18.07.2014 and Kadevi completed the manufacturing and offered first lot of 548.5MT for inspection on 03.07.2014. Subsequently on 05.07.2014, A.7 of A1 sent a mail to A8 and A13 to do the inspection. While Kadevi was regularly sending the daily progress report to A.1,5,7,8,13 and 14, A.1-Lanco through its officer-A.5 called several times the Complainant-Kadevi's Managing Director by threatening to invoke the Bank Guarantees, if Kadevi did not choose to accept the conditions imposed by Lanco-A.1, despite fulfilling the commitment of new agreement dated 01.07.2014 and investing additional amount of 10 crores. A.1 and A.5 with A.8 asked Complainant's representative to come and recheck the already supplied material lying at the warehouse and Complainant-Kadevi sent its Senior Quality Head to the warehouse wherein A.1-Lanco and others coerced Kadevi's representatives by threatened with dire consequences and not allowed to inspect and coerced to sign a document stating the entire material supplied was in pathetic condition and not accepted, for which Complainant-Kadevi's representative refused to sign. This act clearly shows the evil intention and blackmailing tactics of A.1-Lanco with the sole intention to avoid payments and Kadevi strongly believes the wilful refusal of A.8-JTC Ltd's senior management personnel to meet Kadevi to sort out the outstanding issues is the result of unsolicited ill advice of other accused 1 to 7, that A.8-JTC Ltd and A.1-Lanco were not interested to take material but called Kadevi's officials and coerced with threat to manufacture complete material without releasing any payments for those already supplied. Kadevi had been put into a major trouble with a huge material of 1100 MT material kept at its yards apart from the already supplied material of 1077MT tower parts for which Lanco has not released payments.

2(i). The further averment is that complainant always submitted the bills properly as per the purchase order condition imposed with all supporting documents for process its invoice and in spite of which several payment denials were at the hands of A.1-Lanco from which Kadevi helplessly struck as Victim in the game by the accused and for their misdeeds and every Director of A.8-JTC Ltd and A.1-Lanco are knowing the day-to-day business of A.1-Lanco in settling the dues and delivery delayed to avoid payments due to Kadevi. The accused with connivance looted payment by effecting lawful financial dues and necessity working only in locking in their huge profits and therefore for the wrongful loss suffered by Complainant-Kadevi, A.1 to A.16 are liable as their acts are to cheat or defraud Kadevi. A.8-

JTC Ltd and A.1-Lanco further given false promises of soon clear the dues and in the meantime Complainant-Kadevi keep supplying stocks from their false assurances by luring and inducing, which shows collusion on the part of A.1 to A.16 and their acts attract offences of cheating, criminal intimidation, conspiracy, breach of trust etc. It is further averred that the acts of accused also caused mental agony and humiliation to Complainant-Kadevi and all the accused 1 to 16 acted dishonestly and malafidely by not lifting the manufactured product for nearly six months. Having thus suffocated Kadevi on all counts and in all directions by all the A.1 to A.16 exploiting the situation and by invoking Bank Guarantee of 8.8 crores, the accused are literally trying to ruin the reputation of Kadevi. The accused purposefully acted with a total dishonest and malafide intent to evade payment and by putting Complainant-Kadevi to extreme financial distress.

2(j). It is further averred that its 800 employees around 1000 families are affected because of the criminal acts of A.8-JTC Ltd and also shattered Kadevi financially and operationally and it is their criminal conspiracy by exploiting services and material inputs of Kadevi which has spent large borrowed moneys from banks and is paying penal and heavy interest on it, by innocently falling into the dishonest trap played by them as a cruel corporate commission. Thereby they are responsible for the criminal breach of trust, cheating, conspiracy, fraud, criminal intimidation besides harassment and humiliation caused.

2(k). It is further averred that the A.1-Lanco well aware of their own purchase order in clause Nos.9 and 10 of (Annexure-15) special terms and conditions which read the vendor`s liability for latent defects shall be applicable during the latent defects liability period which shall be for 10 years from expiry of defects liability of period of 24 months from date of taking over/completion of facilities i.e.31.12.2015, however, A.1 deliberately pushed Complainant-Kadevi to manufacture 1100MT comprising thousands of parts which actually in good and acceptable condition, but A.1-Lanco did not accept and gave false information to A.8-JTC Ltd not only that few members which can be replenished but colluded and ganged up with by showing QA report of A.14 and invoked Bank Guarantees illegally without proving with valid reasons that all tower parts of either rejected or part rejected or non-rectifiable and even to the mails sent by Kadevi, none of the accused responded and not even resolved the issue amicably and the failure on their part shows they are defenceless. It is pertinent to state that in June, 2014, A.1 to A.7 at an option to short close the order and settle the dues, after settling could have gone to any other source to procure towers to meet deadlines if the project was paramount to A.8. However, contra to it, A.1 to A.7 invoked Bank Guarantee of Complainant-Kadevi alleged to be due to the non-supply of material, kept Bank Guarantee on hold and all of a sudden later came forward to enter into MOU with Kadevi to supply the balance material by 18.07.2014 with a condition failing which to impose another 10% of contract value and it is outcome of collusion among the accused persons. Even the Complainant completed to supply, to its shock and surprise, the accused rejected the material on flimsy grounds and with fabricated documentation by taking few photographs and placed the order of some other even giving additional timeframe and if at all the material is defective and rejected, it is unknown how A.13 of A8 would send a mail to Kadevi- Complainant to sell the rejected material to new vendor; which is nothing but cheating, for A.8-JTC Ltd inspected and accepted the material which Kadevi-Complainant has supplied to the location and nearly two months later by disowning own quality acceptance certificate again for reduction. It is unknown how after comfort letter given for A.8-JTC Ltd to deny payment for the supplies made and received by it unless there is a criminal intention to evade payment and after successful completion of towers by 18th July, 2014 by Complainant-Kadevi invoking of Bank Guarantees by A.1-Lanco amounts to cheating and all the accused are jointly blackmailing Complainant-Kadevi besides violation of the agreement invoking Bank Guarantee for 8.8 crores after 45 days of the readiness of material.

2(l) It is further averred that later, on 01.01.2015 Kadevi issued notice to all the accused stating above facts and called upon to settle the legitimate dues, for which A.8 to A.16 requested three weeks time to give appropriate reply to act, but surprisingly all the accused gave reply dated 03.02.2015 denying everything as if false allegations and A.1 to A.7 given reply later on 06.02.2015, more than a month after receipt of the notice also by denying the notice allegations and thus all A1 to 16 conspired and caused loss to Kadevi/Complainant.

2(m). It is averred therefrom that above specific events have abundant ingredients of criminal breach of trust, cheating, intimidation, blackmailing, coercion, threats to cause financial collapse of Kadevi, including trying to enrich themselves at the cost of Kadevi, which were all perpetrated collectively by the A.1 to A.16 intentionally and deliberately with dishonest means and with specific resolve to cheat and defraud Kadevi and with well thought out plan to implement the same to hit hard Kadevi. That, out of A.1 and A.8, (i) A.2 being the Managing Director of Lanco is solely responsible for the acts and deeds *statutorily*, A.3 as Chief Executive Officer in charge of whole affairs of A.1, A.4 as Executive Director directly responsible for the work awarded to Kadevi and made it to enter into agreement with deemed knowledge, A.5 Vice-President is the full in charge of the project and particularly responsible about work awarded to Kadevi, by made it to enter into the agreement with deemed knowledge; that A.6 and A.7 of A.1 are the coordinator and procurement in charge for the project with deemed knowledge; that (ii) so far as A.8/JTC Ltd is concerned, A.9 to A.12 being its Directors on the Board with deemed knowledge including of the comfort letter issued by A.8/JTC Ltd to Kadevi of the happening of events in A.1/Lanco, that the A.11 CEO-Business Head with deemed knowledge, A.13 Project Manager, Q & I of A.8, with deemed knowledge, A.14 Assistant Manager(Quality) in charge of the Project of A.8 with deemed knowledge, A.15 Project Director and employee of A.8 with deemed knowledge and A.16 Manager in charge of Procurement for the Project of A.8 with deemed knowledge are made liable.

2(n). It is further averred by Complainant-Kadevi that on 23.02.2015 they lodged a report with the Station House officer, Kushaiguda Police Station who having acknowledged, refused to register the report as if of civil nature, though it is a criminal offence, which made to file the private complaint with a request to take cognizance or to refer the matter to concerned police for investigation and report under Sections 156(3) of Cr.P.C.

2(o). In the private complaint three witnesses were cited viz, C.Ramakrishna-General Manager, Quality Assurance of Kadevi, Manoj Kumar-Senior Executive, Quality Assurance of Kadevi and R.Srinivasa Rao-Vice President of Kadevi. The contents of the private complaint running into 27 pages, with array of the accused 1 to 16 supra and with names of 1 to 3 witnesses supra, alleges complicity of the accused to the crime at pages 3 to 26(which are referred supra, with specific allegations against A1 to rep by A2, A5&7-(Vice-president and

Asst. Manager of A1), A8 to rep by A9, A13&14-(Manager, HOD Project management and Asst.Manager, Quality and Inspection of A8), with verification at page 27 signed by the authorised signatory-Company Secretary of Kadevi and at last page signed by the advocate. With the complaint, the documents referred supra as Annexures 1 to 12 placed reliance are memorandum and request of complainant's company, authorization letter through Board resolution dated 09.03.2015 to the Complainant's Company Secretary to file the complaint or on the locus of the Complainant concerned through company secretary, purchase order dated 12.11.2013, comfort letter given by the A.8-JTC Ltd dated 12.02.2014, mail dated 03.05.2014 of A.1-Lanco approving proto, instruction of A.7 to the Complainant to take up manufacture of 1100 MTS, demand of additional 10% guarantee by A.1 and A.8 supra, details of dues of 8.69 crores, details of stock worth Rs.7.72 crores not lifted by the A.1, minutes of meeting dated 10.02.2014 prior to letter of comfort document No.4 dated 12.02.2014, letter of A.1-Lanco informing Complainant-Kadevi of inability to open letter of credit and special terms and conditions relating to vendors liability for latent defects.

3) The learned Magistrate as per the docket order dated 20.03.2015 (that is of even date) in Sr.No.798 of 2015, pursuant to the office note with reference to the names of Complainant and the 16 accused arrayed (supra), in the memorandum of the private complaint that- the private complaint is coming up for hearing in the presence of advocate for Complainant and upon hearing and the matter having stood over for consideration passed the order which reads "***Complainant present. Heard. Complaint referred to the Station House Officer, P.S. Kushaiguda u/s 156(3) of Cr.P.C. for investigation and report, call on 08.05.2015***."

4) A perusal of the order of the learned Magistrate, no doubt not assigning any reasons specifically as to what made to refer to police for investigation, though it is one of the options either to take cognizance by calling for presence of the Complainant to record sworn statement including of witnesses if any and if taken cognizance, to issue process to the accused as a private complaint procedure under Section 200 to 204 CrPC, or by referring to police for investigation under Section156(3) CrPC. A perusal of the order no doubt speaks hearing of the learned counsel for the Complainant and from perusal referred the same u/s 156(3) of CrPC to the police (SHO, Kushaiguda, Hyderabad) for investigation.

