***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL PETITION Nos.5797, 3972, 5798, 4305, 3882, 3875, 5776, 4773, 5777, 4772, 5689, 4237, 4906, 5799, 3873, 4696, 6159, 5800, 4455, 4238 and 3883 of 2015

% Dated 01.04.2016

Between:

Crl.P.No.3972 and 5797 of 2015

M/s.Ranbaxy Laboratories Limited,
name changed as M/s.Sun pharmaceuticals Limited
represented by Mr.Arun Sawhney (for short, '**Sun**'), ...Petitioner/A.1

Crl.P.No.4305 and 5798 of 2015

Mr.**Atul Sobti**, the Ex-Managing Director of A-1,
(now merged with Sun Pharmaceuticals Industries Limited),
909, South City Heights,
South city, Gurgaon Petitioner/A.2

Crl.P.No.3875 and 3882 of 2015

M/s.Daiichi Sankyon Co. Limited,
3-5-1,Nihombashi Honcho, Chuo-ku,
Tokyo,Japan rep. by Mr. Yoshihiro Ayogi,
General counsel and Vice President, Legal petitioner/A.3

Crl.P.No.4773 and 5776 of 2015;

Mr.**Takashi Shoda**, Chairman of Daiichi,
Daiichi Sankyo Cimpany Limited,
Totsuka-Cho, Totsuka-ku, Yokohama City,
Kanagwa petitioner/A.4

Crl.P.No.4772 and 5777 of 2015;

Tsutomu Une, Executive Director of Daiichi
Sankyo Company Limited,Chuo Nakano-Ku,Tokya ...petitioner/A.5

Crl.P.No.4237 and 5689 of 2015

M/s.Karvy Computershare Private Limited,
Rep.by its authorized signatory Mr.Sajith V.K,
With its office at Road No.10,Banjara Hills, Hyderabad ...petitioner/A.6

Crl.P.No.4906 of 2015;

C.Parthasarathy, Managing Director of Karvy,
Karvy Computershare Private Limited,
Road No.10,Banjara Hills, Hyderabad. Petitioner/A.7

Crl.P.No 5799 and 3873 of 2015

M/s.I.C.I.C.I Securities Limited,
ICICI Securities Private Limited,
ICICI Centre, H.T.Marg,Churchgate, Mumbai petitioner/A.9

Crl.P.No 4696 of 2015

Ms.Madrabupuribuch,
Managing Director,
ICICI Bank Apartments, Mumbai ...Petitioner/A.10

Crl.P.No 6159 of 2015

Murugappan, (Former) Executive Director,
ICICI Securities Private Limited,
ICICI Centre, H.T.Marg,Churchgate, Mumbai Petitioner/A.11

Crl.P.No.4455 and 5800 of 2015

Ms.Deepabahal, Vice President of ICICI,
ICICI Securities Private Limited,
ICICI Centre, H.T.Marg,Churchgate, Mumbai **...**Petitioner/A.12

Crl.P.No.4238 and 3883 of 2015

Rajbeer S.Sachdeva,
Head Global Legal of Ranbaxy Laboratories Limited,
At present at C-3/151,
Janakpuri, New Delhi. Petitioner/A.14

and

$ State of Telangana
through P.S.Central Crime Station,Hyderabad
represented by its Public Prosecutor,

High Court at Hyderabad .....1st Respondent/State
(in all cases)

Dr.Jayaram Chigurupati, S/o Krishnamurthy,
Managing Director, Zenotech
Laboratories Ltd. Hyderabad ...2nd respondent/defacto complainant.
(in all cases)

! Counsel for the petitioners : Sri Avinash Desai,
(in all cases) Sri Gopala Subramanyam.
Sri K.T.Tulasi.

^ Counsel for respondent No.1 : Public Prosecutor(TG)

Counsel for respondent No.2/
Defacto-Complainant : Sri T.Jayant Jaisurya,

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>HEAD NOTE :

? Cases referred:

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3. AIR 1990 SC 1605
4. (1981)1 SCC 500
5. (2001)1 SCC 169
6. 2003 CrLJ 3087 (MP)
7. (1975)3 SCC 706
8 (1988)1 SCC 537
9 1990 (19) DRJ 139(Delhi)
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11. 1990 Supt SCC 132
12. AIR 1993 SC 1361
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15. (2003)6 SCC 641
16. AIR 2009 SC 1032=(2009)2 SCC 370
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27. Crl.A.No.1686 and 1687 of 2009 decided on 13.01.2015
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35. 2000(1)CTC 545.
36. 2014(2) ALD (Crl.) 693
37. (2000) 4 SCC 459
38. (2012)2 SCC 731
39. AIR 1961 SC 1808
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43. 2014 (3) SCC 306=AIR 2013 SC 3018
44. 2015 (6) SCC 287
45. 2015 (6) SCC 439
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47. 2013 (5) SCC 615
48. 2012(11) SCC 465
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50. 2010(8) SCC 206
51. 2009(13) SCC 241
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60. (2014)2 SCC 62
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69. (1976) 3 SCC 252
70. (2005) 7 SCC 467
71. 2002(2) SCC 636
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74. 2003 (2) SCC 649
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77. 2007 12 SCC 641
78. 2006 1 SCC 627
79. 2015 3 Scale 782
80. (2006)2 SCC (Crl.) 49
81. (2007) 14 SCC 776
82. (2009) 3 SCC 78
83. (2014) (3) SCC 389
84. (2014) 3 SCC 206
85. (2012) 5 SCC 661
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89. (2005) 4 SCC 530
90. (2013)4 SCC 505
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92. (2015) SCC OnLine SC 320 (Crl.A.No.1347 of 2010, dated 31.03.2015 (2JB))
93. 2014 (13) SCC 699
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116. AIR 1992 SC 1815=(1993) Supp. 1 SCC 499
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173. 2004 SCC Online Cal 602
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175. AIR 1970 All. 51
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177. (1981)4 SCC 2
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179. AIR 1960 SC 1113
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181. (2015)3 SCC 424, dt.11.02.2015
182. (1964)1 SCR 639
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205. (1994)2 SCC 266
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214. (2006) 7 SCC 188
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217. 2005(3) SCC-313 at 318.
218. AIR 1980 AP 154
219. AIR 1977 SC 1348

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.5797, 3972, 5798, 4305, 3882, 3875, 5776, 4773, 5777, 4772, 5689, 4237, 4906, 5799, 3873, 4696, 6159, 5800, 4455, 4238 and 3883 of 2015

COMMON ORDER :

These are the 21 petitions maintained by the petitioners respectively among A-1 to A-14 of whom A-13 is deleted from the array and A-8 filed no any application but for others and of whom, the defacto-Complainant is one Dr.Chigurupati (for short Dr.Chigurupati); and the accused A-1 to A-14 respectively are: (**A1**)-M/s.Ranbaxy Laboratories Limited (for short, '**Ranbaxy**')-name changed as M/s.Sun pharmaceuticals Limited represented by Mr.Arun Sawhney (for short, '**Sun**'), (**A-2**-Mr.**Atul Sobti**, the Ex-Managing Director of A-1), (**A-5**)-**Tsutomu Une**, Chairman Board of Ranbaxy, (**A-14**)-**Rajbeer S.Sachdeva**, Head Global Legal of Ranbaxy; (**A-3**)-M/s.Daiichi Sankyon Co. Limited (for short, '**Daiichi**'), (**A-4**)-Mr.**Takashi Shoda**, Chairman of Daiichi; (**A-6**)-M/s.Karvy Computershare Private Limited (for short, '**Karvy**'), (**A-7)-C.Parthasarathy**, Managing Director of Karvy, (**A-8)-Ganapathy Subrahmanyam**, Vice President of Karvy; (**A-9**)-M/s.I.C.I.C.I Securities Limited (for short,'**ICICI**'), (**A-10)-Ms.Madrabupuribuch**, Managing Director of ICICI, (**A-11)-Murugappan** of ICICI, (**A-12)-Ms.Deepabahal**, Vice President of ICICI & (**A-13)-Anand Pathak-(deleted** as not pressed, vide order dated 12.12.2011 of the Hon'ble Supreme Court). Thus, A2,5&14 belongs of **A1-Ranbaxy/Sun;** A4 belongs of **A3-Daiichi;** A7&8 belongs of **A6-karvy &** A10,11&12 belongs of **A9-ICICI** are facing accusation among A1-14 and of whom, for **A13-Anand Pathak is deleted from array of accused**, **but for A8** others are the quash petitioners in the 21 petitions maintained by them u/s.482 CrPC either impugning earlier revisions(for 2nd revision by the same unsuccessful person of 1st revision is a bar u/s.397(3) CrPC) or directly seeking to quash the proceedings or some of them maintained petitions in both ways viz., directly and also by impugning revision orders as the case may be, i.e.,

1). i)(a) A-1 filed quash petition Crl.P.No.3972 of 2015 against the Crl.Rev.Ptn.No.68 of 2014 and
i)(b) The quash petition of A-1 is Crl.P.No.5797 of 2015;
ii)(a) A-2 filed quash petition Crl.P.No.4305 of 2015 against the Crl.Rev.Ptn.No.80 of 2014 and
ii)(b) The quash petition of A-2 is Crl.P.No.5798 of 2015;
iii)(a) A-3 filed quash petition Crl.P.No.3875 of 2015 against the Crl.Rev.Ptn.No.115 of 2014 and
iii)(b) The quash petition of A-3 is Crl.P.No.3882 of 2015;
iv)(a) A-4 filed quash petition Crl.P.No.4773 of 2015 against the Crl.Rev.Ptn.No.118 of 2014 and

iv)(b) The quash petition of A-4 is Crl.P.No.5776 of 2015;

v)(a) A-5 filed quash petition Crl.P.No.4772 of 2015 against the Crl.Rev.Ptn.No.119 of 2014 and

v)(b) The quash petition Crl.P.No.5777 of 2015;

vi)(a) A-6 filed quash petition Crl.P.No.4237 of 2015 against the Crl.Rev.Ptn.No.81 of 2014 and

vi)(b) The quash petitions of A-6 & A-7 are Crl.P.No.5689 & 4906 of 2015;

A-8 ---------Nil

vii)(a) A-9 filed quash petition Crl.P.No.3873 of 2015 against the Crl.Rev.Ptn.No.82 of 2014 and

vii)(b) The quash petitions of A-9/A-10 & A-11 are Crl.P.No.5799, 4696 & 6159 of 2015;

viii)(a) A-12 filed quash petition Crl.P.No.4455 of 2015 against the Crl.Rev.Ptn.No.83 of 2014 and

viii)(b) The quash petition of A-12 is Crl.P.No.5800 of 2015;

A-13---------Nil

ix)(a) A-14 filed quash petition Crl.P.No.4238 of 2015 against the Crl.Rev.Ptn.No.84 of 2014 and

ix)(b) The quash petition of A-14 is Crl.P.No.3883 of 2015;

1).ii) In these 21 petitions taken up for common hearing Crl.MP.No.4905 of 2015 filed by accused and Crl.MP.No.5046 of 2015 filed by Complainant respectively to receive additional material and same are allowed.

2). The defacto-Complainant Dr.Chigurupati claims that he and his wife Smt.Padmasri are the promoters of M/s.Zenotech Laboratories Limited, a Public Limited Company with registered office at Hyderabad (for short, 'Zenotech') and of whom there is a special power of attorney dated 26.09.2002 in favour of Dr.Chigurupati on their behalf for signing of the share purchase, subscription, escrow (a written instrument) and other related agreements and to do generally all other acts (for negotiation, discussion and signing of such agreements necessary) with Ranbaxy name changed as Sun(A1).

3). Coming to factual background relevant to the lis, on October 3, 2007, Ranbaxy and Zenotech entered into a Share Purchase-cum-Share Subscription Agreement, for short (SPSSA), which provides for Ranbaxy to purchase from Zenotech's promoters supra a large block of 78,78,906 equity shares representing 27.35% of the company's fully paid-up equity share capital, at the negotiated price of Rs.160/- per equity share and to subscribe to 54,89,536 fully paid-up equity shares at the same price under a preferential allotment by Zenotech, entitling to exercise voting rights (and in all likelihood control over it) in Zenotech far in excess of the statutorily prescribed limit of fifteen percent and Ranbaxy made public announcement to acquire the shares of the company from the ordinary shareholders, on October 5, within four days of the agreement as required by law. In the public announcement, Ranbaxy quoted offer price of Rs.160/- per equity share as the negotiated price under the agreement (SPSSA) was the highest of the prices arrived at by the different ways prescribed by law. On November 8, 2007 the share purchase transaction between Ranbaxy and the promoters of Zenotech (Dr.Chigurupati and his family) was completed and at the annual general meeting of Zenotech held on the same day and the shareholders of Zenotech approved the preferential allotment of shares to Ranbaxy. On November 23, 2007 Zenotech duly allotted (by way of preferential allotment) 54,89,536 fully paid-up shares to Ranbaxy. The 'open offer' made by Ranbaxy for Zenotech shares, in terms of the Takeover Regulations, was closed on November 15, 2007. Following the completion of the open offer formalities, Ranbaxy issued a post offer announcement on January 30, 2008. The announcement disclosed that though in the public announcement it

offered to purchase shares amounting to twenty percent of Zenotech's capital, it actually received shares comprising only 2.2 percent of the expanded share capital of the company and further that on completion of all transactions Ranbaxy's shareholding in Zenotech stood at 46.85% of the latter's share capital. Even after the sale, in terms of the agreement, the promoters (Dr.Chigurupati and his family) retained a portion of their shareholding in Zenotech. *It is also relevant to say, Daiichi(A3) acquired about 67% shares of Ranbaxy(A1) and this acquisition required Daiichi to give an open offer under SEBI (Substantial acquisition of shares and take over) regulations, 1997 for acquiring the shares of Zenotech.* No doubt, it is no one's case that the acquisition of Zenotech's shares and control by Ranbaxy earlier supra was at the instance of Daiichi or it was in furtherance of some overt or covert understanding between the two as observed by the three Judge Bench of the Apex Court at the end of para No.3 in ***Daiichi V. Jayaram Chigurupati***[1].

4)(a). Further facts as covered by above expression of the Apex Court in ***Daiichi*** supra, are that on June 11, 2008 Daiichi entered into a Share Purchase and Share Subscription Agreement (the 'SPSSA') jointly with (i) Malvinder Singh and others, the promoters of Ranbaxy, and (ii) Ranbaxy Laboratories Ltd. Under the agreement, Daiichi would acquire 30.91% of the fully paid-up equity share capital of Ranbaxy by buying a sufficiently large block of shares from the company's promoters. In addition, Daiichi would subscribe to (i) shares, representing in the aggregate 11% of the fully paid-up equity share capital of Ranbaxy, and (ii) 2,38,34,333 share warrants, each warrant exercisable for one equity share of Ranbaxy. On the same day i.e., on June 11, 2008 Ranbaxy informed by letter, the Stock Exchanges that in the meeting held on that date its Board of Directors had ratified the terms of the SPSSA and had decided to seek the approval of the company's shareholders for issuance of the shares and the warrants to Daiichi, on preferential basis, as stipulated in the SPSSA, **also stated that since Ranbaxy was holding 46.85 percent of the equity shares of Zenotech**, the SPSSA has also triggered an `Open Offer' to be made by Daiichi to the public shareholders of Zenotech to acquire a minimum of 20% of the Equity Shares of Zenotech at a price to be determined under the applicable SEBI Regulations.