5) It is impugning the same as unsustainable the three quash petitions are filed viz., (Crl.P.No.3548 of 2015 by A1 to 7, Crl.P.No.3480 of 2015 by A8 to 12 and Crl.P.No.3479 of 2015 by A13 to 16) with the contentions in nutshell that:

i). the learned Magistrate ought to have rejected the complaint as the Complainant has not filed a copy of the report dated 23.02.2015 alleged to have been lodged with the S.H.O, Kushaiguda Police Station and the acknowledgement given by the S.H.O and ought to have directed the Complainant to take recourse under Section 154(3) CrPC,

ii). the learned Magistrate has erred in mechanically referring the complaint to the Police Station concerned under Section 156(3) CrPC though there was a settled proposition that the Magistrate should apply his mind to the contents of the complaint and it is only on being satisfied that the case requires reference to the police for investigation,

iii). a reading of the complaint would disclose that the Complainant has no case at all even on the civil side and that it was filed only to blackmail and harass the respective petitioners and to avoid the claim of damages payable to the Lanco(A1),

iv). the learned Magistrate ought to have seen that the allegations made in the complaint are so absurd and inherently improbable on the basis of which no prudent person will even reach a just conclusion that there is sufficient ground for proceeding against the respective petitioners,

v). the criminal proceedings are maliciously instituted with an ulterior motive of pressurizing the petitioners from not proceeding against the Complainant for its default and also to accept the defective material which was refused by the accused and make the payment for the same,

vi). even assuming the complaint allegations are true, the same pertains to a civil dispute and a commercial transaction and it cannot be the basis for a criminal offence whatsoever besides there is no material to allege or infer that the petitioners herein committed any offence within the scope of alleged sections of law in as much as none of the ingredients for constituting the offences under those provisions of law present or made out and the F.I.R thus deserves to be quashed,

vii). it is pertinent to mention here that the Complainant specifically averred in his complaint that it had issued a notice calling upon all the accused to settle the legitimate dues and the petitioners also issued reply denying the same and hence the only remedy, if any, to the Complainant is to proceed under Arbitration Act as provided in clause 11 of the terms and conditions annexed to the purchase order dated 12.11.2012 and not to maintain the complaint,

viii). there is no fraudulent and dishonest intention at the time of entering into the contract and hence Section 420 of I.P.C does not attract,

ix). the petitioners never deceived the Complainant fraudulently and dishonestly at the time of entering into the contract, nor induced him to deliver the property or to consent that any person shall retain the property or that the petitioners have intentionally induced the Complainant to do or to omit to do anything which they would not have otherwise done, had they not been so deceived and that such an act or omission had caused any damage or loss to the Complainant,

x). there is no allegation of Complainant entrusted any property to the petitioners or that the petitioners had dominion over any property of the Complainant or that the petitioners had dishonestly misappropriated or converted any property of the Complainant which had been entrusted to them or the petitioner or the other accused had dominion over or that the petitioner or any of the accused has dishonestly used or disposed of such property placed in trust and hence the question of alleged offence under Section 406 I.P.C does not arise,

xi). the Complainant filed O.S. No.690 of 2014 on the file of XVI Additional District and Sessions Judge, Malkajigiri, Ranga Reddy District for permanent injunction against Lanco(A1) from invoking the bank guarantee and then an ad-interim order of injunction dated 14.08.2014 in I.A. No.451 of 2014 was passed in its favour and extended on 25.09.2014, 14.10.2014 and later on 02.04.2015.

xii). the learned Magistrate failed to see that there is no vicarious liability on the part of the petitioners, that A2 only on the ground of being Managing Director of A1 cannot be implicated, so also of A-3 as the Chief Executive Officer of A1 and in-charge of whole of the affairs of the A1, A-4 being Executive Director of A1 as responsible for the work awarded to the Complainant, A5 as the Vice President of A1 and overall incharge of the project and responsible for awarding of the work and thus none of the petitioners/A2 to A7 can be proceeded against; likewise from the contract was between the Complainant and A1 company, the A8 company or its directors are not at all parties to said contract, the A8 to A16 on the basis of the 'letter of comfort' issued to the defacto-complainant cannot be made liable for any offence and on the allegations that A8 company interfered into the contract of the defacto-Complainant with A1 company assuring payment of material supplied in lieu of non-payment of amount by Lanco(A1), though the assurance of acceptance of delivery and payments of amounts is subject to the defacto-complainant supplying materials in accordance with the quality standards acceptable and within the time limits specified in the 'letter of comfort' and in the commitment letter dated 13.02.2014 by defacto-Complainant, which the defacto-Complainant completely failed to comply and therefore its failure to supply materials as per the fixed time schedule, rendered the 'letter of comfort' infructuous and exonerated A8 company's liability (if any) to make payments under said 'letter of comfort' to the defacto-Complainant and thus there is no any offence of cheating or breach of trust much less any offence of criminal intimidation or criminal conspiracy under Sections 420,406,506 or 120B I.P.C that could be made out,

xiii). in the entire complaint except description of directors of A8 no specific allegations are made explaining or attributing their role in furtherance of the contract between the Complainant and A1 company,

xiv). Apart from the above, A13 to A16 specifically contended that they are nowhere related to the day-to-day affairs of the A8 or A1 companies, but for only employees of A8 who are assigned specific tasks in furtherance of their employment and hence the present complaint is not maintainable against them for what they have executed the work assigned to them, there can be no criminality attributed to any action of them in causing an inspection and making a report thereof from any contractual dispute between the defacto-Complainant and A1 company,

xv). having not made any averments against the petitioners-accused 2-16 in the suit filed against A1 company, the present complaint is filed falsely with concocting allegations against the petitioners and that

xvi). as per the settled principles of law no person shall be allowed to file a complaint where the criminal proceedings are manifestly attended with malafide intention and with an ulterior motive for coercing the accused to succumb to illegal demands and as a measure of arm-twist tactics, that the present case falls under the category of rarest of rare cases wherein a clear case of quashing is made out by the petitioners and failure to interfere by the Hon'ble Court would lead to miscarriage of justice.

6. The sum and substance of the contentions in the quash petitions grounds referred supra and in the oral and written submissions in support of it during course of hearing by placed reliance upon several expressions in impugning the order referring the private complaint by the learned Magistrate u/s 156(3) of CrPC to the police for investigation and the consequential registration of FIR supra are that, apart from the order referring to police investigation is without proper appreciation of facts and without assigning reasons and the consequent FIR proceedings are also therefore liable to be quashed.

7). Where as it is the contention of the Complainant in the oral and written submissions during hearing by placed reliance upon several expressions in support of the order of the learned Magistrate that, it is at the nasal and crime stage pending investigation of the cognizable offence discloses from the private complaint in its referring by the learned Magistrate to police for investigation and such an order as one of the options as a pre-cognizance recourse no way requires reasons, that too from the facts showing even report given to police by Complainant, police did not take the same saying civil nature, that made to file the private Complaint and therefore the inherent powers under Section 482 CrPC to invoke are not meant for such a contingency to quash the FIR, that the learned Magistrate's order referring for police investigation is a well considered by judicial application of mind to facts on record; for assigning reasons it is not even an order taking cognizance and issue of process against the accused to appear and face the accusation, but for referring the complaint to police for investigation, apart from non giving of reasons alone not a ground to interfere invoking the inherent powers to quash or otherwise, that the order of the learned Magistrate no way requires interference for the offences against all the accused are made out from the complaint averments with its enclosures prima-facie, that too same is under police investigation, that copy of the police report is now filed as part of additional material of the Complainat-2nd respondent to the quash petitions and there is a compliance of the guidelines of Priyanka Srivatsava's latest expression which is not with any retrospective operation and not within the knowledge of the Complainant even by date of Complaint filed; further that whatever material in defence available with accused is with liberty to file before the investigating officer to consider as part of investigation material so as to file final report by completing the investigation and any remedy is thereafter, if not to invoke for quashing of final report and any taking of cognizance of offence/s by the Magistrate Court against all or any of the accused, to seek for discharge, that in a quash petition of FIR the High Court cannot go into any disputed and complicated questions of fact and once prima facie there is material to investigate from prima-facie accusation, there is nothing to interfere invoking the inherent powers, further all the persons among accused 1 to 16 are liable for their privy to the offence along with the entities A1 and 8, also from their respective positions and the roles played even vicariously, the existence of arbitration clause in the annexure to the purchase order dated 12.11.2012 not a bar to maintain the criminal proceedings and thereby sought for dismissal of all the three quash petitions.

8). From the above, the common points that arise for consideration are:

i). Whether reasons are required to be mentioned for an order referring a private complaint to police for investigation u/s.156(3)CrPC or overall consideration by application of mind is enough to sustain?

ii). Whether there is a legal bar to the maintainability of the private complaint which is filed subsequent to the expression in Priyanka Srivastava of the Apex Court and consequently to order referring said private complaint to police for investigation u/s.156(3)CrPC and if so same is one of the grounds to interfere under Section 482 CrPC?

iii). Whether there are any grounds to quash the crime proceedings against all or any of the accused, including on lack of any vicarious liability on the principle of ***alter-ego*** or from existence of Arbitration clause in the agreement and if so on what material?

iv). To what result?

Points i, ii, & iii:

9). The points i to iii for consideration being taken up together, for answering separately in the discussion on merits on facts and law, meeting the points raised by both sides from the material placed on record by both sides, in avoiding the order too lengthy by repetition of facts and propositions. In support of the respective contentions both sides placed reliance on several expressions of the Apex Court which include ***Priyanka Srivastava Vs. State of Uttar Pradesh*[1], *Ramdev Food products Private Ltd. Vs. State of Gujarat*[2], *Anil Kumar Vs. M.K.Aiyappa*[3], *Madhao V. State of Maharashtra*[4], *Nupur Talwar vs. CBI*[5], *Bhushan Kumar vs. State (NCT of Delhi)*[6], *Srinivas Gundluri Vs. SEPCO Electric Power Construction Corp*[7], *Rajiv Modi Vs. Sanjay Jain*[8], *U.P.Pollution Control Board Vs. Dr.Bhupendra Kumar Modi*[9], *Maksood Saiyed Vs. State of Gujarat*[10], *Dy. Chief Controller of Imports and Exports vs. Roshanlal Agarwal*[11], *U.P.Pollution Control Board vs. M/s. Mohan Meakins Ltd.*[12] *Kanti Bhadra Shah vs. State of W.B.*[13]. *Satvinder Kaur vs. State*[14], *Smt.Nagawwa vs. Veeranna Shivalingappa Konjalgi*[15], *Sunil Bharti Mittal vs. CBI*[16], *Sarath Mathew vs. IOCVD*[17] and *Lalith Kumari Vs. State of U.P.*[18] *Irisuns Chemical Industry v. Rajesh Agarwal*[19], *S.W.Palanitkar V. State of Bihar*[20], *State of Orissa V. Ujjal Kumar Burdhan*[21] *Devarapalli Laxminarayana Reddy Vs. V.Narayana Reddy*[22], *CREF Finance Limited Vs. Shree Shanti Homes Private Limited*[23]** among others that are being discussed hereunder in dealing with maintainability of Complaint, non-assigning of reasons, vicarious liability, arbitration clause is a bar or not to the criminal proceedings, inherent powers of the Court and limitations to interfere from facts of the case on hand as to how far any cognizable offence made out to investigate or to quash the investigation respectively.

10. Coming to the contention of the complainant has to proceed under Arbitration as provided in clause 11 of the terms and conditions annexed to the purchase order dated 12.11.2012 and the private complaint filed was referred to police and consequently the FIR registered against the accused is not maintainable concerned, merely because there is an arbitration clause in the agreement supra, that cannot prevent criminal prosecution against the accused if any of their acts or omissions constitute any criminal offence of cheating and like. ***In this regard in Irisuns Chemical Industry v. Rajesh Agarwal*** supra it was held while dealing with the effect of existence of arbitration clause in the agreement on criminal prosecution on the ground that civil proceedings are also maintainable, that merely because an act has a civil profile is not enough to stop action on the criminal side. It is further held that a provision made in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act constitutes a criminal offence. The expression in ***Irisuns Chemical Industry v. Rajesh Agarwal*** supra was quoted with approval by the Apex Court in ***S.W.Palanitkar*** supra holding that merely because there is an arbitration clause in the agreement that cannot prevent criminal prosecution against the accused if an act constituting a criminal offence is made out even prima facie. Even in ***State of Orissa V. Ujjal Kumar***

Burdhan supra the principle laid down in ***S.W.Palanitkar*** supra was reiterated. Thus the contention of any arbitration clause in an agreement is not a bar to the criminal prosecution, but for to decide on own merits of the prosecution is sustainable otherwise or not.

11) **Coming to application of judicial mind and reflecting the same with reasons or even with no reasons if at all to sustain by sitting against by legal scrutiny**, **including to consider on vicarious liability before referring to police the Complaint against such of those with no allegations of how personally liable and for IPC offences, there is no vicarious liability with an entity for persons holding office from mere status for no legal fiction like under Section 141 NI Act that also required as part of judicial application of mind from what is also referred supra**, undisputedly the learned Magistrate while referring for police investigation of the complaint under Section 156(3) CrPC, did not assign reasons and even reasons not required and for mere non-giving reasons not a ground to quash the order referring to police investigation, the order with reference to facts did not show application of mind against each of the individual accused as to Complaint averments with enclosures how constitute cognizable offences respectively against them, however, the dispute to answer is it suffice to quash atleast against individual accused without considering by analysation of the material as to said order of Magistrate sustains or not? This Court now undertakes to answer the same hereunder.

11)(a). Firstly coming to the rival contentions; ***on one side saying the reasons are required to be given not only for taking cognizance and issuing summons but also for referring to police investigation, and on the other hand not required but for to verify by sitting against as to there is judicial application of mind or not from the material on record to sustain or not if at all to entertain the quash application for deciding on merits and within its scope concerned***:

11)(a)(i). In ***Maksood Saiyed*** supra, that referred in several subsequent expressions, which not only deals with judicial application of mind to refer complaint for police investigation, but also on principle of ***alter-ego*** of no vicarious liability in IPC offences on mere status or holding office by persons of an entity, without specific allegations in the complaint to entertain as to how they or any of them individually liable and on what basis.