4)(b). In order to complete the takeover of Ranbaxy as envisaged under the SPSSA, Daiichi went through the gamut of the statutory prescriptions and on June 16, 2008 it made a public announcement (open offer) to the shareholders of Ranbaxy (other than the Sellers under the SPSSA) to acquire in the aggregate 22.01% of the fully paid-up equity share capital of Ranbaxy. The offer price in the public announcement, was Rs.737/-for each share, which was the price Daiichi had paid to the company's promoters for acquisition of the shares under the agreement and which worked out to be the highest of the prices reckoned by the different ways prescribed by the law. Daiichi's control over Ranbaxy consummated on October 20, 2008 when it acquired more than fifty percent of the share capital of Ranbaxy (as it stood on that date) and on and from that date, Ranbaxy became a subsidiary of Daiichi.

4)(c). As a result of takeover of Ranbaxy, Daiichi also indirectly acquired control

of 46.85% of the equity share capital in Zenotech, held by Ranbaxy. In the Daiichi`s public announcement in regard to Zenotech on January 19, 2009, it offered Rs.113.62 ps for each share of Zenotech based on the price of the Zenotech shares quoted on the stock exchange. In regard to the offer price of Rs.113.62 ps for each share of Zenotech made in the public announcement by Daiichi, one Sri N.Narayanan (respondent No.1 in Civil Appeal No.7314 of 2009), who was holding 63000 shares in Zenotech, made a complaint (vide. letters dated January 19, March 5, April 1, April 15, and May 7 of 2009) to the Securities and Exchange Board of India (for short 'SEBI') saying the offer price for each of the Zenotech shares could not be less than Rs.160/- and requested the SEBI to direct Daiichi to revise the offer price accordingly and also to pay interest @15% for the delay in coming out with the public announcement. Dr.Chigurupati who was the Director, founder and promoter of Zenotech along with his wife and were holding 26% equity shares in Zenotech made a similar complaint to SEBI dated January 27, 2009. The SEBI after due consideration of the matter turned down the same (vide letter dated June 18, 2009 in the case of complaint of N. Narayanan and letter dated June 22, 2009 in the case of the complaint of Dr. Chigurupati). *Against the decision of the SEBI, Dr.Chigurupati and Sri Narayanan preferred separate appeal Nos.137 and 139 of 2009 before the Security Appellate Tribunal and the Appellate Tribunal upheld their claim by order dated October 7, 2009 and allowed the appeals by reversing the decision of SEBI and by modified the letter of offer (sic) issued by Daiichi and directed Daiichi to offer Rs.160/- per share to the shareholders of Zenotech.*

4)(d). The two appeals of Daiichi against Dr.Chigurupati and Sri Narayanan impugning the Appellate Tribunal's findings were allowed by the Apex Court with observations at paras 50, 55, 56 and 57 that:

> "50. In light of the discussion made above, we are of the view that the Appellate Tribunal was in error in proceeding on the basis that the material date for Ranbaxy and Daiichi to be acting in concert was the date of the public announcement for the Zenotech shares. The Tribunal Observed: "It is, thus, clear that on January 19, 2009, the material date on which the offer price for indirect acquisition is being worked out, Ranbaxy, being a subsidiary, was acting in concert with the Daiichi and that Ranbaxy had paid Rs.160 per share to the shareholders of the target company during January 16 and January 28, 2008 when it acquired their shares under the Ranbaxy-Zenotech deal which period falls within twenty-six weeks prior to June 16, 2008." 51..... 54.....
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> 55. **In light of the discussion made above, the inevitable conclusions are that, in so far as Zenotech is concerned Ranbaxy was not acting in concert with Daiichi either from the date of the SPSSA or even after becoming a subsidiary of Daiichi and the acquisition of Zenotech shares by Ranbaxy in the month of January 2008 did not come within the ambit of regulation 20(4)(b). The offer price in the public announcement for Zenotech shares made by the appellant was correctly worked out. It follows that the judgment of the Appellate Tribunal is unsustainable and it has to be set aside.**
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> 56. It was submitted ....., we find that the controversy is completely free from any confusion and the view canvassed on behalf of the respondents is not even a remotely possible view of the matter.
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> 57. Before parting with the records of the case, we would like to say that in arriving at the correct meaning of the provisions of the Takeover Code specially regulation 14(4) and 20(12), we were greatly helped by the reports of the two Committees headed by Justice Bhagwati..... Now that we have more and more of the regulatory regime where highly important and complex and specialised spheres of human activity are governed by regulatory mechanisms framed under delegated legislation, it is high time to change the old practice and to add at the beginning the "object and purpose" clause to the delegated legislations as in the case of the primary legislations."

5). **It is two months subsequent to said expression of the Apex Court dated 08.07.2010, private complaint was filed by the defacto-Complainant on 14.09.2010 showing the alleged dates of offences in between i.e., from 05.08.2010 to 13.09.2010 and the witnesses cited are besides Complainant one Bhanu Prasad (GPA holder of Dr.Chigurupati)** and as others without even

names, in proof of accusation for the offences punishable under Sections 120-B, 406 and 409 I.P.C at the premises of Karvy(supa), Road No.10, Banjara Hills, of Banjara Hills Police Station jurisdiction, Hyderabad and ***shown six documents in the list*** viz., Public announcement for acquisition of equity shares of Zenotech by Daiichi, dated 26.07.2010, C.A. No.121 of 2010 filed by Ranbaxy before the Company Law Board, Chennai, dated 29.07.2010 and order of the Company Law Board therein dated 04.08.2010, C.A.No.130 of 2010 filed on 13.08.2010 by Ranbaxy(AI) before the Company Law Board, served on Complainant on 14.08.2010 through office of A13 along with documents (*claimed as illegally obtained in criminal breach of trust*) from A6 Karvy/A9/ICICI, notice dated 10.09.2010 sent by Complainant to ICICI(A9) with copies to A7, A10 and A12 viz., C.Pardha Saradhi, M.D. of A6-Karvy, Madrabipuri Buch, M.D of A9-ICICI, Mumbai, Ms.Deepabahal, Vice President of A9-ICICI, Mumbai and e-mail correspondence between the Complainant and A12 supra dated 10.09.2010.

6). The averments in the private complaint, mostly covered by the facts in the expression of the Apex Court supra, in nutshell are that Daiichi(A3) issued an open offer for purchase of shares of Zenotech on 19.01.2009 at Rs.113.62 Ps. Per share; after the pricing issue has been fought over and culminated through Judgment of Supreme Court dated 08.07.2010(supra), Daiichi issued a public announcement for acquisition of shares of Zenotech on 26.07.2010 and in the light of above statutory scheme, Daiichi appointed ICICI(A9)–a SEBI registered merchant banker as Managers for the open offer and Karvy(A6) being Registrar and Transfer Agents to Zenotech has been acting as Registrar for this open offer and both being SEBI registered and approved market intermediaries with legal, ethical and independent responsibilities cast on them.

7). ***It is averred that in the course of time, Company Law Board in the C.A.No.121 of 2009 in C.P.No.51 of 2009, (filed by Ranbaxy) passed restraint order dated 03.08.2010 interdicting the complainant-Dr.Chigurupati of Zenotech, from selling 51,00,000 shares, leaving it open to sell his remaining 34,75,000 shares****; and the complainant, being free, tendered said remaining 34,75,000 equity shares between 05.08.2010 to 16.08.2010 in the open offer made by Daiichi.*

8). ***While so, Ranbaxy once again approached Company Law Board by C.A.No.130 of 2010 in C.P.No.51 of 2009 alleging contempt against the Complainant and seeking directions restraining him from participating in the open offer, with a specific prayer that his shares to be tendered should not be accepted by the merchant banker ICICI(A9) and the Registrar to the issue Karvy(A6) and this contempt application filed by Ranbaxy(A1) is with a malafide intention to make public known that promoter of Zenotech himself is participating in the open offer.***

9). *The officials and Directors of Ranbaxy(A1) acting at the behest and under the officials and directors of Daiichi(A3) have obtained information and also copies of sensitive documents,* ***submitted by the Complainant to Karvy(A6) in the open offer supra,*** *illegally without authority and with malafide intention,* ***and Karvy and***

ICICI(A6 & A9) dishonestly passed on said documents for using by Ranbaxy against the Complainant for stopping him from participating in the open offer and thereby A6 and A9 caused irreparable damage to the Complainant by committing criminal breach of trust in making available the documents by entrusted to Ranbaxy(A1) to enable it to annex the same to C.A.No.130 of 2010 before the Company Law Board, Chennai; in their endeavour to prevent Complainant from participating in the open offer announced by Daiichi(A3), thereby increasing the promoter holdings in Zenotech to more than 90% that results in delisting of Zenotech and in depriving the complainant's liquidity of his equity in Zenotech, worth approximately Rs.100crores even by calculation at the rate of open offer, which is a consequence of malafide intention of all accused to see that Complainant who holds 25% shares in Zenotech will have no liquidity, results in irreparable financial loss. A13 said to be the legal advisor of A1 and A2. Complainant in course of his business transactions questioned the wisdom of the advice given by A13, due to which A13 developed hostile attitude and personal enmity against the Complainant and as a consequence he was instrumental in hatching the plans of conspiracy with other accused and getting them executed in connivance with and to achieve their illegal object through illegal means. (Undisputedly case against the so called main perpetrator A-13 was dropped as not pressed while the matter was before Hon'ble Supreme Court).

10). It is further averred that the documents submitted by Complainant to KarvyA6 *(only as a SEBI registered Registrar and held all information only in a fiduciary capacity),* include share certificates, transfer deed, income tax returns, pan card copy, form of acceptance-cum-acknowledgement, foreign inward remittance certificate, Reserve Bank of India approvals and correspondence etc., which are very vital, personal and sensitive in nature, as they contain all the closely recorded information of complainant, *to say Karvy and its officials are expected to hold the information in trust of the Complainant and could not divulge or part with the information to any third party to the detriment of the Complainant* and despite the obligation, the officials of the Karvy(A6) conspired with the merchant banker to the offer ICICI(A9) and its officials A10 to 12 as well as A2,5 &14-the officials of Ranbaxy(A1), by violating trust reposed in it in furnishing to A1, the sensitive information entrusted to A6-Karvy by the Complainant to achieve their illegal object and in criminal breach of trust.

11). It is the further averment that all the officials of Karvy and ICICI with Daiichi and Ranbaxy conspired together with dishonest intention and acquired the sensitive documents entrusted by Complainant to Karvy, with sole object of exposing the Complainant to wrongful loss, besides embracement in financial circles and in manipulating share pricing by disclosing that very founder of the company offered to sell much of his shares held in the Company as averred in C.A.No.130 of 2010, even before the open offer is closed to achieve their illegal object and Ranbaxy in making use of said documents obtained illegally from Karvy and ICICI and Daiichi filed the C.A. before the Company Law Board, Chennai. After passing of the information by A6

and A9 in Criminal Breach of Trust, the public share holders started to offer shares also in the panic as very founder Complainant intended to tender his shares and that in case public response to open offer is more than 20% then Daiichi will only acquire shares offered by pro-rata acquisitions which in fact drastically reduces the chances of Complainant in having his shares accepted and by refusing the shares offered by the Complainant on same lines offered to other share holders that resulted in giving scope for delisting of Zenotech from Bombay Stock Exchange that results in suspension of trading in said shares to the detriment of Complainant by refusing to accept the shares of the Complainant on same lines as offered to the public, the promoters holding in Zenotech has increased to 92% and in view of the information passed by Karvy and ICICI as has been informed by officials of ICICI, the officials of Daiichi and Ranbaxy illegally prevailed upon ICICI to reject complainant's shares of more than 99% while accepting shares of other share holders to 96% and ***Ranbaxy(A1)*** *through its officials A2,5 &14 with the active connivance of A13* ***is responsible*** *for filing C.A.No.130 of 2010 by enclosing the documents obtained from A6 and A9 and their officials A7,8,10,11&12 are responsible in the conduct of day to day business, in facilitating commission of the offence of criminal breach of trust and very designations of A4 and A5 disclose their inter-relation with Ranbaxy and Daiichi in achieving their object of criminal conspiracy with the help of each other, thereby all are liable for the offences punishable under Sections 120-B, 406 and 409 IPC of whom A6 and A9 under Section 409 IPC for the documents entrusted by them in the capacity of Registrar and merchant banker respectively to the issue of open offer within the meaning of agent and banker* and therefore *to forward the complaint to P.S.Banjara Hills directing to investigate into the matter under Section 156(3) CrPC.*

12). It is important to note that the learned III Additional Chief Metropolitan Magistrate, Hyderabad on the private complaint dated 14.09.2010, passed an order dated 20.09.2010 as '**forwarded to P.S. Banjara Hills under Section 156(3) CrPC for investigation and report. Call on 19.10.2010**'.

13). There is nothing from said enclosures of 1 to 6 of the private complaint supra or from contents of the complaint supra, as to any written report presented to the Banjara Hills Police or others and when, and if refused to receive, any written report sent to the Superintendent of Police by registered post as per Section 154(3) CrPC, muchless with any particulars of date and proof as to when, though ***same is one of the requirements to lay generally a private complaint***, that too not asking to take action according to law saying ready to give sworn statement and produce any witnesses for proceeding under Sections 200 to 204 CrPC, but in seeking to forward to police for investigation. The police Banjara Hills registered the same as Crime No.1070 of 2010 on 24.09.2010 and later transferred to CCS, Hyderabad who re-registered the same as Crime No.286 of 2010 on 29.10.2010 for the offences punishable under Sections 120B, 406 and 409 IPC and investigated the same and ultimately filed final referred report dated 22.05.2012 as civil in nature. In between some of the accused sought for quashing of the FIR and went unsuccessful though obtained interim orders against investigation and arrest initially and later modified for investigation shall go on and the matter when pending before the Apex

Court, from final report filed, complainant filed protest petition and later the Magistrate has taken cognizance of the case thereupon for the offences supra, against the accused supra.

14). In this context to say in brief, to detail latter as per need, so far as C.A.No.130 of 2010 in C.P.No.51 of 2009, maintained by Ranbaxy against Dr.Chigurupati etc., respondents supra by showing other parties in C.P. as co-respondents, is undisputedly for so called violation of the order in C.A. No.121 of 2010 with the prayer to declare conduct of Dr.Chigurupati in selling 1,39,410 shares and tendering of 24,21,762 shares in open offer is in violation of clause No.7.9 of the SPA amounts to contempt under the Contempt of Courts Act and to make reference of Contempt committed by Dr.Chigurupati to High Court and to take other appropriate steps against him and restrain him and other respondents M/s.Karvy Central Depository Services India Limited and N.S.D.L Trade World, Mumbai from registering transfer of the shares sold and to be sold by Dr.Chigurupati in violation of the order dated 03.08.2010 in C.A. No.121 of 2010 supra of the Company Law Board and to restrain said Karvy from accepting any shares of Dr.Chigurupati in excess of 1,00,000 shares other than as per order dated 03.08.2010 supra and for such other orders.

15). Dr.Chigurupati filed counter dated 16.08.2010 by seeking to dismiss the C.A.No.130 of 2010, by placed reliance on the SPA-7.9 saying the clause therein is in addition to the terms contained in other sub-sections of 7 and not otherwise, to say 7.9 applies only if respondent proposes to sell their shares to outsiders. If respondent offers to the applicant or its affiliate those are covered by 7.5 and 7.6 and the order dated 03.08.2010 of Company Law Board restraints only transfer of 51,00,000 shares with no prohibition and transfer of balance shares and thereby there is no violation and in saying the respondent filed appeal before the High Court against the Company Law Board orders dated 21.05.2010 and 03.08.2010 supra in saying the SPA does not state the respondent-(Zenotech) cannot sell shares to Ranbaxy/Daiichi and hence to dismiss the C.A.No.130 of 2010.

16). As referred above, the C.A.No.630 of 2010 filed against C.A.No.13 of 2010 by Dr.Chigurupati, his wife Smt. Padmasri and Zenotech showing the other parties as respondents 1 to 23 under Rule 9 of Company Rules,1959 to stay para No.5 of the Order dated 03.10.2010 in C.A.No.121(sic-131) of 2010 supra, and the High Court observed that the impugned order dated 03.08.2010 in C.A.No.121 of 2010 in C.P.No.51 of 2009 of Company Law Board where Dr.Chigurupati and 2 others filed the C.P.No.51 of 2009 supra alleging acts of oppression and mismanagement to the prejudice of Zenotech; and Ranbaxy filed C.A.No.80 of 2010 to stay the operation of the termination notice dated 13.02.2010 of Zenotech(R-4) and restrain Zenotech to act on the notice and restrain Dr.Chigurupati from selling his shares locked-in pursuant to clause 7.2 of the SPA with Ranbaxy and restrain Zenotech from acting on the termination notice dated 31.02.2010 and also Dr.Chigurupati from selling; and Company Law Board by order dated 21.05.2010 granted the relief against operation of termination dated 13.02.2010 by restraining Zenotech from acting thereupon and pending main C.P, C.A.No.11 and 12 also filed by Dr.Chigurupati and

Zenotech besides C.A.No.612 in C.A.No.11 of 2010 to stay order dated 21.05.2010 and C.A.No.624 of 2010 in C.A.No.12 of 2010 seeking to stay the said order and the validity or sustainability order dated 21.05.2010 be decided in C.A.Nos.11 and 12 of 2010, hence confined to C.A.No.633 of 2010 in C.A.No.13 of 2010 only, saying Ranbaxy invested substantial amount in Zenotech and agreements are linked to the performance imposing certain contractual obligations and the required milestone could not be reached. Petitioners while alleging the restrictive covenants imposed in the agreement as act of oppression and to terminate the agreement being onerous in nature, same pending in C.P.No.51 of 2009 and the impugned order in C.A.No.121 of 2010 is to maintain existing status quo with respect to the two agreements till disposal of main C.P.No.51 of 2009. Ultimately it was held at para No.36 that the impugned order of CLB to maintain status quo with respect to the two agreements till disposal of main C.P. and by safeguarding and protecting the interest of both parties does not warrant interference for no valid or justifiable grounds to stay the operation of the impugned orders pending disposal of C.A.No.13 of 2010 and therefrom dismissed the C.A.No.633 of 2010 in C.A.No.13 of 2010. It is needless to say the C.A.Nos.11, 12, 13 of 2010 and subsequent C.A.Nos.15 and 16 of 2011 were dismissed as infructuous vide order dated 23.01.2012, a subsequent outcome to the private complaint dated 14.09.2010, however, said order of C.A.No.633 of 2010 in C.A.No.13 of 2010 even undisputedly dated 23.08.2010 is about an year before filing of private complaint on 14.09.2010 and same also not referred or filed in the private complaint.

17). From the averments with six enclosures of the private complaint referred supra, all the material facts and proceedings not covered and mainly 'SPSSA' not filed and the contents of relevant clauses particularly of 7.2,5,6,&9 not even disclosed and but for C.A.No.121 of 2010 & C.A.No.130 of 2010 others not filed, though supposed to be. It is not mentioned of the documents filed are only copies and not originals, in giving impression as if originals, other than pan card copy.

18). Had the material before the Court, apart from had the learned Magistrate, instead of simply for the sake of mere asking, applied his mind to the entire material relevant to go through even cursorily as to which cognizable offence and against whom if at all made out prima-facie therefrom to investigate any cognizable offence by police for referring under Section156(3)CrPC, (leave about reasons assigned or not showing application of mind), it could have been a different outcome, for what is discussed supra.

19). No doubt, after said order of referring under Section 156(3) CrPC by the learned Magistrate dated 20.09.2010 and consequent registration of FIR No.1070 of 2010 of P.S. Banjara Hills and it's in turn re-registration by C.C.S Hyderabad as FIR No.286 of 2010, the FIR was sought for quashing by Ranbaxy-A1, Daiichi-A3, karvey-A6 and ICICI-A9 and its officers among others if any in Crl.P.Nos.12318 and 13209 of 2010, 281 of 2011, 62 and 609 of 2012 and obtained interim order against further proceedings of the crime investigation including arrest of accused until further orders, vide orders dated 10.12.2010 or so and later there was a final order dated 03.11.2011 or so respectively in dismissing the quash petitions. It is impugning the

same, Ranbaxy etc., filed before the Apex Court the Special Leave to Appeal (Crl.) No.9179 of 2011 and while the matter was pending and while ordering to issue notices, the name of A13 Anand Pathak was not pressed by Complainant from the crime supra and accordingly directing to delete from the array of the accused in the FIR without prejudice to proceed against other accused if any to decide and while the matter was pending for hearing, ultimately from the counter and rejoinders respectively; by order dated 07.02.2014, from police final referred report filed from the concession of investigation shall go on, it was disposed of saying in view of order dated 07.12.2013 passed by XII Additional Chief Metropolitan Magistrate, Hyderabad, the counsel for the petitioners Ranbaxy etc., submitted to not press the S.L.Ps by seeking the interim protection extension for four weeks and thereby dismissed as not pressed said S.L.P No.9179 of 2011 and the interim protection granted to remain operative for four weeks from that day **and made clear that extension of the interim orders will not be construed to mean the Apex Court has expressed any opinion in regard to the merits of the case**.

20). It was for the reason while the S.L.P was filed pending against the High Court's final common order in Crl.P.Nos.12318 of 2010 and 13209 of 2010 supra, the police having completed the investigation and filed final referred report dated 22.05.2012. The referred report reads as follows:

> "During the course of investigation examined Complainant and recorded his statement. Notices were also issued to the alleged accused persons and obtained documentary evidence. On perusal of the documents on part of the Complainant and on part of the alleged accused persons of caused him wrongful loss, as per version of A-2 it is disclosed that as per the clause No.7.3 at page No.17 of the Share Purchase Agreement, the Complainant shall sell any of their 85,75,000 equity shares held in the company whether directly or indirectly to any company or entity which is engaged in business of bio-technology and pharmaceuticals and or which would complete in any manner with the business of purchase of company, unless seller has obtained written consent of the purchaser. Seller also agreed not to sell more than 5% of the existing total issued and paid up share capital of the company to a single investor whether directly or indirectly. Hence, legal opinion was obtained to finalise the case. Several times sent the notice to the Complainant to close the case as CIVIL IN NATURE to the house of the Complainant for service of notice to the Complainant but he is not available at home and avoiding taking notice. On 20.04.2012 the same was sent through registered post but it was returned as not claimed on 05.05.2012. On 08.05.2012 ASI Sri C.Narasimha Reddy and PC 4609 were sent to the house of the Complainant for service of the notice to the Complainant but the Complainant is not available, then ASI and PC affixed the notice on the complainant's residence at conspicuous place in the presence of two panchas (1) Sri M.Subhashchandra Bose and (2) Sri G.Veera Raju and the reports are herewith enclosed.
>
> In view of the above facts the case is referred as '**CIVIL IN NATURE**'. Hence it is prayed the Hon`ble Court to issue proceedings accordingly."

21). Thus, the private complaint was referred as civil in nature having obtained legal opinion by the investigating officer. It is on said final referred report of police as civil nature and no criminal offences made out, protest application was filed by the defacto-Complainant on 25.11.2013, with a prayer to order further investigation directing impartial enquiry taking consideration of the orders of the Apex Court on 16.12.2011 and 06.01.2012 or in the alternative permit the Complainant and other witnesses to give evidence on oath to prove the offences committed by accused and take cognizance against the accused and to issue process and to pass any other orders as the Court may deem fit.

22). The protest application filed was with 31 paras by attacking mainly of investigation is unfair, not done on relevant but irrelevant aspects, referred report is mainly based on legal opinion which is illegal, accused could have been interrogated to elicit information as to from whom A14 for A1 obtained the confidential documents to file in the contempt petition C.A.No.131 of 2010 etc., Coming to other

material, there are (against original complaint with six enclosures) now in the protest petition the enclosures filed are original complaint dated 14.09.2010, High Court's order dismissing the quash petition on 03.11.2012, the Apex Court's orders of 18.12.2011, 06.01.2012 and 11.11.2013 supra, notices under Sections 41, 91 and 160 CrPC of 12.01.2012, 13.02.2012 and 23.12.2011, letter to Industries Department dated 15.02.2013, Police final report dated 22.05.2012 and request to furnish legal opinion dated 26.02.2012, post offer public announcement and form of acceptance-cum-acknowledgement.

23). The protest petition was numbered as Crl.M.P.No.5456 of 2013 in said Crime No.286 of 2010, refers 18 documents as Exs.A-1 to A-18 of which Exs.A-5 to A-8 are acknowledgements and Ex.A-12 is copies of Exs.A-1 to A-4 among those already referred supra of the protest petition which show the Complainant alone was examined with no more witnesses.

24). The order in the protest petition reads as follows:

"This is a protest petition filed by the Complainant consequent to the filing of the final report by the Investigation Officer referring the case as civil in nature.

2. The Complainant present. The Complainant in support of his case got himself examined as witness and got marked Ex.P-1 to P-18. Heard counsel for the complainant. Perused the material papers on record.

3. The material facts are as follows:

A private complaint was filed by the Complainant before the learned III ACMM, Hyderabad and on receiving the complaint, the learned the then Magistrate referred the same to PS Banjara Hills u/s.156(3) CrPC for investigation and report and the police registered a case in Cr.No.1070/2010 u/s.120-B, 406, 409 IPC r/w 156(3) CrPC and issued F.I.R. Subsequently the case was transferred to CCS, wherein it was re-registered as Crime No.286/2010 u/s.120-B, 406, 409 IPC r/w 156(3) CrPC and later the Inspector of Police of WCTO Team–V; CCS filed a final report referring the case as civil in nature. Being aggrieved by the same, the Complainant filed the present protest petition.

4. The averments mentioned in the complaint and the sworn statement of the Complainant discloses that he is the founder of the Zenotech Laboratories Ltd., and it is a Public Ltd. Co. incorporated under the provisions of the company Act, 1956 and that he was the Managing Director of the Zenotech Laboratories Ltd. since its inception to September 2012 and he was holding 80% of the shares of the said company when he was the promoter and was holding 25% of the shares as on 04.03.2010 and A1 was holding 46.7% shares in Zenotech Laboratories Ltd as on 4.8.2010 and in the year 2008, A3 acquired A-1 company and therefore A-3 indirectly acquired 46.7% of shares in Zenotech and there was an open offer to acquire the shares of Zenotech from the shareholders of Zenotech by A3 company called as acquirer company for the purpose of open offer and the open offer was announced by A3 company called as acquirer company for the purpose of open offer and the open offer was announced by A3 on 19.01.2009 and later the offer was published on all leading newspapers and the open offer is necessary to comply with the takeover regulations of the Security and Exchange Board of India(SEBI) and the duration of the said open offer was from 4.8.2010 to 23.8.2010.

5. It further discloses that the Complainant has 85,75,000 shares in Zenotech laboratories as on 4.8.2010 and he tendered 24,21,762 shares through four applications i.e. forms of acceptance/acknowledgment dated 4.8.2010 and against 20,53,238 shares on 16.8.2010 through a 5th form of acceptance by enclosing required documents and he had entrusted the forms of acceptance along with respective enclosures for participating in the open offer to A6 company which is authorised to collect the open offer forms of acceptance as registrar to the said open offer.

6. The contention of the Complainant is that, A6 is the authorised agent to A3 to collect the said forms as registrar to open offer and his colleague K.Bhanu Prasad had submitted all the forms of acceptance along with enclosures to A6 and he retained the copies of form of acceptance form acknowledgment and its enclosures and A6 acknowledged the entrustment of four forms of acceptance along with its enclosures on 5.8.2010. He further stated that the form of acknowledgment will be at the bottom portion of last page of form of acceptance/acknowledgment which was stamped and signed on behalf of A6 *and then it was torn and given to him* i.e., Ex.P5 to P8.

7. Ex.P1 and P2 are the office copy of form of acceptance dt.4.8.2010 along with copies of its enclosures i.e., delivery instructions issued by the depositor/IDBI Bank, PAN card and Income Tax returns for the assessment year 2010-2011 tendering 4 lakhs equity shares of Zenotech 1,61,421 equity shares of Zenotech respectively.

Ex.P-3 is the office copy of form of acceptance dt.4.8.2010 along with copies of its enclosures i.e., delivery instructions issued by depository which is IDBI Bank, Pan Card, Certificate of Foreign Inward Remittance issued by State Bank of India dt.27.11.2003 and 27.4.2003, letter of Reserve Bank of India dt.22.2.2005 acknowledging issuance of shares to him and Income Tax Returns for the assessment year 2010-2011 tendering 15,33,341 NRI equity shares of Zenotech.

Ex.P-4 is the office copy of Form of Acceptance dt.4.8.2010 along with copies of its enclosures i.e., share certificate of Zenotech Laboratories for 3 lakh shares along with share transfer form, Pan Card and Income Tax Returns for the assessment year 2010-2011.

Exs.P-5 to P-8 are the acknowledgments issued by A6 towards proof of submission of originals of Exs.P-1 to P-4 respectively.

8. The Complainant further contends that he did not authorise A6, A8 and A9 to use Ex.P-1 to P-4 for any other purpose except for accepting his shares in the open offer and A-3, A-6 and A-9 and their executives are not authorised to furnish copies of Ex.P-1 to P-4 to A1. But the copies of Exs.P-1 to P-4 were made public by A1 and its officers i.e., A2 and A14 and **they were filed by A1, obtained copies of Exs.P-1 to P-4 by committing criminal breach of trust** by A3 to A14 and by conspiring with them **and A14 filed an affidavit on behalf of A1 in CA No.130/2010 before Company Law Board**.

9. The important point to be considered is whether the allegations in the complaint make out a prima facie case of conspiracy and criminal breach of trust punishable u/s.120-B, 406 and 409 IPC?

10. A careful reading of the section shows that a criminal breach of trust involves the following ingredients: (1) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; (c) that **such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contact which the person has made, touching the discharge of such trust.**

11. With regard to Section 120-B I.P.C, the essential ingredient of criminal conspiracy is an **agreement to commit an offence** that is to say that there was an agreement among the accused for doing an unlawful Act.