11)(a)(ii). Coming to facts and principle laid down, ***M/s. Nagami Nicotine Private Limited*** is the defacto-Complainant availed loan from the Deena Bank and for non-payment of the loans, O.A. was filed before the Debts Recovery Tribunal, Ahmadabad, for recovery of Rs.120.13 lakhs from the company. The accused persons charged are the Directors or Chairman and one of them the Chairman—cum-Managing Director earlier of the Bank. The allegation was bank floated a public issue of 8 crores equity share of Rs.10 each for cash at a premium of Rs.17 i.e. at a price of Rs.27 each and prospects was published for public issue and there is some misleading information with regard to sanction limits, the dues and export bills of the company and therefrom Company allegedly committed the offences referred supra and a private complaint was filed by appellant Maksood Saiyed against all.

11)(a)(iii). The learned Magistrate by order dated 28.02.2015 under Section 156(3) of CrPC by relying on the basis of allegation made in the complaint referred to the police for investigation and F.I.R. was issued therein dated 10.05.2005.

11)(a)(iv). The quash petition filed against, was later allowed by the High Court on 09.01.2006.

11)(a)(v). Impugning said order of the High Court allowing the quash petition, the defacto-Complainant Maksood Saiyed approached the Apex Court by SLP No.923/2006. It was observed on the scope of Section 482 of CrPC that quash Court may not enter into determination of disputed questions of fact at this stage but for taking allegations made in the complaint vis-a-vis the conduct of parties. The fact remains that civil suit pending is since 2003 and the facts stated in the prospectus were not correct and in fact the notice issued saying the litigation allegedly mentioned as existing in DRT is not correct for only civil suit No.178 of 2003 filed pending in Vadodara. The case of defamation was alleged only on that basis and the bank issued a reply saying of export bills sent to bank were returned unpaid due to bankruptcy in the document and re-sent to the HSBC bank also were returned unpaid on account of discrepancy in the export bills L/C and there is no negligence of bank in this regard. Only to use pressure on bank, the civil suit is filed. Public issue was closed on 21.05.2005 and draft prospectus of public issue filed with SEBI on 02.12.2004 was kept on website of bank, SEBI and Lead Manager M/s SBI Caps, and a press note was released and public issue opened subsequent to the notice sent on 27.01.2005 is not readable and informed to give fresh copy and instead, the notice was served belatedly and there is no mala fide intention and nothing suppressed but for inadvertent error, hence to withdraw the notice with note not to resort to unwarranted actions.

11)(a)(vi). **The Apex Court therefrom referring to Pepsi Foods Limited Vs. Special Judicial Magistrate**[24] para-28 where it was held, Criminal law cannot be set into motion as a matter course. It is not that the Complainant has to bring only two witnesses to support his allegations in the complaint to have criminal law set into motion. The order of Magistrate summoning the accused must reflect that he had applied his mind to the facts of the case and the law applicable thereto.-------- Then the learned Magistrate in our opinion should have kept said principle in the mind and thereby held no merits in the appeal impugning the order of the High Court to quash the proceedings, as throughout the complaint petition there is no allegation made against any of the respondents saying they had anything to deal with personally either in discharge of their statutory or official duty. The High Court in quashing the case therefrom considered the matter by analyzing the material. The approach of the High Court is entirely correct. **The mention of DRT case instead of civil suit is not per se defamation and particulars in these aspects not found incorrect and the learned Magistrate in referring the complaint for police investigation, did not apply his mind to the allegations in the complaint.**

11)(a)(vii). ***Thus in Maksood Saiyed supra what the Court held is while referring for police investigation even, it is the duty of the Magistrate to go through the complaint and apply his mind to the complaint and documents filed in so referring and not that reasons are mandatory and non-giving reasons ground to interfere with the order of Magistrate on that ground alone***.

11)(b). In ***Rajiv Modi*** supra it is observed that High Court cannot go into deciding complicated questions of fact, but for to decide on reading of Complaint with cognizance order or FIR or Final report material, by proceeding if taken as true cognizable offence made out or not.

11)(c)(i). It was also held in ***Madhoa*** supra that if on perusal of the complaint that shows allegations of cognizable offence, the Magistrate referring under Section 156(3) is sustainable, in saying for reference no reasons much less with detailed order are required but for judicial application of mind. The Apex Court on point for consideration as to the Magistrate was justified or not in directing the police to investigate and submit a detailed report under Section 156(3) of CrPC observed that, impugned order of the Magistrate shows **counsel for Complainant was heard and perused the allegations made against the accused in the complaint and documents annexed therewith and observed it needs proper investigation in forwarding,** thereby held nothing to interfere with the impugned order of forwarding for registering of crime within the discretionary power. For that conclusion ***Madhoa*** supra followed the well considered expressions in ***Devarapalli Laxminarayana Reddy*** and ***CREF Finance Limited*** supra, where it was held the courses open to the Magistrate at that stage of private complaint filed is either to proceed for taking cognizance of a complaint by recording sworn statement of Complainant and witnesses if any by examination on oath as per the Sections 200 to 204 of CrPC or to refer the complaint for police investigation under Section 156(3) of CrPC within his discretion to exercise on reading of complaint, if he finds the allegations discloses a cognizable offence, to save valuable time of Court for enquiry into the matter when discharged primary duty of police to investigate.

11)(d).As per ***Devarapalli Laxminarayana Reddy*** supra:

"It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with must take cognizance". The word "may" gives discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under S.156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself".

11)(e). Coming to the expression in ***Satvinder Kaur*** supra, it was held that where the FIR discloses commission of cognizable offence, the Court does not normally stop investigation. Thus, even order referring to police for investigation is with no reasons, once FIR registered and investigation taken up and same discloses cognizable offence against respective accused to investigate, the proceedings cannot be quashed ordinarily.

11)(f). Further, in ***Srinivas Gundluri*** supra the Apex Court observed particularly at para-15 that what is required is on bare reading of complaint if it discloses a cognizable offence, than a Magistrate without applying mind as is required for sufficient ground to proceed to take cognizance in a private complaint, may direct the police for investigation. It is practically in saying application of judicial mind as only from perusal of the complaint with supporting material where discloses a cognizable offence, police can be directed to register crime and investigate by invoking the discretionary power under Section 156(3)of CrPC.

11)(g)(i). Coming to the other subsequent expression in ***Anil Kumar*** supra, it mainly speaks about sanction under Section 19(1) & (3) of the Prevention of Corruption Act, 1988 (for short, ‘P.C.Act’) and by Section 19(3) P.C.Act, non-effect of absence of sanction in some circumstances held does not mean requirement of sanction not mandatory*. **Once a private complaint against a public servant filed under Section 200 CrPC when there is no sanction, referring to the police for investigation under Section 156(3) of CrPC per se held not valid. It was further held that the learned Magistrate could not have ordered without previous sanction for investigation under Section 156(3) of CrPC and the learned Magistrate while exercising power of such reference should have applied his mind and it should have been reflected in that order though a detailed expression of his views is neither required nor warranted.***

11)(g)(ii). In ***Anil Kumar*** supra the offences against the public servant alleged in the private complaint are Sections 406, 409, 420, 426, 463, 465, 468, 471, 474 read with 120-B and 149 IPC and Sections 8 and 13 read with 12 of the P.C.Act. The learned Special Judge with Magistrate powers referred the complaint to Deputy Superintendent of Police, Lokayukta for investigation and the same was quashed by the High Court under Section 482 of CrPC in saying when special judge cannot take notice of a private complaint against a public servant without sanction under Section 19(1) of P.C. Act, a reference under Section 156(3) of CrPC even acting at a pre-cognizance stage is no way surviving **and for that conclusion referred *Maksood Sayeed* Supra**.

11)(g)(iii). Thus what is laid down in ***Anil Kumar*** supra is exercising power of reference by Magistrate under Section 156(3) of CrPC should not only by applied his mind, but also it should reflect in that order though a detailed expression of his views is neither required nor warranted.

11)(h). Like in **Anil Kumar** supra, it was also held by a three Judge Bench expression of the Apex Court in ***State of U.P. Vs. Parasnath Singh***[25] that either on receipt of complaint or on police report or upon receiving information of offences committed as per Section 190 of CrPC and so far as a public servant concerned, cognizance of offence is barred unless sanction is obtained from the competent authority for the acts alleged in discharge of official duty by offering the protection as to mandatory character and thus when the law requires sanction and the Court proceeds with a public servant without sanction, public servant got right to raise the issue of jurisdiction and **thereby the reference of the private complaint by Magistrate to police for investigation without sanction order filed is not legal**.

11)(i). In ***Bhushan Kumar*** *supra* it was held, subjective satisfaction is enough for no reasoned order contemplated to take cognizance and summoning of accused. Paras 8-11 speak:

> “8. *Under Section 190 of the Code, **it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction***. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.
>
> 9. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. ---------
>
> 10. ***Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons**. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.*
>
> 11. Time and again it has been stated by this Court that the summoning order Under Section 204 of the Code

requires no explicit reasons to be stated because ***it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith."***

11)(j). ***In Nupur Talwar** supra having discussed the legal position covered by many of the decisions supra, it was concluded that, **it is therefore apparent that an order issuing process cannot be vitiated merely because of absence of reasons.***

11)(k). In ***Smt. Nagawwa*** *supra* the Apex Court way back in the year 1976, held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. In deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the Complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the ***discretion has to be judicially exercised***. *Once the Magistrate has exercised his discretion and found within judicial discretion, it is not for the High Court, or even for the Apex Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction.*

11)(l). In ***U.P.Pollution Control Board(2)*** supra at para No.23 it was held that "it is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint and the evidence lead in support of the same and ***he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused***."

11)(m)(i). Coming to other latest decision of ***Ramdev Foods*** supra of a three judges Bench of the Apex Court dated 16.03.2015, where it is observed the power under Section 156(3) of CrPC is distinct from the power under Section 202(1) of CrPC and there is even discretion to call for report under Section 202(1) of CrPC instead of directing investigation under Section 156(3) of CrPC, but for to say for such direction either for ordering to investigate or to issue summons is only after application of mind by Magistrate, as to whether credibility of information available and weighing in such circumstances, the Magistrate can straight away direct investigation under Section 156(3) of CrPC. It is no doubt observed power of arrest or investigation by police is not mechanical and it requires application of mind as observed by the recent Constitution Bench expression in ***Lalitha Kumari*** *supra* as to when mandatory to register the FIR and when there be preliminary enquiry before registration of F.I.R that to be permissible.

11)(m)(ii). In ***Ramdev Foods*** and ***Maksood Sayed*** supra that also referred besides ***Madhoa, Anil Kumar*** and also ***Pepsi Foods*** supra followed in **G.Sagar Suri Vs. State of U.P.**[26] and ***Indian Oil Corp. Vs. NEPC India Ltd***[27] where it was held a ***criminal Court before issuing process has to exercise caution and if essential, the High Court can quash where it is a dispute essentially of civil nature giving cloak on criminal offence and in Indian Oil Corporation supra held further that to settle the civil disputes involving in Criminal Cases by pressure to prosecute be deprecated.***

11)(m)(iii). It is in saying by the Apex Court ultimately of discretionary power under Section 156(3) of CrPC can be invoked by the Magistrate in the nature of pre reminder or intimation to police to exercise plenary power to refer beginning with Section 156(3) of CrPC and ending with final report under Section 173 of CrPC, before invoking Sections 200 to 202 of CrPC for taking cognizance. _It is also observed contextually of investigation includes the power to arrest where requires as held in **H.N. Reshmakumari Vs. State of Delhi**[28]. It is no doubt observed on the scope of Sections 41 and 41-A of CrPC of arrest is not so casual, unless required to do so and referred in that context **M.C.Abrahim Vs. State of Maharashtra**[29]_.

11)(m)(iv). _Thus from **Ramdev Foods** supra also there is nothing but for the duty of the Magistrate before forwarding under Section 156(3) of CrPC to consider whether the dispute is apparently of civil nature or not, and if not, apparently to exercise discretion either to refer for investigation by police or to proceed as a private complaint for cognizance._

11)(n)(i). The other decision is ***Priyanka Srivastava*** supra dated 19.03.2015 of two judges Bench only two days subsequent to ***Ramdev Foods*** supra, no doubt by referring to ***Ramdev Foods,*** besides ***Lalitha Kumari***, ***Madhoa, Anil Kumar, Maksood Saiyed, CREF finance, Devarapalli Laxminarayana Reddy*** supra among **Anil Santhamma Vs. K.Elamgovan**[30], **Manharbhai MK Vs. Shanleshbha**[31], **Dilawar singh Vs. State of Delhi**[32], **Mahammad Yousuf Vs. Afan Jan**[33] in a different context in answering the matter of which ***Manharbhai*** supra _is also a three Judges Bench expression on the scope of Sections 203 and 204 of CrPC as to where the complaint rejected under Section 203 of CrPC revision maintained by the Complainant at this stage where the accused got right of hearing in the revision or not and held referring to Section 401(3) of CrPC of hearing of accused is necessary as per the provision at revision_.

11)(n)(ii). The factual matrix of ***Priyanka Srivastava*** supra is that, accused are in high positions as officers of the bank from which the Complainant availed loan and failed to pay and the bank authorities initiated proceedings under SARFAESI Act, and the Complainant with devilish design to harass the bank officials with sole intent to evade payment of the loan and under the guise of the complaint proceedings that were filed and simply referred by Magistrate to Police without application of mind to the facts, observed that the Magistrate if taken note of the allegations in the complaint in entirety when no offence makes out for cognizable case to refer to police for investigation, such erroneous approach of referring for the sake of asking creates very unhealthy situation in the society and encourages unscrupulous litigations like that defacto-Complainant on hand to take adventurous steps with Courts to bring officials there kneels by compelling to settle the disputes by such means and such situations should not happen and a Magistrate should have kept in mind by aliving to the provisions. In fact against the SARFAESI Act proceedings, the defacto-Complainant filed Writ Petition that was ended in dismissal and the defacto-Complainant therefrom filed Criminal Complaint Case against the top officials of the bank for the offences under Sections 163, 193 and 506 IPC and the Magistrate dismissed the complaint by declined to take cognizance after recorded sworn statements and by examination of witnesses and aggrieved by it, Complainant preferred revision and the revisional Court set aside the order rejecting the complaint and remanded the matter to the trial Magistrate to hear afresh and to pass order on merits and in the revision no notice is even given to the accused persons who are supposed to have been heard while reversing the order of the Magistrate rejecting the complaint by the Sessions Judge in allowing the revision and pursuant to the revision order, the learned counsel by further enquiry taken cognizance and issued summons against the accused who sought for quashing by knocked the doors of High court under Section 482 of CrPC and the High Court quashed the proceedings of the private complaint cognizance, taken by the learned Magistrate after the revision order of the Sessions Court and against which when the matter impugned in appeal before the Apex Court, same was confirmed. It is by referring to the factual matrix of the Complainant filed series of criminal cases against the Bank officials and the High Court earlier quashed the proceedings in October, 2007 and again filed another complaint by the Complainant and cause referred to police for investigation under Section 156(3) of CrPC of the alleged offences under Sections 465,467,468, 471, 386, 506 r/w. 34 and 120-B IPC and which give rise to FIR on 30.10.2011 and sought for referring to police alleging the offences for undervalued property and the same was directed for registration of crime by the Magistrate to the Station House Officer and Cr.No.298 of 2011 is registered and the defacto-Complainant meeting the bank officials to enter into one time settlement thereunder promising to withdraw the various cases filed by him and by suppressing earlier initiation of the complaint also pending against the bank officials subject to deposit of Rs.15.00 lakhs for settlement and deposited and settlement arrived and the officials at this stage filed writ petition No.17611 of 2013 to quash the crime proceedings and by that time, investigation was completed and the police filed final report and the writ petition was dismissed by the High Court as infructuous by vacating interim stay and the defacto Complainant then approached the DRT appellate tribunal contending the title deeds were not returned even one time settlement payment accepted saying criminal complaint not withdrawn even same is a condition for one time settlement that is required to be withdrawn is the grievance of the bank officials culminating which the matter when reached the Apex Court, in the light of the facts, the Apex Court observed that the impugned order of the High Court holding infructuous is unsustainable.

11)(n)(iii). It is observed by the Apex Court that pursuant to which the learned Magistrate while referring the complaint to police for registering crime culmination in filing final report did not apply the judicial mind though supposed to exercise the power within its real purport and the **three judge Bench in *Devarapalli Laxminarayana Reddy*** supra held that the power under Section 156(3) of CrPC is discretionary and in the nature of pre-emptory reminder or intimation to police to exercise the plenary power of investigation as per ***Anil Kumar*** supra referring to ***Maksood Saiyed*** supra of the **requirement of application of mind of Magistrate before referring to police for investigation under Section 156(3) of CrPC or to take cognizance following the procedure under Section 200 of CrPC** and in ***Dilawar Singh*** supra it was held that where allegations in the complaint shows commission of a cognizable offence, the Magistrate may direct police to register crime under Section 154 of CrPC even the Magistrate does not say in so many words while directing investigation under Section 156(3) of CrPC for the FIR to be registered, **it is also the duty of the police before registering a crime as to cognizable offence discloses by complaint or not for proceeding further** and in ***CREF Finances*** *supra*, the Court held that Magistrate may consider appropriate to send the complaint to police for investigation referring to ***Madhoa*** supra within the discretionary power, if it discloses cognizable offence and in ***Ramdev Foods*** supra, referring to ***Lalitha Kumari*** supra, observed that **direction under Section 156(3) of CrPC to be issued by the Magistrate is only after application of judicial mind and therefrom conclude that the discretionary power of the Magistrate under Section 156(3) of CrPC is barred without application of judicial mind**. ***A litigant at his own whims cannot invoke authority of the Magistrate principled and relied, aggrieved citizen with clean hands must have free access to invoke such power, thus, to direct the citizens but when permitting litigant takes this route to harass every citizen, efforts are to be made to curb the same.***

11)(n)(iv). In ***Priyanka Srivastava*** it is observed therefrom at paras-30 and 31 as follows:

> "30. In our considered opinion, a stage has come in this country where Section 156(3) of CrPC. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the application more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the Said Act or under Article 226 of the Constitution of India but it cannot be done to take undue advantage in a criminal Court as if somebody is determined to settle the scores.
>
> 31.We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) of CrPC be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is also because once an affidavit is found to be false; he will be liable for prosecution in accordance with the law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3) of CrPC. That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases and the case where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalitha Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the F.I.R."

11)(n)(v). It is ultimately on the factual matrix in ***Priyanka Srivastava*** supra, while giving the above general directions and directing to circulate to all the Courts and mainly the learned Magistrates so that they can remain more vigilant and diligent while exercising the power under Section 156(3) of CrPC, quashed the charge sheet culminated the very FIR registered based on the reference order of the learned Magistrate under Section 156(3) of CrPC is unsustainable as outcome of non-application of judicial mind.

11)(n)(vi). Undisputedly in ***Priyanka Srivastava*** supra particularly at para Nos.30 and 31 guidelines referred supra are issued of along with a private complaint a detailed affidavit with truth of the contents of the complaint shall be filed and a proof regarding section 154(1) and (3) of CrPC that is giving of report or oral information to the police that to be reduced to writing and in case of refusal to receive the report or to reduce in writing that information by sending written report by post to the superintendent of Police discloses the commission of a cognizable offence shall be accompanied with a proof of such compliance to be filed before the Magistrate in a private complaint for entertaining and further the Magistrate to verify on truth and veracity of the allegations to deter the casual invoking jurisdiction of the Magistrate by filing a private complaint without basis.

11)(o). The other recent expression of the Apex Court dated 17.03.2015 in ***Vesa Holdings Private Limited Vs. State of Kerala***[34] by referring to the earlier expressions including ***Uma Shankar Gopalika Vs. State of Bihar***[35] ***All Cargo Movers(India) Private Limited Vs. Dhamesh Badarmal Jain***[36]***, V.Y. Josh Vs. State of Gujarat***[37]***, Vijayender Kumar Vs. State of Rajasthan***[38] to the scope of the offences under Section 417, 420 IPC read with Section 34 or 120-B IPC as the case may be. There question was whether there was any offence of cheating made out from reading of the complaint allegations of the private complaint filed before the learned Magistrate that was referred to police for investigation under Section 156(3) CrPC, when sought for quashing, the Kerala High Court dismissed the same and the accused preferred appeal before the Apex Court; on facts held that there is no offence of cheating made out from reading of the whole of the complaint averments on its face, for the Magistrate to refer to the police under Section 156(3) of CrPC for their registering the Crime No.1461 of 2010 which is pending investigation and thereby quashed said proceedings by setting aside of the dismissal order of the Kerala High Court. Even from this expression what all it speaks is application of judicial mind to the facts and contents of the complaint before referring to police for investigation if there is a cognizable offence made out therefrom and not otherwise casually for sake of mere asking.

11)(p). The ultimate analysis from all the expressions supra is that for referring of private complaint to police for investigation, what is required is judicial application of mind as to existence of a cognizable offence to investigate or not and once found within his discretion to refer where it requires investigation and for that not even necessary of giving reasons, muchless detailed reasons. *However for taking cognizance and issuing process as also held in* ***Sunil Bharti Mittal*** supra, *it not only on prima facie satisfaction of the Magistrate by judicial application of mind about prima facie accusation from material on record of the case on hand, but also that has to be reflected in the order. Though reasons are required to be given for whatever the conclusion arrived to sustain, non-giving reasons no way vitiates the order, if otherwise from material justifies the decision to the judicial scrutiny of superior courts*. Even from what all the expressions speak together is application of judicial mind to the facts and contents of the complaint before referring to police for investigation if there is a cognizable offence made out therefrom and not otherwise casually for sake of mere asking and for any Court sitting against such order referring to police is not from perusal of the order but from perusal of the material to sustain or not of the order to decide. Once there is judicial application of mind reflects on perusal of the material by the superior Court, the same no way requires interference. Thereby the contention of reasons are necessary even for referring the complaint to police for investigation under Sec.156(3) CrPC is untenable.

12). Even regarding the compliance of the directions in ***Priyanka Srivastava*** supra directions, the judgement of the Apex Court as referred supra was on 18-03-1015 and the private Complaint in this case filed on 20-03-2015 even for the Magistrate to insist the Complainant for compliance, there is nothing to attribute knowledge of the expression by then, but for if at all to comply later if police report given to submit, the Complainant infact filed copy of the police report already submitted to the police and also with proof of report received by police, who did not register FIR.

13). From the above, now to answer the contention of no vicarious liability on the principle on ***alter ego*** for IPC offences to implicate the petitioners A2-7 &A9-16 other than A1 & A8 if any concerned, the legal position is very clear.

13)(i). In ***R.Kalyani V. Janak C.Mehta***[39] it was held that vicarious liability can be fastened only by reason of a conferment by a statute and not otherwise, and for said purpose a legal fiction has to be created thereby for the I.P.C offences of cheating and forgery or breach of trust of the respondents charged in individual capacity in the absence of showing how personally liable, referring to several expressions and upholding the F.I.R proceedings quashed by the High Court, by the Apex Court for no interference.

13)(ii). In ***Keki Hormusji Gharda V. Mehervan Rustom Irani***[40] it was held at para17 that:

> "**The Indian Penal code, save and except some matters does not contemplate any vicarious liability on the part a person**. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. **The Managing Director or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices. The learned Additional Chief Metropolitan Magistrate, therefore, in our opinion, was not correct in issuing summons without taking into consideration this aspect of the matter.** The Managing Director and the Directors of the Company should not have been summoned only because some allegations were made against the Company".

13)(iii). The three Judges bench in ***Standard Chartered Bank*** supra held that Company can be prosecuted and convicted for an offence which requires a minimum sentence of imprisonment.

13)(iv). Though it was held in ***Standard Chartered Bank*** supra that it is not expressing any opinion on the question whether a Corporation could be attributed with requisite Mensrea to prove the guilt, the same is later clarified by the subsequent three Judge bench expression in ***S.M.S Pharmaceuticals*** *supra* and same is reiterated in ***National Small Industries Corporation Vs. Harmeet Singh***[41] and subsequent expressions following it are mainly in ***Iridium India*** supra referring to the several expressions of the Apex Court and of the American and England Courts in paras 59 to 64 of the expression page Nos.98 to 100 in nutshell **that a Company in many ways be like a human body they have a brain and nerve centre which controls what they do**. Some of the people in the Company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent directing the mind and will of the Company and control what they do. ***The state of mind of these managers is the state of mind of the Company and is treated the law as such. The fault of the manager will be the personal fault of the Company. The knowledge and intention must be imputed to the body corporate***. It was concluded therefrom by referring to ***Standard Chartered Bank*** para No.6 supra of a Company is liable to be prosecuted and punished for criminal offences in deviation to the earlier authorities in India of Corporations cannot commit a crime, for generally accepted modern rule is that except for such crime as a corporation is held incapable of committing by reason of the fact that they involve personally with malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agent. The criminal intent of the ***alter-ego*** of the Company that is the personnel group of persons that guide, the business of the Company would be imputed to the Company/corporation. It was the conclusion in ***S.M.S Pharmaceuticals*** and ***Iridium*** supra that was again followed in the latest three Judge Bench expression of the Apex Court in ***Sunil Bharti Mittal*** supra.