12. The learned counsel for the Complainant submits that it is **A6 who supplied copies of Exs.P-1 to P-4 and passed on the same to A1** and the accused had used **Exs. P-1 to P4 for their use by making them public** that the promoter himself i.e. the Complainant is participating in the open offer and prejudiced his rights for participation in open offer and it resulted in losing the liquidity of his shares and confidentiality of his documents under Exs.P1 to P4 was lost and his private confidential documents under Exs.P1 to P4 have become known to public and all the accused conspired together and committed criminal breach of trust and by doing the same, an overwhelming response was received from the shareholders of Zenotech of which was not earlier and adopted a process of acceptance to his detriment and rejecting his offer illegally and caused significant loss to him and all his personal confidential information became public.

13. The learned counsel for the Complainant submits that due to the rejection or offer of the Complainant by A3 under Exs.P1 to P4 will benefit the current and former employees of A1 fully and in December, 2007 A1 itself gave an open offer to buy the shares of Zenotech from its shareholders at a price of 150 per share to acquire 20% of equity in Zenotech and resulted in receiving a response of only 1.67% of equity out of 20% and open offer by A3 is only for Rs.113.62/- and by that A3 got a better response in open offer by making public that the Complainant himself is participating in open offer and therefore prays to direct further investigation or to take cognizance of the case of the accused A1 to A12 and A14.

14. The learned counsel for the Complainant further submits that the accused filed a quash petition before the Hon'ble High Court of AP in Crl.P.Nos.12318, 13209 of 2010 and the same was dismissed by a common order dated 13.11.2011 and on that the accused filed SLP (Criminal) i.e., Ex.P-14 certified copy of orders of the Hon'ble Apex Court in SLP(Crl.) 9179 of 2011 dt.16.12.2011, wherein the Hon'ble Apex Court directed the accused that they shall fully cooperate with the investigation. Again on 6.1.2010 the Hon'ble Apex Court directed A5 in SLP (Crl) 58/2012 dated 6.1.2013 that he shall render full cooperation to the investigation agency. Ex.P-15 is the orders of Special Leave Petition(Crl.) 9179/2011 dated 12.12.2011. But the police did not make investigation properly and filed the final report stating that the matter is of civil nature. He further submits that the complaint given by him under Ex.P-13 has nothing to do with civil litigation.

15. The learned counsel for the accused cited a citation reported in Bhagwant Singh V. Commissioner of Police 1985(2) SCC 537 wherein it was held that three options are open to the court on receipt of a report under Section 173(2) of the code, when such report states that no offence has been committed by the persons accused in the complaint. They are –

1) The Court may accept the report and drop the proceedings; or

2) The court may disagree with the report and take cognizance of the offence and issue process if it takes the view that there is sufficient ground for proceeding further; or

3) the court may direct further investigation to be made by the police.

16. There can be no doubt that before a public servant can be convicted of an offence under Section 5(1)(c) or under Section 409 I.P.C, the property which is said have been misappropriated must be entrusted to him, Section 406 merely provides, whoever being in any manner entrusted with property or with any dominion over the property, as the first ingredient of the criminal breach of trust. The words "in any manner' in the context are significant. The section does not provide that the entrustment of the property should be by someone or the amount received must be the property of the person on whose behalf it is received. *As long as the accused is given possession of property for a specific purpose or to deal with it in a particular manner, the ownership being in some person other than the accused he can be said to be entrusted with that property to be applied in accordance with the terms of entrustment and for the benefit of the owner*. The expression 'entrusted' in Section 409 is used in a wide sense and includes all cases in which property is voluntarily handed over for a specific purpose and is dishonestly disposed of contrary to the terms on which possession has been handed over. It may be that a person to whom the property is handed over may an agent of the person to whom it is entrusted or to whom it may belong, in which case if the agent who comes into possession of it on behalf of his principal fraudulently misappropriates the property, he is nonetheless guilty of criminal breach of trust because of an agent he is entrusted with it. A person authorised to collect moneys on behalf of another is entrusted with the money when the amounts are paid to him, and though the person paying may no longer have any proprietary interest nonetheless the person on whose behalf it was collected becomes the owner as soon as the amount is handed over to the person so authorised to collect on his behalf.

17. **For participating in the open offer the Complainant was required to submit**

certain confidential documents for processing his application and accordingly he entrusted the documents to A6 i.e., 1.Income Tax Returns, 2.Share certificates, 3.Pan Card Copy, 4.Transfer Deed, 5.Form of Acceptance/acknowledgment, 6.Foreign Inward Remittance Certificate and 7.Reserve Bank of India approvals.

18. The learned counsel for the Complainant submits that the said documents were enclosed to the originals Exs.P1 to P4 and the same were entrusted to A5 and A6 who received the same on behalf of A3. The above said documents are confidential documents which are not available in the public and the Income Tax returns of the Complainant cannot be obtained even under the Right to Information Act and RBI approvals and Foreign inward Remittance Certificate belonging to him are not available in the public and the said documents have to be used only for the purpose of open offer. But accused No.3 illegally and without any authorisation transferred these documents to A1 and unless the A3 parted with the same to A1, A1 could not have been in possession of the said documents and A1 received the said confidential documents and filed the same before Company law Board and thereby his confidential documents became public and it is nothing but criminal breach of trust.

19. The learned counsel for the Complainant further submits that the nature and scope of a civil proceeding are different from the criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not. To that effect he relied on a citation reported in 2006(6) Supreme Court Cases 736, Indian Oil Corp. V. NEPC India Ltd and others.

20. The learned counsel for the accused submits that where the accused are given in possession of the property *with a specific purpose or to deal with it in a particular manner, they can be said to entrust with the property to apply it in accordance with terms of entrustment and if he dishonestly disposes the property contrary to the terms, he is guilty of criminal breach of trust.* To that effect he relied on a citation reported in 1973(2)APLJ-127– Dr.M.A. Salam V. D. Subba Rao and four others.

21. As per Section 405 I.P.C what is contemplated for Criminal Breach of Trust is the conversion, by one who in any manner is entrusted with property, or with any dominion over property, to his own use in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which has been made touching the discharge of such trust.

22. In the present case according to the Complainant the documents i.e. originals of Exs.P1 to P4 along with its enclosures which were entrusted to A6 and who received it on behalf of A3 have gone into the hands of A1 and A6 is the agent of A3 received it on behalf of A3 for a specific purpose that they have to be used for the purpose of open offer. But the said documents have gone into the hands of A1 and he made them public by filing the same before the company law board. A1, A3, A6 and A9 are the companies, A2, A4 of A1 company, A5 are the Executives of A3 company, A7 and A8 are the executives of A6 company, A10, A11 and A12 are the Executives of A9 company and A14 is the person who filed the copies of Exs.P1 to P4 documents before the Company Law Board by giving his affidavit i.e., under Ex.P11, Ex.P17 form 20-B discloses that A7 is still the Managing Director of A6. Ex.P-18 letter of offer discloses that A6 is the Registrar to the offer and A9 is the Manager to the offer and it further discloses that offer opens from 4.8.2010 and closes on 23.8.2010. Exs.P1 to P8 discloses that annexure B in Ex.P11 is nothing but the copies of Exs.P1 to P4 and Ex.P12 was given to them as annexure B as described in Ex.P11. But Ex.P12, which are copies of Exs.P1 to P4 does not contain Exs.P5 to P8 acknowledgments. The contention of the Complainant is that Exs.P5 to P8 acknowledgments are torn and given to him as acknowledgments towards proof of submission of Exs.P1 to P4. The averments mentioned in the complaint and the sworn statement discloses that all the accused have conspired together committed criminal breach of trust with regard to Exs.P1 to P4 confidential documents and put them to their own use by handing over the same to A1 who made them public by filing the same under Ex.P11 and by doing so A3 got overwhelming response to the open offer by making public to believe that the Complainant himself that is the very founder of the company of Zenotech Laboratories Ltd is offering to sell his shares in the Company. Ex.P-14 is the orders of the Hon'ble Apex Court wherein the Hon'ble Apex Court directed that it will be open to the investigating Officer to carry on the investigation, but the petitioners shall not be arrested until the disposal of the special leave petition and the petitioners who are the accused in the complaint shall fully cooperate with the investigation. Ex.P16 is the information obtained by the Complainant under RTA Act from the Deputy Commissioner of Police, DD, Hyderabad with regard to the investigation made by the Investigation Officer.

23. While arguing the matter, the learned counsel for the Complainant submits that the accused have criminal intention and they all conspired together committed criminal breach of trust and the police did not make investigation properly and filed the final report stating that the matter is of civil nature and that it is not correct and the complaint filed by him under Ex.P-13 has nothing to do with civil litigation.

24. As seen from the record, the private complaint filed by the Complainant was referred to the PS Banjara Hills on 20.9.2010 and the same was registered on 24.9.2010 as Cr.No.1070/2010 u/s.120 B, 406, 409 IPC r/w 156(3) CrPC and later it was transferred to CCS which was re-registered as Cr.No.286/2010 u/s.120 B, 406, 409 IPC r/w 156(3) CrPC on 29.10.2010 and final report was filed on 4.6.2012 i.e. after lapse of more than one and half year by referring to the same as civil in nature.

25. Section 202 enquiry is limited to consider whether there is sufficient ground to proceed in the case and not to consider whether there is sufficient ground for conviction. All that is required to see is whether prima facie case for criminal offence is made out. At this stage, the court has to see how far the evidence placed before the Court by the Complainant is sufficient to lead to the conviction of the accused if it remained unrebutted during the course of trial. ***The fact of conspiracy, misappropriation as well as criminal breach of trust will come to light at the time of trial though the mountain of the witnesses after confronting the documents to the witnesses, but not at this stage.***

26. The sworn statement of the Complainant discloses that he instructed his counsel to not press the complaint so far A13 is concerned and accordingly his counsel not pressed the complaint against A13 before the Hon'ble Apex Court. The learned counsel for the

Complainant also submitted the same and in cause title of the protest petition also the same is mentioned. Ex.P15 the orders of the Hon'ble Apex Court wherein it was observed that the Complainant do not wish to press their complaint so far as A-13 Mr.Anand Pathak is concerned and his name is accordingly directed to be deleted.

27. ***On careful consideration of the allegations in the complaint, the sworn statement of the Complainant and the material placed before the Court and for the reasons set forth in the preceding paragraphs, the final report filed by the investigation officer referring the case as civil in nature is not accepted* - as it appears that prima facie case is made out against the accused Nos.1 to 12 and 14 and that this Court is satisfied that there are prima facie sufficient grounds to take cognizance against the accused Nos.1 to 12 and 14 for the offences punishable u/s.120 B, 406 and 409 IPC.**

In the result, this case is taken cognizance for the offences punishable u/s.120 B, 406, 409 IPC against A1 to A12 and A14. Issue summons to the accused A1 to A12 and A14."

25). Said cognizance order was impugned by filing revision petitions by some of the accused and succeeded partly from deletion of Section 409 IPC by the learned Sessions Judge, out of the order supra of the leaned magistrate taken cognizance of the case for the offences punishable u/s.120 B, 406, 409 IPC and they carried the matter by filing some of the quash petitions under Section 482 CrPC for 2nd revision to maintain by them is a bar under Section397(3)CrPC and other quash petitions directly filed under Section 482 CrPC as referred supra.

26)(i). The sum and substance of the contentions in the quash petitions grounds and in the oral and written submissions during hearing by placed reliance upon several expressions in impugning the respective orders supra are that, apart from the order referring to police investigation, the order taking cognizance is without proper appreciation of facts and without sustainable reasons to say as bad as with no reasons and even without basis to differ with police final referred report opinion of civil nature and even the facts in the protest petition and sworn statement are contradictory to the facts in the original complaint and statement of complainant during investigation, the material facts suppressed in the original complaint that disentitles the complainant to get any remedy under equity, the material relied no way makes out any offence to take cognizance of any offence and against any of the accused persons and the revision court also did not properly advert to the relevant material in passing orders, the accused are otherwise entitled to the defence to consider application of Section 78 IPC and once the cognizance order ignoring these aspects is with no fruitful purpose by such lame prosecution, even summoning an accused is a matter concerning personnel liberty requires judicial application of mind in proper perspective that is lacking, the learned Magistrate instead of mostly reproducing the contentions of counsel for complainant, could have applied judicial mind to entire material on record including police final report material against which alone protest raised to consider within its scope and the calendar case proceedings are therefore liable to be quashed.

26)(ii). 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 cognizance order of the learned Magistrate that, the quash petitions as a second round of litigation tantamounts to review of earlier dismissal orders of this Court even went to supreme court there not pressed with no right reserved, though it was at crime stage pending investigation on the private complaint referred to police investigation, and now even from final referred report filed and against which on protest raised cognizance taken by the learned Magistrate and same is barred by

Section 362 CrPC, apart from the fact of revision against the order taking cognizance and issuing process by the learned Magistrate, not correct of deleting cognizance of the offence under Section 409 IPC, same impugned by Complainant by separate revision lies, there is a bar to accused to maintain second revision under Section 397(3) CrPC and what they cannot directly achieve by impugning from second revision bar, they cannot indirectly achieve by impugning under Section 482 CrPC to invoke inherent powers when not meant for such contingency to make section 397 nugatory and also for those other persons not filed revision even same order of revision bind all parties to the case for cognizance is by common order based on common facts, the order taking cognizance and issuing process by the learned Magistrate is well considered and supported by reasons, apart from no reasons even required judicial application of mind to facts to take cognizance and even for any reason of order reflect with reasons of application of mind, non giving of reasons alone not a ground to interfere invoking inherent powers, apart from the order in question is fully supported by reasons to differ with police final referred report opinion of civil nature for that is unsustainable on facts and also illegal for based on legal opinion and further apart, what is required by law is judicial application of mind to facts for reference within discretion for police investigation and that order now not left open for went unsuccessful against it at crime stage and even the order taking cognizance and issuing process by the learned Magistrate no way requires interference for the offences against all the accused from the cognizance order making out, further that whatever defence to avail if at all invoking section 78 IPC is in trial to avail by discharge of the burden under Section 105 Evidence Act and not at this stage to seek, apart from not raised the same in earlier quash petition which tantamounts to waiver and in fact in a quash petition the High Court cannot go into disputed and complicated questions of fact and once prima facie there is material and cognizance order therefrom sustains, there is nothing to interfere invoking inherent powers, further all the persons among accused 2,4,5,7,8,10,11,12,&14 are liable for their privy to the offence along with the entities A1,3,6&9 and deletion of name of A13 one of prime accused no way absolve from the penal consequences all other accused supra and thereby sought for dismissal of all the quash petitions.

27). From the above, the points arise for consideration are:

i).Whether reasons required for order taking cognizance of an offence, particularly on protest application and non giving of reasons or reasons given not meeting the requirement itself a ground to quash, leave about such requirement if any in referring a complaint for investigation and in case of protest on police final referred report, is it sufficient of only referring to sworn statement and protest petition and its enclosures or also requires to consider the contents of FIR regd. on the original complaint and investigation material thereupon, against which the protest was raised from overall consideration by judicial application of mind to sustain?

ii). Whether there is a legal bar to the maintainability of the quash petitions under Section 482 CrPC either from Sections 362 or 397 or other provisions of CrPC or from Doctrine of merger or waiver from not raising the defence under Section 78 IPC in quash petitions filed against FIR apart from not reserving any right specifically while withdrawing the appeals before Supreme Court at the stage of FIR regd. on the original private complaint referred for investigation, for impugning the subsequent taking of cognizance on protest petition against the police final referred report from completion of investigation?

iii). Whether there are any grounds to quash the calendar case proceedings

against all or any of the accused for offences taken cognizance and if so on what material?

iv). To what result?