13)(v). It was observed in ***Sunil Bharti Mittal*** supra that the corporate entity, an artificial person acts through its Officers, Directors, Managing Director, Chairman etc, if such fact continues an offence involving Mensrea, it would normally be evident and action of that individual who would act on behalf of the Company in particular in relation to criminal conspiracy. However, the cardinal principle of criminal jurisprudence is that there is no vicarious liability unless the statute specifically provides so. An individual who has perpetrated the commission of an offence on behalf of a Company can be made as an accused along with the Company, if there is sufficient material on his active role. Second situation is knowledge it may be implicated is in those cases where statutory regime itself attracts the doctrine of vicarious liability by specifically incorporating by such a provision. It is therefrom referring the Section 141 of N.I.Act in particular as an example at para No.44 of ***Sunil Bharti Mittal*** supra and the expression of the Apex Court in ***Aneeta Hada (II) V. Godfather Travels & Tours (P) Ltd***[42] held that the group of persons that guide the business of the company if the criminal intent that would be imputed to the body corporate and in this back drop Section 141 of the N.I.Act has to be understood. Such a position is therefore because of statutory intendment making it a deemed fiction.

13)(vi). For that conclusion including on vicarious liability in ***Sunil Bharathi Mittal*** supra, the Apex Court referred ***Aneeta Hada Vs. Godfather Travels and Tours (P) Ltd.***[43], ***Iridium India Telecom Ltd***[44], ***Maksood Sayed*** supra, ***Sabita Rama Murthy Vs. R.B.S. Channabasavaradhya***[45], ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla***[46], ***Standard Chartered Bank Vs. Directorate of Enforcement***[47] among other expressions.

13)(vii). In ***Sunil Bharti Mittal*** supra it also referred the observations in the three Judge Bench expression of the Apex Court in ***S.M.S.Pharmaceuticals*** supra at para No.8 that there is no universal rule that a Director of a Company is in-charge of its every day affairs. It all depends upon the respective roles assigned. A company have managers or secretaries for different departments and may have more than one Manager or Secretary.

13)(viii). In ***S.M.S Pharmaceuticals*** supra also it is made clear with reference to section 141 of the N.I.Act that it is necessary to aver that at the time the offence was committed, the person accused was in-charge of and responsible for conduct of business of the Company and without this averment being made in the complaint, the requirements of Section 141 of the N.I.Act cannot be said to be satisfied. A clear case should be spelled out in the complaint against the persons sought to be made liable to show as incharge of and responsible to the Company for the conduct of its business. Every person connected with the Company thereby shall not fall within the ambit of Section 141 of the N.I.Act but of those persons who were incharge of and responsible for the conduct of business of the Company at the time of commission of the offence. The liability arises on account of conduct or act or omission on the part of a person and not merely on account of holding an offence or a position in a Company. The complaint therefore must disclose the necessary facts which make a person liable, specifically aver that at the time of offence committed, the person accused was incharge of and responsible for conduct of the business of the company. A Director cannot be deemed to be incharge of and responsible to the Company for the conduct of the business for no deemed liability of a Director from that status, unless the aforesaid requirement of Section 141 of the N.I.Act has been averred as a fact in the complaint.

13)(ix). In another expression referring to Section 141 of the N.I.Act by the Apex Court in

Saroj Kumar Poddar supra referring to ***S.M.S. Pharmaceuticals*** supra apart from other expressions that for dishonour of cheque making of requisite averments in the complaint is a statutory requirement and the allegations satisfy the same, in the absence of which the proceedings are liable to be quashed.

13)(x). The other expression of the Apex Court two Judge bench in ***National Small Industries Corporation*** supra also referring to ***Parekh*** and ***S.M.S.Pharmaceuticals*** supra among other expressions held that vicarious liability on the part of any Director or other person as incharge and responsible to the conduct of business be specifically averred, though same is not required against a Managing Director……….. It is not even sufficient to make a bald and cursory statement in a complaint that the Director is incharge of and responsible to the Company for conduct of its business without saying anything more as to his role. The complaint should spell out as to how and in what manner a co-accused was incharge of or responsible to the accused company for conduct of its business.

13)(xi). Same is also reiterated in another two Judge Bench expression of the Apex Court in ***Central Bank of India V. Asian Global Limited***[48] relying on ***S.M.S. Pharmaceuticals*** and those were followed by a single Judge expression of this Court in ***Arrakuntal V. Ganeshan V. Sai Rama Cotton Syndicate***[49].

13)(xii). It was also held in ***S.K.Alagh Vs. Stat of U.P.***[50] that Indian Penal Code save and except some provisions specifically providing there for, does not contemplate any **vicarious liability** on the part of a party who is not charged directly for commission of an offence. A criminal breach of trust is an offence committed by a person to whom the property is entrusted. As, admittedly, drafts were drawn in the name of the company, **even if appellant was its Managing Director, he cannot be said to have committed an offence** under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically there for. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself, as held in ***Sabitha Rama Murthy*** supra.

13)(xiii). **In *Maksood Saiyed* supra, it also referred on principle of *alter-ego* of no vicarious liability in IPC offences,** the earlier expression of Apex Court in ***Saroj Kumar Poddar Vs. State***[51]**,** that placed reliance on ***Everest Advertising Private Limited Vs. State Government of NCT of Delhi***[52] and ***S.M.S.Pharmaceuticals Limited Vs. Neeta Bhalla***[53] in observing **"The Penal Code does not contain any provision for attaching vicarious liability on the part of Managing Director or Director of a Company when the accused is the company. The learned Magistrate did not pose unto himself the correct question as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion of the quash petitioners are personally liable for any offence. The bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Even for the said purpose to fix vicarious liability from a statutory provision, it is obligatory on the part of the Complainant to make requisite allegations which would attract the provisions constituting vicarious liability.**

13)(xiv). Even other latest expression in ***Poojari Ravinder Devi Dasani V. State of Maharashtra***[54] reiterates the same relying upon ***National Small Industries Corporation*** supra. The same has been reiterated in the latest expression by this Court in ***Narendra Urangi V. M/s.Greenmint India Agritech Pvt. Ltd.***[55]

13)(xv). In the case of ***M/s.Thermax*** as referred from para Nos.20 and 21 *supra,* in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1– Company, who do not have any personal role in the allegations and claims of Respondent No.1, apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law.

13)(xvi). In ***Punjab National Bank V. Surender Prasad Sinha***[56] it was held in para No.6 that:

> *"It is also salutary to note that judicial process should not be an instrument of oppression or needles harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case of harass them for vendetta."*

13)(xvii). In another latest expression in ***Gunmala Sales Private Limited V. Anu Mehta***[57] it is held no doubt a case under Section 138 read with Section 141 of the N.I. Act, that the necessary requirements of the complaint which need to be indicated in the complaint are "how", "in what manner", "the role", "description" and "specific allegation" as to the part played by a person before he could be made an accused. These conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principle accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable.

13)(xviii). In ***G.M.Verma V. State of Jharkhand***[58] held mainly on vicarious liability that for the alleged offence under Section 72(b) of the Mines Act against the Chief General Manager of the Colliery in the mine where fatal accident took place, the complaint does not contain any allegation of specific role on the part of the Chief General Manager in the running of the colliery and as to in what manner he was in charge or responsible for the conduct of its business though same is the requirement of law to allege to fasten vicarious liability upon any officer of a Company in the absence any such specific allegation a complaint only contains a general statement does not make him vicariously liable in quashing the proceeding by the Apex Court by referring to ***National Small Industries Corporation*** supra.

13)(xix). In ***GHCL Employees Stock Option Trust V. India Infoline Limited***[59] at para Nos.18 and 19 it was observed by the Apex Court as follows:

> "18. From bare perusal of the order passed by the Magistrate, it reveals that two witnesses including ***one of the trustees were examined by the Complainant but none of them specifically stated as to which***

of the accused committed breach of trust or cheated the Complainant except general and bald allegations made therein."

19. ***In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against respondent Nos.2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them.*** **Recently, in the case of *M/s.Thermax Ltd. & Ors. vs. K.M. Johny & Ors*.**[60], while dealing with a similar case, this Court held at para Nos.20 and 21 as under:-

"20. Though ***respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1–Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role.***

21. Apart from the fact that *the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC*, it is to be noted that **the concept of 'vicarious liability' is unknown to criminal law.** As observed earlier, ***there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-Company***."

13)(xx). It is also apt to refer para 16 of the Apex Court`s expression in ***Sharon Michael v. State of T.N***[61] that***:***

"16. The first information report contains details of the terms of contract entered into by and between the parties as also the mode and manner in which they were implemented. Allegations have been made against the appellants in relation to execution of the contract. No case of criminal misconduct on their part has been made out before the formation of the contract. ***There is nothing to show that the appellants herein who hold different positions in the appellant Company made any representation in their personal capacities and, thus, they cannot be made vicariously liable only because they are employees of the Company."***

13)(xxi). Having regard to the above propositions which are in one line speak that a bald averment in complaint is not even sufficient but for a specific allegation to plead and show as to how a Director of a company who stands in a different footing to the Managing Director by his status under Section 141 of the N.I. Act is liable or to be made liable for the offences punishable under Section 138 of the N.I.Act, even from the statutory fiction of vicarious liability under the Act; though ***for I.P.C offences there is no such statutory fiction or vicarious liability but for individually made liable for their individual acts and not merely while holding an office of the Company for acts of the persons concerned with the affairs of the Company are the acts of the Company under the principle of alter-ego, that what is laid down in the latest expression in Sunil Bharti Mittal supra of the concept of 'vicarious liability' is unknown to criminal law.***

14). Now coming to decide how far any of the offences attracts against any of the accused persons for no vicarious liability from mere status of any accused to an entity to make liable along with and the dispute is since outcome of a commercial transaction and appears of civil nature and against enforcing bank guarantee a civil suit is since pending, what is the impact therefrom for continuation of the prosecution if otherwise sustainable concerned:

14)(i). In ***V.P.Srivastava Vs. Indian Explosives Ltd***[62] referring to several expressions including ***Ram Jas Vs. State of U.P***[63], ***Medchal Chemicals & Pharma(P) Ltd Vs. Biological E. Ltd***[64] and ***Hira Lal Hari Lal Bhagwati Vs. C.B.I***[65] particularly at paras 20 to 25 held that, it is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making representation or promise and such a culpable intention right at the time of entering into the agreement must be established by showing from facts and that cannot be even be presumed including from any failure to keep his promise subsequently or for mere dereliction of any duty or any omission or lapse.

14)(ii). In ***Anil Mahajan Vs. Bhor Industries Limited***[66] (3JB) it was held that to attract the offence of cheating, fraudulent and dishonest intention must be shown to be existing from the inception of the transaction and failure to keep promise at a subsequent stage will attract no offence and mere use of expression cheating in the complaint is of no consequence for no basis to the averment of deceiving, cheating or fraudulent intention of accused at the time of entering into the transaction.

14)(iii). The Apex Court in **Uma Shankar Gopalika** *supra* held that every breach of contract is not breach of trust or cheating. A breach of contract is different from the offence of cheating or criminal breach of trust under IPC In the absence of the allegations in the complaint that at the very inception there was intention on behalf of the complainant, no offence of cheating with criminal conspiracy would be made out. In relation to the facts where accused entity represented by its directors financing the truck purchased by the Complainant under hire purchase agreement, subsequently the truck not traced and when claim submitted to the insurance company, the claim was allowed, the representative of the Complainant was allowed to handle the claim, received the amount and failed to pay, on the facts held no offence of criminal breach of trust or cheating made out in quashing the F.I.R not only against the accused impugning the F.I.R but also against the other accused.

14)(iv). In ***Ajay Mitra Vs. State of M.P.***[67] (3JB) it was held by the Apex Court that *mensrea* of inducing the persons deceived to deliver property is essential to constitute offence of cheating and in ultimately quashing the F.I.R therein referred the other expressions of ***A.L.Panian Shanmugam Vs. State of Andhra Pradesh***[68].