Points i, ii, & iii:

28). The points i, ii and 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.

29) **Coming to the main contention on maintainability of the present quash petitions**, from the earlier quash petitions filed against the earlier FIR registered for the offences punishable under Sections 120B, 406 & 409 IPC against all the accused, from the private complaint referred by the learned Magistrate to the police under Section 156(3) CrPC for investigation and the same ended in dismissal before the High Court and even impugned before the Apex Court, before decision on merits same was withdrawn from police after investigation filed final referred report and the same is a bar under Section 362 CrPC for impugning the subsequent taking of cognizance on protest petition concerned:

29(i). **Section 362** CrPC-which speaks of 'Court not to alter judgment' reads that, **save as otherwise provided by this Code or by any other law for the time being in force**, **no court** when it has signed its judgment or final order disposing of a case, **shall alter or review** the same except to correct a clerical or arithmetical error.

29(ii). In ***State of Orissa V. Ram Chander Agarwala***[2], it was held on the scope of Sections 362 and 482 CrPC that once Section 362 CrPC speaks no Court when it has signed its Judgment or final order disposing of a case, shall alter or review the same except to correct a clerical error, save as otherwise provided by this Code or by any other law for the time being in force, the inherent power is not applicable to invoke for exercise of power which is specifically prohibited by the Code. For that conclusion referred several expressions.

29(iii). In ***Mostt.Simrikhia vs. Smt.Dolley Mukherjee @ Smt.Chhabimukherjee***[3] it was laid down that, the inherent jurisdiction of the High Court cannot be invoked to override the bar of review under Section 362 CrPC as laid down in ***Sooraj Devi V. Pyare Lal***[4]

29(iv). In ***Hari Singh Mann V. Harbhajan Singh Bajwa***[5] it was held referring to ***Ram Chander Agarwala*** supra and other expressions that High Court has no jurisdiction to alter or review its own Judgment or order except to the extent of correcting any clerical or arithmetical error and the practice of filing criminal miscellaneous petitions after disposal of main case and issuance of fresh directions in such petition amounts to abuse of process of the Court as once a matter is finally disposed of, the Court in the absence of a specific statutory provision becomes

functuous officio in respect of that matter.

29(v). However, here it is not a case that at post cognizance stage on the protest application of the defacto complainant, any petition filed by any of the accused persons among the present quash petitioners and any order passed against them by this court and there after undertaking to review the same even to invoke from above expressions for any such bar under Section 362 CrPC.

29(vi). In ***Manoj Vs. Savita***[6] the learned Single Judge of the Madhya Pradesh High Court in the facts moving application under Section 482 CrPC for second time, having went unsuccessful at FIR stage and after police referred report private complaint filed taken cognizance in impugning the same held impermissible on same set of facts.

29(vii). In this regard, it is apt to refer the expression of the Apex Court in ***Superintendent and Remembrancer of Legal Affairs, West Bengal V. Mohan Singh***[7] that the **High Court got power to entertain application again in a changed set of circumstances** even earlier application was ended in rejection on the ground of question of fact had yet to be ascertained and the later application after length of time with no progress in investigation. It was observed that the inherent power preserves in High Court under Section 561-A (New 482) to make such orders as it deems fit to prevent abuse of process of the Court or to secure ends of Justice and the High Court must exercise the same having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. Thus, there is no legal bar to any of the quash petitions under Section 362 CrPC.

30. **Coming to other main contention on maintainability of the present quash petitions**, from the earlier revisions before the Court of Sessions against the cognizance of the offences punishable under Sections 120B, 406 &409 IPC against all, but for holding no offence under Section 409 IPC is made out to allow the revisions to that extent, (leave about the complainant filed revision against that revision order of the Court of Sessions deleting Section 409 IPC holding no offence under that Section made out, (from the wording of bar of second revision to same person and not to other or opposite persons-vide decision in ***Bakulabai V. Gangaram***[8])); the quash petitions requesting to invoke the inherent powers under Section 482 CrPC or supervisory powers under Section 483 CrPC won't lie, to aid such unsuccessful revision petitioners for those are within the mischief of bar of second revision under Section 397(3) CrPC, leave about any jurisdiction under Articles 226 or 227 of the Constitution of India concerned:

30(i). Sections 397, 482 & 483 CrPC read that:

"1. Section 397-Calling for records to exercise powers of revision-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction,

shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.
(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, *no further application by the same person* shall be entertained by the other of them.

2. Section 482-Saving of inherent powers of High Court-

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to **prevent abuse of the process of any Court or otherwise *to secure the ends of justice***."

3. Section 483-Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates-

Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as **to ensure that there is an expeditious and proper disposal of cases by such Magistrates**".

30(ii). In ***B.K.Chakravarty Vs. Bijaya Gurung***[9] the learned Single Judge of the Delhi High Court in the facts moving application under Sections 482 and 397 CrPC, impugning the order of the High Court modifying the onerous conditions in the bail order of the Sessions Judge, it was observed that the order of the Sessions Judge merged with the order of the High Court and as held in ***Ram Chander Agarwala*** supra and other expressions that High Court has no jurisdiction to alter or review its own Judgment or order except to the extent of correcting any clerical or arithmetical error. It was however observed if order is obtained from the High Court by practicing fraud it can set aside by invoking the inherent power and for that there is no such bar.

30(iii). In ***State(Delhi Administration) Vs. Kumari Tukkanna***[10] the learned Single Judge of the Delhi High Court under Sections 482 and 397 CrPC by referring to several expressions held that second revision before High Court from first revision dismissed won't lie.

30(iv). In ***Rajan Kumar Machananda Vs. State of Karnataka***[11] it was held under Sections 482 and 397 CrPC by the Division Bench of the Apex Court in its short judgment that where a revision petition is dismissed by the Sessions Court, a second revision would not lie to the High Court. Merely by saying that jurisdiction of the High Court for exercise of its inherent power was being invoked, the statutory bar could not have been overcome. If that was to be permitted, every revision facing the bar under Section 397(3) CrPC could be labeled as one under Section 482 CrPC.

30(v). In ***Dharmapal v. Ramshri***[12]–it was held by the Apex Court Division Bench that the inherent power under Section 482 CrPC cannot be exercised for allowing a second revision barred by Section 397(3)CrPC.

30(vi). In ***Deepti @Arati Rai Vs. Akhil Rai***[***13***] it was held under Sections 482 and 397 CrPC by the Division Bench of the Apex Court in its short judgment that where a revision petition is dismissed by the Sessions Court, a second revision would not lie to the High Court.

30(vii). ***In fact,the expression in Rajan Kumar Machananda*** among others were specifically overruled in a latter three judge Bench expression of ***Krishnan Vs. Krishnaveni*** in 1997 in answering a reference, which is being discussed later.

30(viii). In ***Rajathi Vs. C.Ganeshan***[14] it was held under Sections 482 and 397 CrPC by the Division Bench of the Apex Court relying upon the three judge Bench expression of ***Krishnan Vs. Krishnaveni,*** that the High Court did exercise its inherent powers which are not a substitute for a second revision however, the

inherent powers of High Court are vast to be circumscribed and could be invoked only on certain set principles, like to prevent miscarriage of justice or abuse of process or to avoid multiplicity of proceedings or needless procedure or unnecessary delay in trial or the like.

30(ix). In ***State v. Navjyot Sandhu***[15](Parliament attack case)–at Para 29, it was observed categorically by the Division Bench of the Apex Court that **the power under Section 482 CrPC could be exercised notwithstanding the power under Section 397 or any other provision of the CrPC though not against the power under other laws.**

30(x). In ***Dhariwal Tobacco Products Ltd. V. State of Maharashtra*** [16] by scanning the law on the subject, it was held categorically that, ***availability of even alternative remedy of revision under Section 397(1) CrPC or even such revision is barred under Section 397(3) CrPC, that is not a bar to exercise the inherent power under Section 482 CrPC or supervisory jurisdiction under Section 483 CrPC by the High Court, besides to exercise to the remedies under Articles 226 and 227 of the Constitution***. The expression reads that:

> "8. Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur v. State of Punjab-AIR 1960 SC 866 to Som Mittal v. Govt. of Karnataka-(2008) 3 SCC 574 has laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code.
>
> Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908 this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai and others-(2003) 6 SCC 675).
>
> **Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Sessions is barred under Section 397(3) of the Code, the inherent power of the Court has been held to be available.**
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> 9. The power of the High Court can be exercised not only in terms of Section 482 of the Code but also in terms of Section 483 thereof. The said provision reads thus:-"483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates:- Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."
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> 10. Inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because revisional jurisdiction could also be availed of.
>
> In fact in Adalat Prasad v. Rooplal Jindal and others -(2004)7 SCC 338 to which reference has been made by the learned Single Judge of the Bombay High Court in V.K. Jain and others (supra) this Court has clearly opined that when a process is issued, the provisions of Section 482 of the Code can be resorted to.
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> 11. It may be true, as has been noticed by the High Court that thereunder availability of appellate or revisional jurisdiction of the High Court did not fall for its consideration but in our considered opinion it is wholly preposterous to hold that Adalaat Prasad (supra), so far as it related to invoking the inherent jurisdiction of the High Court is concerned, did not lay down good law. The High Court in saying so did not only read the said judgment in its proper perspective; it misdirected itself in saying so as it did not pose unto itself a correct question.
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> In Amar Nath and others v. State of Haryana and others-AIR 1977 SC 2185 it was opined :-
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> ".... It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub-sections (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the present case, particularly having regard to what had preceded, was undoubtedly a matter of moment, and a valuable right of the appellants had been taken away by the Magistrate in passing an order prima facie in sheer mechanical fashion without applying his mind. We are, therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial."
>
> 12. We may notice that in G.Sagar Suri v. State of U.P .-(2000) 2 SCC 636 this Court has held: .....We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate and Ashok Chaturvedi v. Shitul H. Chanchani wherein it has been specifically held 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.

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution. For the accused it is a serious matter.

This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

This Court therein noticed a large number of decisions to opine that whenever the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so.

13. We may furthermore notice that in Central Bureau of Investigation v. Ravi Shankar Srivastava-(2006) 7 SCC 188 this Court while opining that the High Court in exercise of its jurisdiction under Section 482 of the Code does not function either as a court of appeal or revision held:-

"7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise.

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."

30(xi). In ***Mohit @ Sonu V. State of U.P***[17] referring to earlier three Judge Bench expressions in ***Manhar Bhai*** supra of 2012, ***Madhulimaye*** supra of 1977 and the other expression in ***Raj Kapoor V. State***[18] observed that ***the power of High Court under Section 397 or any other provisions of C.P.C will not affect the amplitude of the inherent power under Section 482 CrPC.*** In other words inherent power of the Court can be exercised ordinarily when there is no express provision under the Code under which order impugned can be challenged as observed in ***Padamsen V. State of U.P***[19] and the Constitution Bench in ***Manoharlal Chopra V. Seth Hiralal***[20] the inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers, when the exercise of those powers is not in any way in conflict with what has been expressly provided by the Code or so as to nullify the provisions of the Code.

30(xii). In ***State of Karnataka V. Muniswamy***[21] 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) It is wrong to say that at the stage of framing charges the Court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence.

(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 applied.

(6) In the instant case the High Court is right in its view that the materials on which the prosecution proposed to rely against the respondents is wholly inadequate to sustain the charge that they are in any manner connected with the assault on the complainant.

(7) The grievance that the High Court interfered with the Sessions' Court's order prematurely is not justified. The case was adjourned by the Sessions Judge not for deciding whether any charge at all could be framed against the remaining accused, but for the purpose of deciding as to which charge/s could appropriately be framed on the basis of the material before him.

(8) The object of Sec.227 of the Code of Criminal Procedure, Act 2 of 1974, is to enable the superior Court to examine the correctness of the reasons for which the Sessions Judge has held that there is not sufficient ground for proceeding against the accused.

(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.

30(xiii). Relying upon ***Muniswamy*** supra, it was held by the Full Bench of this Court in **Re Puritipati Jagga Re**ddy[22], on the question whether it would be open to a party to invoke Section 482 CrPC, when he seeks to file second revision in High Court under Section 397(3) CrPC that:

"…. a party who has been unsuccessful befo**re** the Sessions Judge, may seek to bring it to the notice of the High Court under Section 482 CrPC. But that shall not be automatically taken notice of by the High Court. It must be scrutinised and examined whether the**re** has been miscarriage of justice of in any particular case befo**re** it entertains any such petition filed by an unsuccessful party. Once such satisfaction is reached, the High Court can interfere in exercise of its inherent powers under Section 482 CrPC where Sessions Judge already exercised revisional powers."

30(xiv). In ***Amit Kapoor V. Ramesh Chander***[23] the Apex Court by referring to catena of expressions concluded that–

"8. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. **Each case would have to be determined on its own merits.**

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. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore stated. Even framing of charge is a much advanced stage in the proceedings under the CrPC. 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.

10. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence is an approach which is impermissible in terms of Section 228 of the Code. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

11. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar V. Ramesh Singh (1977) 4 SCC 39:

> "4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance

whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or proprietary of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, proprietary or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, 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.

13. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor V. State of Punjab-AIR 1980 SC 258=(1980) 1 SCC 43. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Section 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

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.

17. Having examined the inter-relationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

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.

19. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

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."

30(xv). ***In Krishnan vs. Krishnaveni***[24] the Apex Court three Judge Bench held that, even the bar of second revision under Section 397(3) CrPC before the High Court from earlier revision before Court of Session ended in dismissal, not a bar for the High Court to invoke the inherent powers under Section 482 CrPC (which is not one conferred by the Code but one which the High Court already has in it and which is preserved by the Code) but such power must be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. For that conclusion in ***Krishnan*** supra, placed reliance upon the earlier three Judge Bench expression of the Apex Court in ***Madhulimaye V. State of Maharashtra***[25] holding from what Section 482 Cr.P.C worded of like nothing in this Code, which would include Section 397(2) also shall be deemed to limit or affect the inherent power of the High Court to say despite High Court has no power of revision, still its inherent power will come into play when there is no provision for redressal of grievance of the aggrieved party and also the earlier four Judge Bench expression of the Apex Court in ***V.C.Shukla V. State through C.B.I***[26] holding Section 397(3) CrPC bar does not limit at all to invoke the inherent powers under Section 482 CrPC by the High Court. It was concluded by the Apex Court at para No.14 of ***Krishnan*** supra by mainly relying upon the two expressions viz., ***Madhulimaye*** and ***V.C.Shukla*** supra while referring several expressions; that in view of the discussion, we hold that though the revision before the High Court under sub-section(1) of Section 397 is prohibited by sub-section(3) thereof, inherent power

of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of Justice and in setting aside the order of the Courts below - - - - - -. We do not find any justification warranting interference in the appeal.