14)(v). In ***Vimala Vs. Delhi Administration***[69] and ***State of U.P Vs. Ranjit Singh***[70] it was held further that to constitute the offence of Section 420 I.P.C there should not only the cheating but as a consequence of such cheating the accused should have been dishonestly induced the person deceived and the complaint must be by the person deceived or on his behalf. The criminal culpability to attract for certain specified acts alleged to have been done fraudulently or dishonestly to constitute an offence it cannot be assumed that the person committed the offence merely by alleging or showing that he acted fraudulently unless such a fraudulent act is specifically made an offence under I.P.C or some other law. The expression 'defraud' involves two elements of deceit and injury to the person deceived and such injury is something other than economic loss and it will include any harm caused to any person in body, mind or reputation or such others and it is a non-economic or non-pecuniary loss and the benefit or advantage to the deceiver will almost always cause loss of detriment to the deceived.

14)(vi). In ***V.Y.Jose V. State of Gujarat***[71]***,*** it was held therein referring to ***Rajesh Bajaj V. State NCT of Delhi***[72] that in order to prove offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Further, in ***Rajesh Bajaj*** supra, the Apex Court held that the facts narrated in the complaint would as well reveal a commercial transaction or money transaction, but that is hardly a reason for holding that the offence of cheating would elude from such a transaction and in fact, many a cheatings were committed in the course of commercial and also money transactions.

14)(vii). In ***S.W.Palanitkar*** supra it was held that every breach of trust may not result in a penal offence of criminal breach of trust, unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil Court but a breach of trust with *Mensrea* gives rise to a criminal prosecution as well. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use, or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the discharge of such trust".

14)(viii). By referring ***S.W.Palanitkar*** supra, recently the Apex Court in ***International Advanced Research Centre for Powder Metallurgy and new materials (ARCI) V. NIMRA Cerglass technics (P) Ltd***[73] it was held that distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement and if it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating.

14)(ix). In the other expression of ***Binod Kumar V. State of Bihar***[74] on the scope of Section 406 IPC, by referring to many of the expressions supra it is held that by act of withholding of payment no case is made out for misappropriation of funds under Section 406 IPC.

14)(x). The other decision in ***Tamil Nadu Mercantile Bank Limited V. State through Deputy Superintendent of Police***[75] by referring ***C.B.I V. A.Ravishanker Prasad***[76] the Apex Court held that when the customers of a bank sought to justify the fraudulent transactions on the basis of agreements evident from letter of credit, open cash credit and also on the ground that loan had been repaid under a settlement and therefore, criminal proceedings on account of forgery, cheating, corruption etc., should not be permitted.

14)(xi). In ***Ghanshyam V. State of Rajasthan***[77] in the facts for the offences under Sections 405 to 409 I.P.C alleging criminal breach of trust of crime registered referred report filed on protest petition, complaint restored unsuccessful and matter went to High Court where from the protest petition was restored finding that statement recorded by the Magistrate on the protest petition stage, after the protest petition clearly revealed that complainant had handed over three gold chains to the appellant at the time of purchase of cloth by appellant from complainant's shop that was not returned which makes out the offence, when the matter in seeking quashment impugning in the said order of the High Court went before the Apex Court it was held that entrustment and failure to the account for the property held should be construed in distant parts viz., creation of an obligation in relation to property over which dominion or control is acquired by accused and misappropriation or dealing with the property dishonestly and contrary to terms of the obligation created specifically or the twin requirements that not made out in quashing the proceedings.

14)(xii). ***In Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin***[78], it was held:

> "to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.
>
> **It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.**"

14)(xiii). Regarding the basic ingredients required to satisfy for attributing criminal conspiracy, the Apex Court in ***Maharashtra State Electricity Distribution Co. Ltd. vs. Datar Switchgear Ltd***[79] categorically held that ***merely on the basis of the appellant's status in the company, it could not be presumed that it is the appellant who became a party to the alleged conspiracy.***

14)(xiv). Further the Constitution Bench expression of the Apex Court in ***Bhagwan Swarup Lal Bishan Lal Vs. State of Maharashtra***[80] observed that **the offence of conspiracy has to be established like any other offence** but for Section 10 of the Indian Evidence Act introduces the doctrine of agency subject to conditions laid therein are satisfied for act done by one is admissible against co-conspirators. But this Section will come into play only when the Court is satisfied that there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or the actionable wrong that is to say there should be a prima facie evidence that a person was party to the conspiracy before his acts can be used against his co-conspirators.

15). From the above propositions on close analysis of facts of each case it is clear that each of the case conclusions are resting on own facts but for understanding the basic principle that was keeping in mind in deciding the cases supra. In this context it is apt to refer on the concept of how to understand a precedent in its application to facts of the case on hand, the Courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made, that it is neither desirable nor permissible to pick out a word or a sentence from the judgment as held in ***Bihar School Examination Board V. Suresh Prasad Sinha***[81] ***and Rajbir Singh Dalal V. Chaudhari Devilal University, Sirsa***[82]***. Further in Chauharya Tripathi V. Life insurance Corporation of India***[83] in Para 15, relying upon the observations of para No.18 of ***Ambika Quarry Works V. State of Gujarat***[84] and of Lord Halsbury in Quinn V. Leathem[85] it was held that "it has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.

16). Before discussing to decide on further factual controversy, coming to jurisdiction aspect raised in the course of arguments:

16)(i). The Apex Court in ***Satvinder Kaur V. State***[86] held that a police officer is competent to investigate any cognizable offence under Section 154 read with 156 CrPC. However, he can forward the case to the police station having territorial jurisdiction if he comes to the conclusion that the crime was committed beyond his territorial jurisdiction. But this would not mean that in a case which requires investigation, the police officer can refuse to record the F.I.R or to investigate. The High Court has to proceed under Section 482 CrPC entirely on the basis of allegations made in the complaint/FIR if prima facie discloses commission of offence, it should be reluctant to interfere and held erred in quashing the F.I.R at the investigation stage overlooking Section 156(2) CrPC by holding as if at that stage on lack of territorial jurisdiction to investigate by referring to Section 177 CrPC and 178 CrPC though same is for said offence can be inquired into or tried by a Court having jurisdiction over any of such local areas and not during investigation for interference at post-cognizance stage.

16)(ii). Further, in ***Rajiv Modi V. Sanjay Jain***[87] it was held on the scope of Sections 482 read with 200, 190 and 177 CrPC in relation to the offences punishable under Section 406, 420 and 120-B IPC that the quashing of the private complaint filed under Section 200 CrPC on the ground of Judicial Magistrate did not have territorial jurisdiction to take cognizance for said offences was held unsustainable in saying the appointment of appellant's company as C&F agent of respondent company was agreed in Patna and letter of appointment was also delivered thereon to say part of cause of action has arisen in Patna and thereby the Judicial Magistrate was justified within the jurisdiction to take cognizance of the complaint case of quashing the same by High Court held unsustainable in setting aside the same, with the observation that the High Court has erred in going into merits of the case and deciding doubtful and complicated questions of fact and law by invoking the inherent power under Section 482 CrPC. There referred several expression including ***Y.Abraham V. Inspector of Police***[88] and ***Satvinder Kaur*** supra.

16)(iii). In ***National Bank of Oman V. Barakara Abdul Aziz***[89] on the allegation by the Complainant Bank of the accused had cheated the bank by spindling amount equal to Rs.5.178.00 crores, from allegations of accused upon current account with the Bank representing of holding Indian passport and gained confidence and produced treating licence of Abudabi Municipality has engaged in trading in Textile, Garments, Stationery items and electronics etc., of the business established at Abudabi and to extend the business required finding facilities and based on it bank granted the over draft facility and also enhanced the limits of O.D loan. However, accused committed breach of trust and failed to repay and while contemplating action, accused approached the Bank and entered settlement agreement by completing all outstanding liabilities to a term loan to repay in instalments and issued as per the MOU post dated cheques to honour. However, the cheques were dishonoured for no funds and meanwhile accused absconded to India by not discharging the loan and the Bank having no branch in India with any business in India appointed one power of attorney holder of Ahmednagar to file complaint in India against the escaped accused and the Chief Judicial Magistrate, Ahmednagar and the complaint and from the sanction accorded by the Central Government under Section 188 Proviso to CrPC observed sufficient material of prima facie case made out by taking cognizance and issued process, for the offences punishable under

Section 418 and 420 I.P.C that was challenged before the High Court of Bombay, the High Court took the views that prima facie the allegations of cheating did not make out against the accused to issue the process and the learned Chief Judicial Magistrate did not follow the procedure under Section 202 Cr.P.C and could have been postponed the process against accused and either enquiry into the case itself or direct the investigation for the purpose of deciding sufficient grounds or not for proceeding and it is noticed accused is resident of Dakshina Kannada District and the matter went before the Supreme Court where it was held, 'we find no error in the view taken by the High Court' – and ultimately observed High Court instead of quashing the cognizance taken on the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 CrPC.

16)(iv). In fact from the expressions the jurisdiction bar is for taking cognizance and not for referring to police for investigation or for investigation of the crime pending on the FIR registered at the pre-cognizance stage.

17. Coming to scope of inherent powers and the limitations in its exercise on dispute of civil or commercial nature, besides some of the decisions covered supra, the further legal position in this regard is that:

17)(i). In ***P.Swaroopa Rani V. M.Hari Narayana @ Hari Babu***[90] the Apex Court held that there is no bar of simultaneous civil and criminal proceedings in a given matter is a case in relation to the observation in a civil judgment regarding the forgery of a document within the purview of Section 195 Cr.P.C by referring to the three Judge bench expression in ***Iqbal Singh Marwah*** supra that referred ***Sachida Nand Singh V. State of Bihar***[91].

17)(ii). In **Rishipal v. State of Uttar Pradesh**[92], it was however held that mere dereliction of duty which is purely civil in nature does not attract any penal consequence and continuation of criminal proceedings is a pure abuse of process of law and deserved to be quashed the proceedings.

17)(iii). In ***Madhavrao Jiwajirao Scindia V. Sambhajirao Chandrojirao Angre***[93] it was held as follows:

> "A case of breach of trust may be both a civil wrong and criminal offence. **But there would be certain situations where it would predominantly be a civil wrong and may or may not amount to criminal offence.** The instant case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offence are wanting, the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is not only as to whether the uncontroverted allegations as made prima facie establish the offence but also to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

17)(iv). In ***Indian Oil Corp.*** supra, referring to ***G.Sagar Suri*** supra it was observed that there is growing tendency in business circles to convert purely civil disputes into criminal cases - - - - any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged; by further saying 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.

17)(v). Coming to the other expression of the Apex Court in ***Ravindra Kumar Madhanlal Goenka V. Rugmini Ram Raghav Spinners Private Limited***[94] (2JB) where on the scope of prima facie material available against accused, a petition for quashing cannot be entertained by permitting defence material which at best can be looked into during trial. In para Nos.17 to 19 by referring to ***Uma Shanker Gopalika V. State of Bihar***[95] it was observed that, investigation agency should have had the freedom to go into whole gamut of the allegations to reach their own conclusion and pre-emption of such investigation would be justified under Section 482 CrPC only in extreme cases and the case on hand is not as such to quash the criminal prosecution, though defence case is pleaded and required to be considered, it is at a later stage and not at this stage pre-empting investigation to analyse and scrutinise.

17)(vi). The Apex Court in ***Rajib Ranjan V. R.Vijay Kumar***[96] referring to ***Indian Oil Corporation, Sagar Suri, Bhajanlal*** and ***Inder Mohan Goswami*** supra among others held that having went unsuccessful in the civil suit filed for rejection of his tender that was which suit later withdrawn and the writ petition filed that was dismissed and also unsuccessful in the S.L.P before the apex Court for the complaint before police and from their non-registering on the ground of civil dispute filed the private complaint attributing criminal conspiracy forgery, defamation and cheating that was taken cognizance by the learned Magistrate in summoning the accused and went unsuccessful before the High Court impugning the cognizance order, from the matter reached before Apex Court, the Apex Court quashed the proceedings saying given colour of criminality to a civil lis with an after-thought by making allegation of fabrication of recourse so mischievously and fit case to quash the proceedings.

17)(vii). In ***Rashmi Jain V. State of Uttar Pradesh***[1] and ***State of Maharashtra V. Sayed Mohammed Masood***[1] it was held from a dispute of civil nature attributed with malice to convert it into criminal complaint of as if utterances by accused/appellant and inserting in the complaint that was taken cognizance when impugned before the High Court unsuccessfully the matter when reached before the Apex Court held the observation of the High Court that disputed questions of fact cannot be agitated a defence of the accused cannot be considered at that stage, for if at all to seek for discharge before framing charges by so applying before the trial Court, held High Court was wrong in not considering the dispute as purely of civil nature and in quashing the same. By referring to ***Sagar Suri, Bhajanlal, Anil Mahajan, S.W.Palanitkar, Zandu Pharma*** among others right from ***R.P.Kapoor*** of 1960.

17)(viii). In ***C.B.I V. Maninder Singh***[97] it was held on the scope of Section 482 CrPC in an economic offence that the inherent power of the High Court should be sparingly used and only when the Court comes to the conclusion that there would be manifest injustice or abuse of process of Court. In economic offences Court must not only keep in view the interest of society at large as a distinct from simple assault or a theft of a trivial amount. It is in relation to one time settlement of the bank transaction pending criminal offence by quashing the same by

High Court found fault and set aside by the Apex Court in directing to proceed with trial.

17)(Ix). In the present case on hand, the civil suit is pending before the trial Court is only in respect of enforceability of bank guarantee and the ingredients of the present complaint are different in nature from that of the civil suit and once the Complaint contains primafacie allegations atleast against some of the accused, it is only to decide prosecution of who among all accused and for what offence to continue.

18). Coming to inherent powers and scope of exercise in entertaining additional material for consideration:

18(i). In ***Anita Malhotra V. Apparel Export Promotion Council***[98] relying upon Harshendra Kumar D. vs. Rebatilata Koley[99] the Apex Court held that, in an appropriate case, if on the face of the documents which are beyond suspicion placed by the accused from which if the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merit of the accusation, but if on the face of the document which is beyond suspicion or doubt placed by the accused and if it is considered the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.

18(ii) ***In All Cargo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain***[100], it was observed that, Court may not only take into consideration the admitted facts but it is also permissible to look into other material. Superior Courts while exercising the inherent power should also strive to serve the ends of justice. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of the process of Court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal namely to force the accused to pay the amount due to the Complainant immediately. The Courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The Courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable. The High Court, in our opinion, should have further taken into consideration the fact that in the event, the defence of the appellant is accepted in the criminal case, it will have no remedy to prosecute the respondents again.. . . .

18(iii) In ***Rukmini Narvekar V. Vijay Sataredkar*** ***[101]***, it was held as follows:

“Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.

18. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

19. However, in this case it cannot be said that the evidence in the Civil Suit which was produced by the defence before the trial court established convincingly that the prosecution case is totally absurd or preposterous. In our opinion this is a matter which has to be looked into by the trial Court.

20. In Dr. Monica Kumar & Anr. vs. State of U.P. & Ors. 2008(9) Scale 166 this Court referred to various decisions on the point of quashing the criminal proceedings against the accused. **In this decision this Court quashed the criminal proceedings against the accused, though on the allegations in the F.I.R. prima facie an offence was made out. Thus quashing of the criminal case was done considering all the facts and circumstances of the case.** No doubt, in this decision the Court has relied on Article 142 of the Constitution, but in our opinion the result would have been the same irrespective of Article 142”.

18(iv). In ***Prashanth Bharathi V. State (NCT of Delhi)*** ***[102]*** it was held relying upon Rajiv Thappar[103] as follows:

“19. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the CrPC.”) has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor (Criminal Appeal No…… of 2013, arising out of SLP (Crl.) no.4883 of 2008, decided on 23.1.2013) wherein this Court inter alia held as under:

22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the CrPC if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the CrPC., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution’s/complainant’s case without allowing the prosecution/Complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the CrPC the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the CrPC. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the CrPC.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the CrPC. **Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”**

21. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. **Even in the charge sheet dated 28.6.2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges.** The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 of the CrPC.

22. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (supra) stand - satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Section 482 of the CrPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354 and 376 of the Indian Penal Code against the appellant-accused, and the consequential charge sheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed."

18(v). In ***Anita Malhotra Vs. Apparel Export Promotion Council***[104] it was held that documents relied upon the defence beyond suspicion or doubt can be relied upon and defence case with reference to it can be scrutinised to sustain the prosecution to continue or to quash otherwise.

18(vi). Thus, the material can be permitted to be looked into from both sides and in particular of the probable defence of the accused can be looked into from any cogent material placed by accused at that stage in seeking to quash though no roving enquiry is required to undertake but for on consideration of the same *prima facie* if nothing to sustain accusation in exercise the inherent power to subserve the ends of Justice.

19). Coming to scope of inherent powers to exercise in a given case within the parameters is only to analyse by taking the allegations on its face value and nothing beyond, in addition to what is discussed supra, at paras-16&17, the following expressions also cited by either side:

19)(i). In **Ford India Ltd V. Sunbeam Ancillary P. Ltd**[105] it is observed categorically that, allegations made in F.I.R when did not disclose any offence, the F.I.R can be quashed by referring to **State of Haryana V. Bajanlal**[106]**, Pepsi Foods, Anil Mahajan, Umashanker Gopalika, Hotline Telegubes and Components V. State of Bihar**[107] **& Ashok Sachdev V. G.S.Chauhan**[108]

19)(ii). In **Girish Sarwate V. State of A.P.**[109]**,** the full bench of this Court on reference approved the expression in **Gudavalli Murali Krishna V. Gudavalli Madhavi**[110] of a single Judge differing to the earlier expressions holding not good law by mainly placing reliance upon **Bhajanlal** supra that an FIR can be even quashed invoking inherent powers by the High Court, though such power is to be exercised sparingly with care and circumspection and in cases where the allegations in the F.I.R does not disclose any offence.

19(iii). In ***State of M.P V. Awadh Kishore Gupta***[111] what the Apex Court held on the scope of inherent powers of the High Court under Section 482 CrPC for appreciation is that, at that stage High Court cannot appreciate the evidence but for to evaluate the material and documents on record to the extent of its prima facie satisfaction about existence of sufficient ground for proceeding against the accused or not. On facts, it was held when the investigation is pending quashing the proceedings acting on the documents relied on by the accused was held not proper even this expression one way says the material can be evaluated including the one that can be placed by the accused to receive on the post-cognizance stage to sustain the prosecution or not.

19(iv). It is categorically held in para Nos.8 and 13 of ***Awadh Kishore Gupta*** that inherent p

19)(v). Apart from it, the Apex Court in ***Amit Kapoor V. Ramesh Chander***[112] at para No.27 observed that in exercising the powers under Section 482 CrPC the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not, to decide the Court show apply the test and if shows the basic ingredients of the offence not satisfied the Court may interfere. It is also observed that the process of the Court cannot be permitted to be used as an oblique or ultimate/ulterior purpose. The Court where finds it would amount to abuse of process or interest of Justice favours otherwise it may quash the proceedings. The power is to be exercised ***ex debito justitiae*** that is to do real and substantial justice for administration of which alone the Courts exercise.

19)(vi). Apart from several expressions on the above scope referred supra, the other expr

19)(vii). In ***State of Karnataka V. Muniswamy***[114] it was held:

"(1) The High Court was justified in holding that for meeting the ends of justice the proceedings against the respondents ought to be quashed. It would be a sheer waste of public time and money to permit the proceedings to continue against the respondent, when there is no material on the record on which any tribunal could reasonably convict them for any offence connected with the assault on the complainant. This is one of these cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking.

(2) The saving of the High Courts' inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.

(3) Considerations justifying the exercise of inherent powers for securing the ends of justice vary from case to case and a jurisdiction as wholesome as the one conferred by Sec.482 ought not to be encased within the strait-jacket of a rigid formula. The three instances' cited in the Judgment in R.P. Kapoor Vs. The State of Punjab-[1960] 3 SCR 388, as to when the High Court would be justified in exercising its inherent jurisdiction are only illustrative and can in the very nature of things not be regarded as exhaustive.

(4) -------------------------------------

(5) While considering whether there is sufficient ground for proceeding against an accused, the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible-Vadilal Panchal v. D.D.Ghadigaonkar-AIR 1960 SC 1113 and Century Spinning & Manufacturing Co. v. State of Maharashtra-AIR 1972 SC 545.

(6) --

(7) --

(8) --

(9) The High Court is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case.

(10) In the exercise of the wholesome power u/s.482 of the Act 2 of 1974(Sec.561 of 1898 Code), the High Court is entitled to quash a proceeding, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

19)(viii). In ***Amit Kapoor V. Ramesh Chander***[115] the Apex Court by referring to catena of expressions observed that:

9. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and

cannot be exercised in a routine manner. -----. Right from the case of State of West Bengal v. Swapan Kumar Guha-(1982) 1 SCC 561, which was reiterated with approval in the case of State of Haryana v. Bhajan Lal-1992 Supp.(1) SCC 335, the courts have stated the principle that if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received. It is further stated that the legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to have been committed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Whether an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each case. If on consideration of the relevant materials, the Court is satisfied that an offence is disclosed, it will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed in order to collect materials for proving the offence. In Bhajan Lal's case (supra), the Court also stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein power under Section 482 of the Code for quashing of an FIR should be exercised, there are circumstances where the Court may be justified in exercising such jurisdiction. These are, where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; where there is an expressed legal bar engrafted in any of the provisions of the Code; and where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Despite stating these grounds, the Court unambiguously uttered a note of caution to the effect that power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases; the Court also warned that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

12..Section 482 is based upon the maxim ***quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest***, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

14. In Dinesh Dutt Joshi V. State of Rajasthan-(2001) 8 SCC 570, the Court held that Section 482 does not confer any power but only declares that the High Court possesses inherent powers for the purposes specified in the Section. As lacunae are sometimes found in procedural law, the Section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are, however, required to be reserved as far as possible for extraordinary cases.

15. In Janata Dal V. H.S.Chowdhary-(1992) 4 SCC 305, the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercise in appropriate cases ***ex debito justitiae***, i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extra ordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.

16. If one looks at the development of law in relation to exercise of inherent powers under the Code, it will be useful to refer to the following details:

> As far back as in 1926, a Division bench of this Court In Re: Llewelyn Evans, took the view that the provisions of Section 561A (equivalent to present Section 482) extend to cases not only of a person accused of an offence in a criminal court, but to the cases of any person against whom proceedings are instituted under the Code in any Court. ***Explaining the word "process", the Court said that it was a general word, meaning in effect anything done by the Court.*** Explaining the limitations and scope of Section 561A, the Court referred to "inherent jurisdiction", "to prevent abuse of process" and "to secure the ends of justice" which are terms incapable of having a precise definition or enumeration, and capable, at the most, of test, according to well-established principles of criminal jurisprudence. The ends of justice are to be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the Section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner.

18. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the Court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In the case of Indian Oil Corporation V. NEPC India Ltd-(2006) 6 SCC 736, this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending.

It is observed ultimately that:

1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code

should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the Complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ***ex debito justitiae***, i.e. to do real and substantial justice for administration of which alone, the courts exist. {Referred:State of West Bengal & Ors. v. Swapan Kumar Guha & Ors.[AIR 1982 SC 949]; Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors.[AIR 1988 SC 709]; Janata Dal v. H.S. Chowdhary & Ors.[AIR 1993 SC 892]; Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Ors. [AIR 1996 SC 309; G. Sagar Suri & Anr. v. State of U.P. & Ors. [AIR 2000 SC 754]; Ajay Mitra v. State of M.P. [AIR 2003 SC 1069]; M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.[AIR 1988 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705]; Ganesh Narayan Hegde v. s. Bangarappa & Ors. [(1995) 4 SCC 41]; Zundu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors.[AIR 2005 SC 9]; M/s. Medchl Chemicals & Pharma (P) Ltd. v. M/s. Biological E. Ltd. & Ors.[AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala & Anr.[(2009) 14 SCC 466]; V.V.S. Rama Sharma & Ors. v. State of U.P. & Ors.[(2009) 7 SCC 234]; Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr.[(2009) 11 SCC 203]; Sheo Nandan Paswan v. State of Bihar & Ors. [AIR 1987 SC 877]; State of Bihar & Anr. v. P.P. Sharma & Anr.[AIR 1991 SC 1260]; Lalmuni Devi (Smt.) v. State of Bihar & Ors.[(2001)2 SCC 17]; M. Krishnan v. Vijay Singh & Anr.[(2001)8 SCC 645]; Savita v. State of Rajasthan [(2005)12 SCC 338]; and S.M. Datta v. State of Gujarat & Anr.[(2001)7 SCC 659]}.

20. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court."

19)(ix). In ***Popular Muthaiah Vs State rep. by Inspector of police***[116] **it was held that the High Court can exercise inherent power even *suo motu*, even while exercising other jurisdiction such as appellate or revisional and for invoking inherent jurisdiction by High Court no formal application of any party even necessary.**

19)(x). In ***Padal Venkata Rama Reddy @ Ramu V. Kovvuri Satyanarayana***

Reddy[117] referring to several expressions including ***Indian Oil Corporation, Zandu Pharma, Ganesh Narayan, Bhajanlal, Madhavarao Jivajirao, L.Muniswamy, R.P.Kapoor etc.,*** it was observed that exercise of inherent powers to quash the proceedings is called for in a case of which complaint does not disclose any offence or is frivolous, vexatious or oppressive and the like, for excessive list of grounds cannot be laid down but for to decide each case on own facts.