30(xvi). After referring to ***Mohit @ Sonu, Madhulimaye, V.C.Shukla, Krishnan, Rajan Kumar Machananda, Sujith Kumar Rana, Popular Muthaiah, Southern Coal Fields*** and several other expressions, this Court in ***Tamilnadu Mercantile Bank V. M/s.Subbaiah Gas Agency***[27] held at para Nos.12(c), 13, 13(a) to (h), 14 and 15 as follows:

> "12-C) Even otherwise for arguments sake, the appeals are not maintainable from contention of the accused as Respondent No.2 to the present appeals in saying there can be no appeal against the lower Courts revision order reversing the trial Courts conviction judgment in acquitting the accused; then this Courts inherent power to decide the case by invoking Section 482 CrPC is there.
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> 13) It is important to note in this context from the expression in Krishnan (supra) referring to Section 397 read with Sections 401 and 483 and also Section 482 CrPC that; though a second revision before High Court against the revision orders of the Sessions Court impugning the order of any Magistrate, under Section 397(3) is a bar, the inherent power of the High Court is still available under Section 482 CrPC to proceed with the matter in accordance with the requirements of justice. It was observed that besides the ***suomotu*** power of the High Court under Section 401 CrPC to convert the appeal as revision and vice-versa including by invoking Section 482 CrPC or to sit against the impugned order in revision either under Section 483 CrPC or even under Section 482 CrPC. Where it is found that miscarriage of justice or abuse of process of the Court or required statutory procedure not been complied with or the order passed or sentence imposed requires correction, it is but the duty of the High Court to have it corrected by exercising the inherent powers.
>
> 13-A) It is therefore to meet the ends of justice or to prevent abuse of process or otherwise, where it is necessary the High Court is preserved with inherent power and would be justified so to exercise such inherent power in appropriate cases even filed as an appeal or a revision or the like and for that conclusion the apex Court referred the maxim of ***exdebito justitiae*** i.e., in accordance with the requirements of justice. Thus, from that principle, the prohibition under Section 397(3) on revision power given to High Court or otherwise for no appeal provision, such a bar have no application and no way coming in the way for the High Court to decide the lis by sitting against the order of the Sessions Judge. It was observed particularly at para No.9 of the judgment in Krishnan (supra) on the inherent power of the High Court under Section 482 CrPC referring to the said maxim that this power is not conferred by the Code but inherent in the High Court that is preserved by the Code. It was also observed by referring to the four Judges bench expression in V.C.Shukla V. State through C.B.I that refers the three Judge Bench expression in Madhulimaye v. State of Maharashtra that even the bar under Section 397(2) CrPC to maintain a revision not coming in the way to decide the matter before the High Court under Section 482 CrPC as nothing in the provisions of the Code shall be deemed to limit or affect the inherent powers of the High Court.
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> 13-B) Thus, the power of revision to entertain by High Court, even taken away under any of the provisions of CrPC that can be exercised under Section 482 CrPC. The Apex Court also referred for that several expressions including Rajan Kumar Machananda V. State of Karnataka another expression of the Three Judge Bench holding the bar under Section 397 CrPC is not coming in the way to the High Court to decide the matter under Section 482 CrPC. Further, the Apex Court in the other expression in State of West Bengal V. Sujith Kumar Rana held that inherent power under Section 482 CrPC can be exercised by the High Court in deciding the matter pending before it, even there is any bar to exercise of power under CrPC or any other law, the High Court within its inherent power can exercise the jurisdiction in that matter before it under Section 482 CrPC by sitting against the order impugned of any authority or Court to which it is superior.
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> 13-C) Further more, in the later expression in Mohit @ Sonu Vs. State of U.P, the Apex Court referred the settled expression of Madhu Limaye(supra) besides the expression earlier to it in Amarnath Vs. State of Haryana saying the orders which are not purely interlocutory in nature and which could be corrected in exercise of revisional power, the High Court would refuse to exercise inherent power; but where if revision is not maintainable, the High Court can exercise inherent powers; to exercise inherent power, the order clearly brings a situation of abuse of process of the Court or for securing ends of justice or interference is absolutely necessary. It also referred Rajkumar Vs. State in distinguishing the power of revision and inherent power of the High Court in holding that none of the CrPC provisions will affect the amplitude of the inherent power reserved in the High Court by Section 482 of CrPC but for inherent power should not invade the area set apart for specific power under a specific provision of the Code.
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> 13-D) It also held referring to the Municipal Corporation of Delhi Vs. Ramakishan Rahatagi which relied upon Madhu Limaye (three judge Bench expression) supra, saying on the question whether, where a power is exercised under Section 397 CrPC., the High Court could exercise those powers under Section 482 CrPC.; that the matter is however no longer res-integra as the entire controversy has been set at rest by Madhu Limaye(supra)- where it was pointed out that Section 482 CrPC. had a different parameter to exercise the inherent power to pass necessary orders and is a provision independent of Section 397 CrPC. A plain reading of Section 482 CrPC. follow that, nothing in the Code (which include Section 397(2) CrPC. also), shall be deemed to limit or affect the inherent powers of the High Court but for to say the order brings about a situation which is an abuse of process of the Court or for the purpose of securing the

ends of justice or interference by the High Court is absolutely necessary for exercise of the inherent power in such a situation. It is also observed that the High Court alone can pass such orders ex debito justitiae- to do real and substantial justice in the lis. It was also observed referring to Section 151 C.P.C. and the earlier expressions of the Apex Court in Padamsen Vs. State of Uttar Pradesh & Manoharlal Chopra Vs. Rai Bahadur that it is well recognized that the High Court is vested with inherent power, however, said inherent power is not to be exercised contrary to any express provision that being the intention of legislature in enacting the civil & criminal procedure codes vis-a-vis the law laid down by the Apex Court.

13-E) It was also held by the Apex Court in Popular Muthaiah Vs State rep. by Inspector of police that the inherent power is not confined to procedural or adjectival law, but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts ex debito justitiae-to mean to do real and substantial justice in the lis for which alone the power exists inherently. The Apex Court in Popular Muthaiah(supra) referred the earlier expressions in 1) Nawabganj Sugar Mills Vs. Union of India holding that, though there are limitations on the powers of the Court, it cannot abandon its inherent powers. **The inherent power has its roots in necessity and its breadth is coextensive with the necessity** and in 2) South Eastern Coal Fields Ltd. Vs State of M.P. holding that act of court does not confine to act of primary court, but even appellate or revisional or other superior court, as it is an act of court as a whole. In Popular Muthaiah (supra) it is also held referring to the scope of the Maxim actus curiae neminem gravabit-that this principle is not confined to erroneous act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and the law.

13-F) It is also in this juncture to mention the expression of the Apex Court in Rajendra Prasad Gupta Vs. Prakash Chandra Mishra relying upon the Full Bench expression of Allahabad High Court in Rajnarayana Saxena Vs. Bhimsen which relied upon the earlier Full Bench expression of the Allahabad High Court in Narsing Das Vs. Mangal Dubey holding that the Courts have to act upon the positive principle that every procedure is permissible till it is shown to be prohibited and prohibition as a general principle cannot be presumed.

13-G) It is also as per the well laid down expression of the Apex Court five judge Bench way back in Ratilal Bhanji Mithani Vs. Assistant Collector of Customs, Bombay referring to the earlier three judge bench expression in Talab Haji Hussain Vs. Madhukar Purshottam Mondkar that the High Court is having the inherent power under Section 561-A(old) 482(new) CrPC, **where such an order is necessary to secure the end of justice or to prevent abuse of process of Court as this power is always preserved to the High Court under the Code. It was also observed that the inherent power of the High Court is not conferred by CrPC. but for to say the power which inheres in the High Court no way limited or effected for its exercise by High Court by the provisions of CrPC.**

13-H) Thus, from the above settled propositions of law, even revision or appeal is a bar by virtue of any of the specific provisions of CrPC the High Courts inherent power can be exercised in deciding the matter before it under Section 482 CrPC within its scope; that is not a bar from what is discussed supra from several and settled expressions of the Apex Court to decide the two appeals on merits by taking the same under Section 482 CrPC for otherwise not maintainable under Section 378(4) CrPC or proviso to Section 372 amended CrPC.

14) The other contention of the learned counsel for the accused/2nd respondent to these two matters is that, the subject under Section 482 CrPC not entrusted in allotment of work to this Court in distribution by the Honourable the Chief Justice. In fact, the two matters are filed and numbered as appeals and the criminal appeal matters under Section 138 of Negotiable Instruments Act are undisputedly entrusted to this bench. When such is the case, in the case covered by Section 138 of the Act in deciding the matters filed as appeals; from contention of appeal wont lie; **when the inherent powers of this Court which inheres from the very constitution that are saved by the CrPC to decide the lis, it no way requires further entrustment, muchless to say, this Court is powerless to invoke Section 482 CrPC**.

15) Thus, the inherent power of the Court which inheres in it, enables to decide the appeals otherwise under Section 482 CrPC by sitting against the revision reversal and acquittal Judgments (orders), reversing the trial Courts conviction judgment against the two accused persons on the two private complaint cases maintained by the present appellant-Complainant bank."

30(xvii). Further in ***Kailash Verma V. Punjab State Civil Supplies Corporation***[28] it was held under Section 482 CrPC that in view of the prohibition under Section 397(3) CrPC, the complainant or the accused cannot be allowed to take recourse to a second revision, but the High Court can entertain a petition under Section 482 CrPC when there is miscarriage of Justice or abuse of process of the Court or mandatory provisions of law are not complied with or then the High Court feels that the inherent power is to be exercised to correct the mistake committed by the revisional Court and for that conclusion referred ***Krishnan, V.C.Shukla, Navjot Sandhu*** etc, expressions.

30(xviii). Even in the recent past referring to some of the expressions supra (including ***Krishnan*** and ***Dharampal*** supra) in ***Shakuntala Devi v. Chamru Mahto***[29] at 24 it was held clearly that: "It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision so as

to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases the bar under Section 397(3) could be lifted**. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases.** Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commends itself to us".

30(xix). In ***Bharat Builder Pvt. Ltd V. Parijat Flat Owners Coop. Housing Society Ltd***[30] it is in relation to Article 144 of the Constitution of India from direction of the Supreme Court, for the same requires by authorities civil and Judicial in India to act in aid of the Supreme Court, where there is a direction of the Supreme Court to the Division Bench of the High Court of Bombay to re-consider in review jurisdiction where a certain admission was as recourse a sale of or an arrangement to sale a flat and where the MOF (ROTPOC, S, M & T) Act, 1963 was applicable, in so directing that regardless of the technical limitations of the review petition thus petition shall be addressed. Still the High Court declined and held that it was not presumably for it to go into a fresh issue which was not raised in the trial Court or in the appellate Court is held impermissible as should have been obeyed the direction of the Supreme Court. To rely on the judgment by other side, it is not a case of while giving liberty to withdraw earlier appeal before Supreme Court, in such special concession given to file application for quashing and to decide.

30(xx). No doubt, before the Apex Court earlier while withdrawing the appeals there was no specific prayer to reserve right to impugn in the event of any protest petition filed and any cognizance taken. In fact such a course is premature to anticipate and ask for any such thing. It is needless to say, once final referred report of civil nature is filed, the quash proceedings of the crime became infructuous and as such it is needless of asking to reserve any future right by anticipating protest petition and taking of cognizance; but for to impugn in such event for no such right is taken away from reading of the order of the Apex Court by any specific observation with bar. The Apex Court itself granted four weeks time and not closed once for all the lis and also given liberty to the complainant to appear and raise protest meanwhile itself is an indication such right is impliedly reserved. The Apex Court`s expression in ***Devendra V. State of U.P***[31] at para Nos.18 to 26 is an answer to it otherwise from where it observed that even refusal to quash the F.I.R by the High Court from a different standard required to be applied at that stage, when after materials collected in investigation and filed final report or otherwise Magistrate has taken cognizance of the offence, the same would give raise to a new cause of action and would attract the provisions of Section 482 Cr.P.C to invoke if case is made out for invoking thereof impugning the cognizance. The expression in ***Devendra*** supra was relied upon in the subsequent expression in ***Vijayender Kumar V. State of Rajasthan***[32] at para Nos.7 to 9 referring to ***Thermax, Anil***

Mahajan, ***Dalip Kaur*** and ***Kalyani*** supra. Thus, any contention of the Complainant contra to it, impugning maintainability of the quash petitions on that count is also unsustainable but for left open to decide on merits.

30(xxi). In ***D.S.R Steel Private Limited V. State of Rajasthan***[33] (2JB) it was observed original order does not merge with review order where review application is dismissed.

30(xxii). In ***Popular Muthaiah Vs State rep. by Inspector of police***[34] **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.**

30(xxiii). Therefore, the contentions that there was a complete bar under Section 362 or 397(3) of the Code or by virtue of the Doctrine of merger or waiver from not raising plea of Section 78 in earlier quash petition or even otherwise from no right reserved while withdrawing the appeals before the Apex Court and any of that debarring the High Court from entertaining applications under Section 482 CrPC does not stand or survive to the above legal scrutiny. Accordingly, the point No.2 for consideration is answered.

31. **Coming to other merits including on sustainability or not of the order taking cognizance on protest application against police referred report from investigation of the crime based on private complaint referred earlier and reasons required if any for any of such orders including for taking cognizance of an offence particularly on protest application and on what material** and what offence that could be made out and against whom in answering point No.1 for consideration involving several of above aspects concerned, this Court answers the following on merits from the material and on facts and law.

32). Before coming to the protest petition averments in detail with sworn statement of complainant and arguments of the counsel for complainant basing on which the cognizance order passed by the learned Magistrate to its sustainability in ignorance of the original FIR from private complaint and the police investigation material from that the factual disclosures are even contradictory, besides some relevant material not placed with the private complaint for reference to police for investigation; from a reading of said FIR it is not even the case from complaint averments of conspiracy in furnishing information by all together to any third party in particular, but for allegation of A6 parted with to A1 in alleging breach of trust by A6 and the place of offence at the office of A6 at Road No.10, Banjara Hills; for nothing even to say it is by or through A9 to A1 and for benefiting A3, muchless through alleged officials of A1, 3, 6 & 9, **without even saying what is the role of which official for no vicarious liability by any statutory provision** (like under Section 141 of N.I.Act) **for IPC offences to infer or rope with said officials, from their mere status to their entity**; for not even a case from said private complaint of said documents were given by Complainant to a particular official of Karvy-A6 and he intentionally parted with the same to implicate any specified such person. Further, it is by saying at other breath of Ranbaxy-A1 obtained from Karvy-A6 and

not even stated from a particular official of A6. If so, how there is any basis to say A9 and its officials or A3 and its officials are privy to it, so also any of the officials of A6 or of A1. Even coming to A6, unless it is shown A6 has intentionally parted with to A1 out of their privy with any basis for such privy even to infer, it is difficult to rope A6 for mere giving if at all and otherwise for A1's obtaining from A6, in the absence of any further showing, for mere obtaining by A1 from A6 or from any other is not an offence and even with any dishonest intention obtained that is not an offence of breach of trust by A1 or its officials-A2,5 &14, so also for nothing against A3 & 4 even from A1 through A14 filed the copies of the documents in the contempt petition. It is not even with specific averment of to whom entrusted and with what directions or cautions of use and what breach of any such specific caution with dishonest intention by violation of any such specific direction committed by any person concerned of A6 to attribute against that person of A6 or against A6 to any criminal intention of parted with by committing breach of trust by violation of any such directions or cautions of trust and otherwise there is only mere breach of any express or implied contract which is different to criminal liability of breach of trust, even same is within the meaning of entrustment, as per the settled expressions of law in this regard, that to be discussed later. Then, where is conspiracy for breach of trust and where is prior concert or privy for cheating and with what allegation and against whom, that was not even considered by the learned Magistrate while referring the private complaint under Section 156(3) CrPC but for sake of asking; even it is required of application of mind to the basic facts, though not to reflect the same by any reasons always, needless of giving detailed reasons, for referring to police for investigation. Obtaining documents by A1 even for arguments sake from A6, cannot when be called entrustment by Complainant to A1 and that too when it is not the complaint of A6 or A9 against A1 for any other offence, that too if the so called parting is by A6 to A1, there is no basis to rope A9 or its officials or A3 and its official or the officials of A6 or the officials of A1 even as referred supra. Even there is nothing to say any element of cheating the Complainant by A1 or A3 from very inception of 'SPSSA', apart from same is not even the case remotely either in C.P.No.51 of 2009 or the other matter on share price offer that went up to the Hon'ble Supreme Court in Daiichi Vs Dr.Chigurupati supra. There is thus nothing to rope any of the officials of A1 or A3 or A6 or A9 from the above, but for stray and vague allegations of alleged conspiracy bereft of required details against any of the particular officials to show any of their privy or prior concert with A1 and with any basis for such allegation, which is required to show even prima facie.

33). In this context it is also to consider that the criminal complaint offence proper is breach of trust by A6 in abusing the trust reposed by Complainant on A6 in entrusting the documents to A6 on complainant's financial credibility etc., in saying A6 entrusted to A1 as referred supra for filing by A1 in C.A.No.131 of 2010, contempt petition for violation by Complainant-Dr.Chigurupati of the restraint order in C.A.No.121 of 2010. If such is the case, mere giving to file in the contempt case for violation of restraint order, no way tantamount to breach of trust muchless to cheat with criminal conspiracy in the absence of even specific entrustment and trust and

understanding and undertaking of the sensitiveness and importance of the documents while entrusting to appraise and undertaking not to part with and its violation, which material particulars are lacking even as detailed supra from a plain reading of the complaint.

34). Before undertaking further discussion in detail on the above aspects in addition to what is initially discussed in a glimpse, coming to the factual background on material aspects in brief of C.A.No.131 of 2010-contempt petition for alleged violation by Complainant-Dr.Chigurupati of the restraint order in C.A.No.121 of 2010; A1-Ranbaxy as R5 of C.P.No.51 of 2009, filed the C.A.No.121 of 2010, to restrain the C.P.No.51 of 2009-petitioners 1-3 i.e. Dr.Chigurupati etc., from acting in violation of the restrictions imposed under the 'SPSSA' and as admitted in para-17 of C.P.No.51 of 2009 and as interim relief to restrain them from selling, divesting or tendering their shares in Zenotech without leave of the Company Law Board and for such other reliefs. Pursuant to which, by referring to earlier order in C.A.No.80 of 2010, dt.21-05-2010 and serving on Ranbaxy by Dr.Chigurupati of the notice for termination of the mutual agreements, for nothing to show the agreements were terminated after approval of the Zenotech Board of Directors, also from the proceedings pending by then before the Apex Court (*Daiichi V. Dr.Chigurupati supra) and* ***Dr.Chigurupati & family rep. minority shares of 26%,*** *besides below* ***27%*** or so of shares by public, the termination of agreements without board approval of Zenotech is held unsustainable. It was held that evidently both parties acted upon the agreements, though not fully, when Ranbaxy invested about Rs.225 crores in good faith, it is therefrom ***held necessary to maintain status quo of the two agreements*** and thereby, the interim order was passed on 04/06.08.2010, restraining the C.P.No.51 of 2009 petitioners (Co-Respondents to CA No.121 of 2010) from doing anything in violation of the 'SPSSA', so far as their 51,00,000 equity shares referred in clause 7.2 of 'SPSSA' are concerned until further orders; however, they are at liberty to sell the remaining 34,75,000 shares **as provided** under Article 7.9 of SPA.

35).In this regard, clause7.9 of the agreement speaks that:

> "In addition to terms set out in Section 7, the seller and the purchaser agree that on balance 34,75,000 equity shares, there shall not be any lock-in period as contemplated in Section 7.2 (seller agrees that out of 85,75,000 equity shares, ***not to transfer 51,00,000 equity shares till date of unconditional approval granted to the company to launch GCSF in European Union and shall keep these 51,00,000 shares in the own name of seller without sale or assigning their rights in favour of third party in any manner till above mentioned milestone is achieved as lock-in period and in case parties decide above milestone cannot be achieved, the parties shall work in good faith and agree on alternative milestone and the sellers agree to keep these 51,00,000 shares in the escrow-(II) on the closing date till the lock-in period is complete) with the condition that these shares shall be subject to right of first refusal existing in favour of purchaser***, the seller and purchaser agree that the seller shall be entitled to sell up to 1,00,000 equity shares in any financial year of 1st April to 31st March by giving offer notice for sale to purchaser which shall be for a period of three days, within which the purchaser shall have option to exercise from date of receipt of offer notice - - - and if does not exercise the right to purchase option seller shall be free to sell to third party. For the purpose thereof, the price shall be calculated - - - shall not be more than the price calculated by taking average of daily high and low of closing price of equity shares at BSE during two weeks preceding the date of offer notice."

36). It is relevant to mention in this context for more clarity that Article 7.9 supra of the share purchase agreement-SPA provides the first right of rejection and the Article 7.2 of SPA is the unconditional order from European Union, that what is the crux for consideration from the 'SPSSA'.

37). It is also important to note in this context, even at the cost of repetition of

portion of above paras, from perusal of averments in the private complaint of 14.09.2010, (para No.6) that, there is no whisper made about the clauses 7.9 and 7.2 supra of the share purchase agreement dated 03.10.2007 between the complainant-Dr.Chigurupati for himself and on behalf of his wife as power of attorney holder including for Zenotech as its Managing Director with Ranbaxy, though these facts contain therein are very material to disclose and even mere filing of document not enough. In fact the share purchase agreement is not even filed as one of the list of documents with the original private complaint. Further, even from para Nos.9 to 11 of the complaint in particular and anywhere in general, there is nothing to say these documents filed by A1 in the contempt application (said to be the personal and sensitive in nature) are not the documents given in open offer to show credibility. In fact the very written submissions of Counsel for Complainant in these quash petitions reiterated that the Complainant participated in the open offer and along with the application in this regard enclosed by him the documents. ***Once the documents are given in open offer to show credibility, it is as good as document for public access, leave apart these are only the copies given to the Company Law Board. Though for not all undisputedly, even for arguments sake any of the documents if those are origionals, atleast IT Returns, share certificates, transfer deed to be construed as dominion over property; same when not origionals but only copies cannot be called so, for not any of them are cerfied copies of public documents under Section 74 -77 of the Indian Evidence Act, to rely on the Single Judge expression of the Madras High Court in Ganesan Vs. M. Sundararaja.*** [35] ***Further, it is not even a case of any disclosure by Complainant specifically and any pursuant undertaking by A6-Karvy or A9-ICICI to the Complainant of not to part with any information contained in the documents muchless anything to say same is required to be used by entrusting as confidential and not to give to any, even to show credibility of Zenotech and its Directors. It is not stated whom of the officials of Karvy, said information furnished for such official to explain how if at all such an undertaking and any violation with malice, to make liable for information went outside from him if at all; and in the absence of which if at all any offence made out is only against the Karvy(A6) and not against any of its officials including A7 & A8 personally for nothing specific in the complaint to say even a particular official of A-6 parted with the information and without which mere status of any official of the entity does not make vicariously liable for IPC offences as referred supra.*** Further, it is not a case of other than mere filing of copies of the documents in the C.A. No.130 of 2010, anybody got knowledge and obtained certified copies of it or misused or caused loss to the Complainant therefrom. It is not even a case of any circulation of copies of the documents by all or any of the accused (other than filing by A1 in the contempt petition filed by A1 as its enclosures) to public to cause loss to the reputation of the Complainant or Zenotech therefrom. There is nothing even to say Complainant has not given any such documents to A-1 and only from A3, A1 obtained and if such is the case, leave about nothing against A6 or A9 and its

officials to rope any of them with penal consequences. Even taken for arguments sake, the documents entrusted by the Complainant to A6 and those leave about not property or dominion over property, not even like a origional cheque or origional pronote or origional title deed to use as a valuable security for dominion over property; even taken as such, therefrom also when those are claimed given in open offer to show credibility, any such giving by A6 to A1 even or taking of the same by A1 from A6 or others in relation to the open offer of shares, perse not a criminal offence, much less of its use by filing in the Company Law Board proceeding in pursuing a legal remedy, muchless any offence of cheating with dishonest intention from the inception of entering agreements or criminal breach of trust with any criminal element; for every breach of contract or breach of trust is not perse criminal breach of trust as per the settled law as discussed supra, even to sustain against A6, leave about against any of the A7 & A8, the officials of A6 or against A9 and any of the A10 to A12, the officials of A9 or against A3 leave about A4 one of the officials of A3 or against A1 leave about any of the A2, A5 & A14, the officials of A1, not to mention A13 was already deleted from the array.

38). It is also important to note that in the writ petition No.22806 of 2010, dated 12.09.2010 filed by the defacto-Complainant herein against SEBI, ICICI, Karvy, Zenotech for which the Complainant also the Managing Director- with a prayer to direct SEBI to investigate into misconduct of ICICI in not considering 34,75,000 equity shares held by the Writ petitioner-Dr.Chigurupati in Zenotech R-4 which have been tendered in public offer under SEBI Regulations,1997 by the acquirer pursuant to public announcement dated 26.07.2010 and consequently to hold ICICI has illegally refused to accept said shares as part of public offer and to pass such other orders; there is no whisper about said criminal breach of trust or conspiracy. In the counter filed by SEBI, particularly at para No.10 (**no doubt dated 05.09.2011, about 11 months after said private complaint**), it is contended by SEBI that as per Section 37 of the Contract Act and as per the submission of the merchant banker by letter dated 13.09.2010, the parties to the contract must either perform or offer to perform their respective promises and unless such performance is dispensed with or excused under the Contract Act or other law and **as the shares tendered are subject matter of SPA dated 03.10.2007**, the burden to show that Writ petitioner had offered the said shares as per the agreement to Ranbaxy or by virtue of any law or order of Court, they are not obliged to perform their part of the contract. ***The burden to show that the said shares were freely transferable rests on the shareholder when a dispute is raised between shareholders and another entity and thus as the petitioner has not submitted any order of the Court or any agreement to the contrary that they are not bound by the SPA dated 03.10.2007, the merchant banker was not obliged to verify and accept the shares in dispute*** *- - -. In view of the above, there is no need to investigate the alleged conduct of the merchant banker in accepting the shares tendered in open offer*. ***The writ petition filed on 12.09.2010 was thus ended in dismissal undisputedly by order dated 15.03.2012 by referring to said counter of SEBI, para No.10 supra in saying therefrom there is no need to investigate into the***

alleged misconduct of ICICI.

39). In this background, coming to the protest petition averments and the contentions in opposing the quash petitions supporting cognizance order and impugning the referred report as unsustainable, **regarding the contention of referring as civil nature on legal opinion by investigating officer is untenable and illegal concerned**;

39(a). Firstly to say, there is no statutory bar to obtain legal opinion from any legal complications felt by the investigating officer, but for to say the investigating officer can verify the opinion (like any expert opinion with reference to the reasons of the opinion) and come to an independent conclusion rather relying on that opinion solely to close the case. Here from perusal of referred report, there is nothing indicating closing only by that legal opinion without any little application of mind though same is not detailed, ***more particularly for the reason having come to the conclusion, opinion sought and the opinion confirmed,*** and therefrom closed.

39(b). In fact the investigating officer (inspector of Police WCO, TV CCS, DD) by letter dated 26.02.2013 addressed the public prosecutor of XII Additional Chief Metropolitan Magistrate's Court to furnish legal opinion in the crime supra by mentioning the brief facts almost briefing of what is detailed supra under the last paras saying the matter is related to acquisition of shares and business issues between pharmaceutical firms and Complainant has recourse to represent any grievance before any intermediaries' such as Company Law Board, SEBI etc. It is not known whether any malafide intention was involved on the part of the accused persons to cause him wrongful loss. As per version of A-2, it was disclosed that as per clause No.7.3, page No.17 of SPA, the Complainant shall not sell any of their 85,75,000 equity shares held in the Company to any entity which is engaged in business of biotechnology and pharmaceuticals and/or which would compete in any manner with the business of purchaser or company, unless seller has obtained written consent of purchaser. Seller also agreed not to sell more than 5% of the existing total issued and paid up share capital of the company to a single investor, whether directly or indirectly. It is uncertain whether A-2 was right and whether any offence is made out against of the accused. ***Apparently the complaint and actions of the alleged accused persons show up as civil in nature.*** Hence, I request for suitable guidance- - - - - - - - -to proceed further with the investigation. The legal opinion endorsed by the A.P.P on 27.02.2012, having received on 27.02.2012, that verified the requisition of I.O with C.D file as per the contents of the complaint - - - - - - -the Complainant may approach the Company Law Board the reliefs, if any. The evidence on record does not disclose any offence under Sections 120-B, 406, 409 IPC The investigating officer is advised so.

39(c). The contention that taking legal opinion is not provided in police standing orders or CrPC and the same is perse illegal and unwarranted by referring to a single judge expression of this Court in ***Bethalam Subba Rao V. Superintendent of Police, Urban Guntur***[36], that no way in fact referred how an investigating officer when involves any legal complication or medico-legal complication or the like prevented from taking expert opinion and same clarified by another later expression

of this Court saying there is no legal bar but for to say I.O has to arrive by the independent application of mind but not to blindly act on any opinion. What was held by the apex Court in this regard in ***R. Sarala Vs T.S. Velu*** [37] is that there is no stage during which the investigating officer is legally obliged to take the opinion of a Public Prosecutor or any authority, except the aforesaid superior police officer in rank and ***hence the investigating officer cannot be directed by the Court to be influenced by the opinion of the Public Prosecutor***. The expression did not even say so also same followed in later expressions by the apex Court and several High Courts that taking of opinion is illegal but for, at best other than to form an opinion with reference to it, to act solely on it.

39(d). In fact, the investigating officer himself in the letter itself, as referred supra, while detailing facts in nutshell saying the matter is of civil nature with no offence made out and sought opinion for guidance and the A.P.P. also so opined and therefrom, it can never be said the I.O acted only on the opinion of the A.P.P. even to impugn the referred report on that ground. It is needless to say the learned Magistrate from the police final report did not chose to differ and take cognizance having gone through, but for in waiting to serve notice on the defacto-Complainant to have his say for any further to proceed in either way of accepting or differing to said police opinion of the lis is civil in nature. By then the Special Leave to Appeals are pending before the Apex Court as referred supra of later withdrawn. As observed by the Apex Court in the pending Special Leave to Appeal (Crl.) No.9179 of 2011 from liberty given by order dated 16.12.2011 to the I.O to carry the investigation and by order dated 18.09.2013 learned counsel appearing for the State of A.P was enquired regarding the status and again on 08.10.2013 from the information of counsel for the 2nd respondent defacto-Complainant seeking time to file counter affidavit, with rejoinder opportunity to the petitioners before the Apex Court and by expecting the status report from the State posted on 11.11.2013. It was on that day from the submission of police filed the closure report supra and till date the learned Magistrate in seisin of the case has not passed any order in the case as the Complainant (Dr.Chigurupati(R-2)) had not appeared, further orders were passed the Apex Court that- learned counsel representing Complainant undertakes to appear before the Magistrate in seisin of the case on 25.11.2013. Learned Magistrate in seisin of the case shall pass an appropriate order in accordance with law within two weeks from the date of appearance of the complainant. In the meantime, liberty is given to the petitioners to file the rejoinder affidavit and to list in second week of December, 2013. When, from counsel for respondents sought for adjournment, ultimately on 03.01.2014 order referred supra was passed by dismissing as not pressing the S.L.Ps. by extending interim protection for four weeks and by not expressing any opinion regarding merits of the case.