19)(xi). In ***Dhariwal Tobacco Products Ltd. V. State of Maharashtra***[118] by scanning the law on the subject right from R.P. Kapur v. State of Punjab-AIR 1960 SC 866 to Som Mittal v. Govt. of Karnataka-(2008)3 SCC 574 it was held categorically that inherent power of the High Court is not conferred by statute but has merely been saved thereunder. ***Exercise of the inherent power under Section 482 CrPC or supervisory jurisdiction under Section 483 CrPC by the High Court is besides to exercise to the remedies under Articles 226 and 227 of the Constitution of India and availability of even an alternative remedy of revision under Section 397(1) CrPC is not a bar***. Relying upon ***Pepsi Foods Ltd. v. Special Judicial Magistrate*** and ***Ashok Chaturvedi v. Shitul H. Chanchani***, it was held further that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

19)(xii). The Constitution Bench of the Apex Court way back in ***Nandini Satpathy vs. P.L. Dani***[119] held particularly at P.1032 by quoting Lewis Mayers that:

> "To strike the balance between the needs of law enforcement on the one hand and the protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery on the other is a perennial problem of statecraft. The pendulum over the years has swung to the right" -- "We have earlier spoken of the conflicting claims requiring reconciliation. Speaking pragmatically, there exists a rivalry between societal interest in effecting crime detection and constitutional rights which accused individuals possess. Emphasis may shift, depending on circumstances, in balancing these interests as has been happening in America. Since Miranda v. Arizona[120], there has been retreat from stress on protection of accused and on protection of the accused and gravitation towards society's interest in convicting law-breakers".

19)(xiii). In **Inder Mohan Goswami V. State of Uttaranchal**[121] **(3JB)** it was observed that the inherent powers of the High Court under Section 482 Cr.P.C are though wide that has to be exercised sparingly with great caution and to exercise ***ex-debito justitiae*** that is to do real and substantial justice for the administration of which the Courts exist, and for not to allow to use the prosecution is an instrument of harassment or private vendetta or with a motive to pressurize the accused to terms and the powers too could not be exercised to stifle a legitimate prosecution and Court should refrain from giving prima facie decision in a case where entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issue involved are of such a magnitude that they cannot be seen in the true perspective without sufficient material, though no hard and fast rule can be laid down for exercise of the extraordinary jurisdiction. It is observed that Court should balance with personal liberty, the societical interest and a warrant for arrest of accused should not be issued without proper scrutiny of facts from complaint or F.I.R in application of judicial mind and where dispute is a pure civil in nature or from reading of F.I.R the ingredients of offence are absent, the proceedings can be quashed.

19)(xiv). In ***Central Bureau of Investigation v. Ravi Shankar Srivastava***[122] the Apex Court held that the High Court under Section 482 of the Code, exercise its jurisdiction to quash the proceedings if it would be an abuse of the process of the court to allow any such action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "***quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest***" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ***ex debito justitiae*** to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the Complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

19)(xv). **So far as the defective material which was refused by the accused to receive and make payment for the same**, that even assuming the allegations are to be true, the same pertains to commercial transactions, the expression of the Apex Court in ***Arun Bhandari V. State of Uttar Pradesh***[123] it was held that if the allegations in the FIR are not frivolous, malafide or vexatious, it cannot be simply quashed for the reason that civil suit is also pending in the matter.

19)(xvi). In ***Kamaladevi Agarwal V. State of West Bengal***[124] it was held that inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the FIR/complaint even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.

19)(xvii). Following the two expressions in ***Ganga Dhar Kalita V. State of Assam***[125] in para No.12 it was concluded that not to interfere with the order of the High Court dismissing the quash petition in relation to the deed of power of attorney transaction which makes out a cognizable offence from the allegations. The legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in Court under Section 173(2) CrPC the same was expressed by the Apex Court in ***State of Karnataka V. Pastor P.Raju***[126].

19)(xviii). By reiterating ***All Cargo Movers*** supra the Apex Court long back answered in ***Shivanarayana Kabra V. The State of Madras***[127] at para No.4 that for the offence under Section 420 IPC, accused need not make false pretence in express words and same may be inferred from all circumstances including conduct of accused in obtaining property. In the present case on hand, the petitioners ordered material to the Complainant, who in turn manufactured on the qualitative supervision of some of petitioners herein and after make ready to supply, all of a sudden petitioners advised to supply the same to other company as it is a defective one which shows the conduct of the petitioners. Once letters of credit given for the first transaction by A-1 and not for others, to say each transaction independent and though one of the conditions to give the non-giving and in cause manufacturing and in refusing the supply is nothing but dishonest intention from the inception that too once rejected in asking to supply to others even by A-8 through its officials is something unnatural and to infer the guilty intention.

19)(xix). In ***Medchal Chemicals*** supra it was held on the scope of Section 482 CrPC that the complaint has to be examined as a whole without going into the merits of the allegations made therein. If *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, Court should not quash the complaint. But if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. The Court's approach should, however, be circumspect, cautious and careful. Mere fact that the offence was committed during the course of a commercial transaction by itself not sufficient to quash the complaint. The Court has to see whether on fact situation, 'civic profile' outweighs the 'criminal outfit'. It was held on facts of the complaint filed for the offences punishable under Sections 415, 418, 420 and 120-B IPC no way warranted quashing. For that conclusion referred ***Bhajanlal*** and ***Nagowwa*** among other expressions.

19)(xx). In ***M/s.Suryalakshmi Cotton Mills Ltd. V. Rajvir Industries Ltd.***[128] it was though on facts held from paras 24 and 25 of cheque being property that was since entrusted if misappropriated or had been used for a purpose for which same not handed over from *prima facie* case of misappropriation under Section 406 IPC, while protecting personal liberty of accused, the investigating officer of Mahankali Police Station was directed confine investigation to the charge under Section 406 of the Indian Penal Code, before arriving said conclusion, on the scope of Section 482 CrPC it was observed that the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of well known legal principles involved in the matter. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure should be exercised, but some attempts have been made in that behalf in some of the decisions of this Court as for example State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335], Janata Dal Vs. H.S. Chowdhary [(1992) 4 SCC 305], Rupan Deol Bajaj(Mrs.) Vs. Kanwar Pal Singh Gill [(1995) 6 SCC 194] and Indian Oil Corp. Vs. NEPC India Ltd. [(2006) 6 SCC 736].

19)(xxi). It was observed with reference to facts in ***Sunil Bharti Mittal*** supra that **the reason for summoning these persons and proceed against them are specifically described that these persons were in control of affairs of the respective companies, as such, they represent the directing mind and will of each company and their state of mind is the state of mind of the companies. Thus, they are described as 'alter ego' of their respective cases. It is on this basis these three persons are treated as alter ego of their respective companies and in the opinion of the learned Special Judge, the acts of the companies are "to be attributed and imputed to them". On erroneous presumption in law the special Judge issued summons.** For the learned Magistrate it is always open to invoke special exercise after going through the material on record, if he is satisfied that there is enough incriminating material on record to proceed against he may pass appropriate orders in this behalf. Even if at this stage no such prima facie material is found, if in future such evidence surpasses against the appellant, the special Judge got liberty to exercise his powers under Section 319 of CrPC to rope all or any of the appellants by passing orders in accordance with law. For that conclusion the Court referred ***Dharampal Vs. State***[129].

19)(xxii). In ***S.P.Gupta V. Ashutosh Gupta***[130] it was held that whether petitioner was truly mistaken as regards information given by him is an important issue which needs to be decided in answering the charge made and prima facie case for going to trial, thus, made out, and hence no interference need be necessary.

20) From sum and substance of above expressions, coming back to facts of the case on hand from analisation of the entire material of the quash petitions on record

(i). with no roving enquiry contemplated and without going into complicated and disputed questions of fact, while keeping in mind quashing a proceeding at nasal stage pending investigation is different to post cognizance stage from material available to assess;

(ii). the fact that it is outcome of a commercial transaction and with some civil flavour and there exists an arbitration clause from initial agreement are no answers to seek for quashing the order of the learned Magistrate on the private complaint referred to police for investigation and the consequent registration of the FIR in the pending crime proceedings;

(iii). as also not liable to be quashed automatically for bereft of reasons or for non-enclosure to the private complaint earlier police report given and received by same police since filed with acknowledgment of received the report and no crime registered;

(iv). from the allegations show criminal offences to be investigated against A1 entity rep. by its M.D. as prime accused, though A2 to A7 by mere virtue of their status to A1 are not liable for any offence vicariously with A1, but for specific allegations and role of them to consider; and there are also allegations against A8 entity rep by its M.D. or other person as the case may be along with A1 entity as privy, though A9 to A16 by mere virtue of their status to A8 are not liable for any offence vicariously with A8, but for specific allegations and role of them to consider;

(v). from the allegations equally show criminal offences to be investigated along with A1 & A8, out of A2 to A7 and A9 to A16 concerned, primafacie against A5&A7 of A1 entity, leave about others among A2 to A7 nothing specifically as to how as to how they are personally liable, for no vicarious liability for their holding office, but for if at all A2 represents A1 cannot be made personally liable even from the status; so far as A9 to 16, there are also specific allegations against A13 & A14 and not against others out of them;

(vi). thus the investigation has to go on against A1 rep. by A2, A5, A7, A8 rep. by A9 or the other, A13,A14, for others concerned the FIR proceedings are liable to be quashed for nothing to sustain as on date;

(vii). further as per the interim orders of this Court dated 15/17-04-2015 in the three quash petitions, covered by the three miscellaneous petitions in CrPMP Nos.3741, 3742 & 3806 of 2015 in directing the investigation of the crime shall go on, however the quash petitioners shall not be arrested pending investigation, is lending support by the observations of the Apex Court in ***M/s.Suryalakshmi Cotton Mills Ltd.*** supra <u>as part of protecting personal liberty of accused and within the scope of the powers of the Court under Section 482 CrPC;</u>

<u>(viii). the investigating officer of Kushaiguda Police Station is further directed to continue and complete the investigation within three months and submit final report before the learned Magistrate concerned who upon going through the material pass appropriate orders as per with reasons for his conclusion.</u>

(ix). However, it is to be made clear as laid down in ***Sunil Bharti Mittal*** supra that if in the course of investigation there is anything to find any of their or even others not arrayed in FIR having specific role for police on completing the investigation fairly and honestly including by considering any material that to be placed before the investigating officer by Accused or Complainant or others relevant for the purpose of investigation by making part of final report record to file final report and to take cognizance if any. It is made very clear that this observation is not a bar to find out who is liable for the acts done on behalf of A-1 and A-8 among A-2 to A-7 on one hand and A-9 to A-16 on the other hand or if any other person involved other than the arrayed accused in the above crime to proceed against. In view of the above the three miscellaneous petitions in CrPMP Nos.5718,5727&5745 of 2016 in relation to subsequent correspondence between A1 entity and Complainant entity filed by Complainant no way requires to receive as additional material for disposal of the petitions but for giving liberty to file before the investigating officer.

21) Accordingly and in the result the three criminal petitions are partly allowed with the above observations.

22). Miscellaneous petitions, if any pending, in all the criminal petitions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.22.04.2016
Ksh/Vvr

[1] 2015 (6) SCC 287
[2] 2015 (6) SCC 439
[3] 2013(10) SCC 705
[4] 2013 (5) SCC 615
[5] 2012(11) SCC 465
[6] 2012 (5) SCC 424=AIR 2012 SC 1747
[7] 2010(8) SCC 206
[8] 2009(13) SCC 241
[9] 2009 (2) SCC 147
[10] 2008 (5) SCC 668
[11] 2003 (4) SCC 139
[12] 2000 (3) SCC 745
[13] 2000 (1) SCC 722
[14] 1999 (8) SCC 728
[15] 1976 (3) SCC 736
[16] (2015) 4 SCC 609
[17] (2014)2 SCC 62
[18] 2014(2)SCC page 1
[19] [1999] 8 SCC 686
[20] 2002 (1) SCC 241
[21] (2012) 4 SCC 547
[22] (1976) 3 SCC 252
[23] (2005) 7 SCC 467
[24] 1998(5) SCC 749
[25] (2009) 6 SCC 372
[26] 2002(2) SCC 636
[27] (2006)6 SCC 736
[28] AIR 1955 SC 196
[29] 2003 (2) SCC 649
[30] 2012(12) SCC 321
[31] MP (2012) 10 SCC 517
[32] 2007 12 SCC 641
[33] 2006 1 SCC 627
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