40). In addition to the above, the protest petition in **saying the final report is vitiated since proper and independent investigation has not been conducted and final report does not reveal statements recorded from accused, while statement of Complainant was recorded concerned**, there is no basis to say investigation is not independent, but for if at all to say conclusion arrived by the

investigating officer is not sustainable and if so to say how, in raising protest against the final report conclusions for consideration of the entire material including if necessary with reference to further recording of sworn statement of Complainant and witnesses if any, is only by verification with reference to the existing investigation material, if at all to differ to the conclusions and to take cognizance; for not a case of original private complaint only to go through complaint and sworn statements oral and documents referred in the sworn statements, since already police investigation is there from original private complaint referred for investigation as required by the Complainant undisputedly, leave about the irregularity committed by the Magistrate while original private complaint was referring to police for investigation without judicial application of mind as discussed supra.

41)(i). Then if at all to take cognizance on protest petition by the learned Magistrate, by differing with police final report opinion is not by simply record sworn statement/s and take cognizance, but only with reference to the final referred report material, by showing reasons to differ to the conclusions of final report if not sustainable and if sustainable therefrom to act upon by Magistrate, else if felt to further record sworn statement/s of Complainant protest petitioner with witnesses if any concerned, it is to verify also with reference to the existing investigation referred report material in coming to independent conclusion by the Magistrate.

41(ii). In ***Vasanti Dubey V. State of Madhya Pradesh*** [38] the Apex Court held that, it may be worthwhile to highlight at this stage that the enquiry under Section 200 CrPC cannot be given a go- bye, if the Magistrate refuses to accept the closure report submitted by the investigating agency, as this enquiry is legally vital to protect the affected party from a frivolous complaint and a vexatious prosecution in complaint cases. The relevance, legal efficacy and vitality of the enquiry enumerated under Section 200 Cr.P.C, therefore, cannot be undermined, ignored or underplayed as it is at the stage of the enquiry that the conflict between the findings arrived at by the investigating agency and the enquiry by the Magistrate can prima facie justify the filing of the complaint and also offer a plank and a stage where the justification of the order of cognizance will come to the fore. This process of enquiry under Section 200 CrPC is surely not a decorative piece of legislation but is of great relevance and value to the complainant as well as the accused.

41(iii). It is needless to say therefrom of the learned ***Magistrate acting on protest petition cannot totally shun or ignore or eschew from consideration earlier police final report material even the protest is to the final report conclusions to differ with***, and any so doing contra to the requirement supra is apparently not correct to sustain.

42). Coming to the allegation in the protest petition of the I.O issued summons to accused who did not cooperate and statements of accused did not record by the investigating officer and the documents obtained under R.T.I Act reveals the same, however, Complainant’s statement alone was recorded in the investigation as shown in the final report and despite it referred the case as civil nature from table investigation without knowing whether malafide intention involved on part of

accused to cause him wrongful loss and not revealed documents submitted by accused or statements given by accused, if any, and **scope of investigation ought to be how Ranbaxy(A-1) got documents of Complainant for Complainant entrusted to A-3 only and its agents A-6 and A-9 and should have asked A-1 as to how he came into possession and whether transferred by A-3 and to say the final report is vitiated** concerned**,** said contention but for to say duty of accused summoned by the investigating officer to attend if necessary with Advocate assistance, there is nothing that can be extracted by any testimonial compulsion, as part of one of the fundamental rights of accused of silence recognized by Article 20 of the Constitution of India and of its scope is well laid down by the Eleven Judge Bench expression in ***State of Bombay V. Kathi Kalu Oghad*** [39]**.** Needless to say further of one must keep in mind the basic principles of Indian Criminal Jurisprudence, that are also covered by the expression of the Apex Court of the recent past in ***Manusharma V. N.C.T of Delhi*** [40] at paras 197-201(82 to 85 of the original)–

> "**In the Indian Criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is even expected to play a balanced role in the trial of a case. The investigation should be judicious, fair, transparent and expeditious to ensure compliance to the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India**."

43). It is thus not mandatory but for any necessity to interrogate accused and any admissible confession from discovery of fact to record and this position of law was also made clear by the Constitution Bench of the Apex Court way back in ***Nandini Satpathy vs. P.L. Dani*** [41] 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[42], there has been retreat from stress on protection of the accused and gravitation towards society's interest in convicting law-breakers".

44). The other allegation of accused did not cooperate even notices issued under Sections 41, 91 and 160 CrPC and the I.O. unable to do proper investigation from pressure of accused to close the case evident from the final report concerned, same is baseless for nothing to show any pressure and source to so say against a dutiful public servant, for the presumption also under Section 114 of Indian Evidence Act of investigation is done properly, for the persons to rebut the presumption in contending contra by showing any substance to the contention. The other allegation of I.O has gone into the issues not subject matter of investigation concerned, it is also not tenable as the investigation is on the lines disclosed from private complaint referred for investigation and statement of Complainant admittedly recorded, the correctness of which not even in dispute by the Complainant. Coming to other

contention of on relevant facts of on 19.01.2009 Daiichi-A3 announced open offer for purchase of shares from shareholders of Zenotech at Rs.113.62 Ps. per share and to conduct said open offer Daiichi appointed Karvy(A6) as Registrar and ICICI(A9) as the merchant banker and the Complainant participated in the open offer by filing application and submitted certain confidential documents for processing his application to A6 viz., I.T. returns, share certificates, PAN card copy, transfer deed, form of acceptance-cum-acknowledgement, foreign inward remittance certificate and R.B.I approvals which are the sensitive documents, particularly I.T. returns reveal entire financial profile of the Complainant that cannot be obtained even under Right to Information Act and even police have to obtain permission of Chief Commissioner of I.T under Section 138 of I.T. Act if said documents are required for investigation purpose and the R.B.I approvals and foreign inward remittance certificate are not available in public realm, ***those to be used only for open offer purpose***, however, Daiichi(A3) after receiving these documents, illegally and without authorisation transferred to Ranbaxy(A1), who could not have been in possession unless the A3 parted with to A1 and once A1 received and filed the documents before the Company Law Board in the ongoing litigation, the confidential documents became public known to the world which is a breach of trust that must be the subject matter of investigation for the **documents entrusted by Complainant to A3 and its agent A6** for purpose of open offer transferred by A3 to A1 who in turn made it public and the financial profile of Complainant made known to the entire world that caused wrongful loss to the Complainant from the breach of trust committed by accused with malafide intention of A3 from which A3 and A1 committed criminal breach of trust with intent to embarrass Complainant in financial circles and to manipulate share price by disclosing that very founder of the Company Zenotech is offering to sell its shares in the Company which constitutes the offence from entrustment of property and dishonestly disposes of the property in violation of any direction of law prescribing the mode touching the discharge of the trust concerned; these protest application allegations are quite contra to original private complaint averments as also referred supra.

45). In fact to say for more clarity herein even at the cost of repetition, what is now propounded in the protest application of Complainant has given the so called confidential documents to A3 Daiichi and its agent A6 for purpose of open offer, that was transferred by A3 to A1 who in turn made it public, is not the private complaint averment as; there what was averred was Complainant has given to Karvy-A6 and A6 given to A1 or A1 obtained from A6 without even details as to when and to which official of A6 given by Complainant and as to which official of A6 if at all to be otherwise responsible if given to A1 and when and on what information, with no basic averments in the Complainant to so allege, muchless outcome of any privy and with what basis.

46). Though, that is the crux required to state by the Complainant, same is lacking even in the original private complaint referred for investigation as discussed supra, so also from the investigation statement of Complainant and thus this new version is quite contradictory to belie even the version of the complainant and same

is one of the considerations on face value of contradictory versions for ultimately makes a lame prosecution to interfere under Section 482 CrPC.

47). Even said new version is taken consideration, where is the question of Complainant entrusting to A3 but for giving to show his financial credibility and for the performance appraisal for purposes of open offer and once such is the case, it is open to those among the public that can view to participate, to satisfy his financial credibility and for the performance appraisal for purposes of open offer. Thus even taken by A3 and given to A1, that too A3 acquired substantial interest in A1 entity being form part of it and therefrom even same filed by A1 only in the Company Law Board contempt case proceedings in C.A.No.130 of 2010 of violation of the order in C.A.No.121 of 2010 pending disposal of the main C.P.No.51 of 2009, where is any offence of cheating or breach of trust to sustain said protest application averments.

48). Thus, there is nothing to show from the investigation material as to what offence is made out and against whom and what was overlooked by the investigating Officer in the final report, for not even a case of facts stated by complainant during investigation are not reflected in his statement, for the protest petition against final report to defer with the final report conclusions by the learned Magistrate with reference to protest.

49). A perusal of above order of the Magistrate, mostly reproduces only arguments of counsel for protest petitioner-Complainant and not as to what is the material from investigation and what is the attack against it in referring of civil nature; if not correct to differ with that opinion, what is the improvement from sworn statement of Complainant making out a case against all accused other than A13 deleted for all the offences to take cognizance.

50). The order of the learned Magistrate in taking cognizance and issuing process nowhere shows referring of the earlier private complaint with enclosures and the police investigation which contains undisputedly the statement of the Complainant Dr.Chigurupati or his GPA, if any as to what they stated before the investigating officer with reference to the private complaint and once the contents not in dispute, whether it makes out the offence under Section 406 IPC, if not even under Section 409 IPC, and if so against whom and with what other material to say any of the other accused, other than A6 or A1 and out of whom who allegedly parted with the information received from or entrusted by Complainant, from different and inconsistent versions supra, nothing could be arrived as to is it given to A9 or A6 or A3 much less to A1 and for what purpose and with what undertaking and for its what use and in making use is it by A3 or A1, in filing copies of it in the contempt petition by A1. In fact, in the original private complaint referred supra, there is no whisper as to whom the Complainant given the said documents or who collected the said documents otherwise from the complainant. The statement before the I.O during investigation if at all discloses the same or not is not even reflecting in the order taking cognizance referred supra on the protest petition of Complainant by the learned Magistrate. The improvements made in the protest petition could not have been given credence, beyond what is contained in the original private complaint filed by the Complainant in seeking to refer to police investigation,

without proper appreciation but for to belie if at all from the inconsistencies even of the original version in the absence of any explanation in the sworn statement or protest petition which are even lacking herein.

51). In the protest petition, the documents stated given to A3 and not even to A6 and at other breathe in the course of pre-cognizance hearing counsel allegedly stated from the cognizance order reproduced above, of Complainant given to A6 and not even entrusted with any specific purpose to A6 independently, muchless as his agent, but for in saying the documents were given by complainant's GPA at A6 covered by acknowledgement Exs.A-5 to A-8 for Exs.A-1 to A-4 documents and in saying the giving to A6 is as agent for A3 and it is only to say the agent has to part with to the principal A3 and cannot withhold by A6, for not even a case of A6 is agent of Complainant and from the protest petition in saying A3 given to A6 or in turn to A1 makes out no offence against them but for there is entrustment to A3 and any criminal breach of trust therefrom that is also running contra to original complaint averments supra and from the protest petition averments supra and also further contra from the contentions of the counsel for the Complainant reproduced in the cognizance order supra. From even Exs.A5 to A8, there is nothing to show there was any entrustment with any particular purpose and with any caution not to make use otherwise by Karvy-A6. Once given to A3 and it is even through A6 is only as agent of A3 for in turn giving to A3 and it is to show the credibility of the Complainant in the performance appraisal for share purchase, to the A3 Daiichi, how but for if at all Daiichi given to A1 Ranbaxy, either A6 Karvy or any of its officials or A9 ICICI and/or any of its officials liable for alleged breach of trust or any other penal consequences, leave about any of the officials of A3 and A1; all that was totally ignored by the learned Magistrate in the cognizance order for nothing reflected apart from under IPC there is no vicarious liability to fasten by virtue of mere status of any officials or directors of the entity in the absence of specific overt acts of either conspiracy or sharing of common intention or common object or abatement or the like as the case may be as per the settled law.

52). No doubt, it is said in the affidavit of A14 for A1 Ranbaxy being its official copies of the documents in the contempt case C.A.No.130 of 2010 enclosed for alleged violation of the prohibitory order in C.A.No.121 of 2010 against the complainant. Once such is the case of giving of the documents in performance appraisal on credibility to participate in the share purchase and there is a prohibitory order in C.A.No.121 of 2010 and once that prohibitory order is allegedly violated therefrom is the complaint in filing the contempt by enclosing documents (given for performance appraisal) in that contempt petition C.A.No.130 of 2010, for pursuing the legal remedy or to implement or enforce the order of the Court which is within purview of Section 78 of IPC where is the offence of criminal breach of trust, muchless cheating, even against A1 or A3, though otherwise at best to complain only against A3 to whom given either through A6 or its official A5 if at all by Complainant that too there is no any entrustment with any specific purpose with any specific condition not to otherwise use, muchless in writing and there is nothing even to show any criminal element from any so called breach of so called implied

contract to make offence of criminal breach of trust for no any practical entrustment, but for giving for showing performance appraisal as a requisite that cannot be called expressly or impliedly as entrustment for a specific purpose and its abuse muchless visit with criminal element, for the learned Magistrate to take cognizance even against A3 for the offence under Section 406 IPC leave about no offence under Section 409 IPC that attracts and leave about no criminal conspiracy under Section 120B IPC, leave about even against A3 of no case made out for original complaint says given to A6 and the acknowledgement shows given at A6 and not even pleaded as agent of A3 and even any giving by A3 or A6 to A1 no way makes out the offence that too when given for performance appraisal in share purchase transactions and there is a violation of the order in this regard of the documents to make use for such showing, makes out no offence even from the ingredients for the offences reproduced in the order of the learned Magistrate supra covered by the **bold or underlined portions relevant from the order indicated therein supra** to avoid repetition and reproduction many a time to make the order lengthy.

53). **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**, from what is also referred supra, the learned Magistrate initially while referring for police investigation on the original complaint under Section 156(3) CrPC, did not apply his judicial mind leave about no reasons assigned; and later even from the police final referred report no suo-moto cognizance taken by differing with police opinion, muchless by directing further investigation if any, but for on protest application by recording the sworn statement of the Complainant and simply based on it, that too by totally ignoring the original complaint averments and investigation material, though protest filed was on referred report and with inconsistent versions to original complaint version as referred supra. Thus, the order of the Magistrate taking cognizance no way reflects judicial application of mind in correct perspective (but for referring in the order several of the contentions of the counsel for the complainant) as to there is any basis for the contentions or not and no way reflects what is the original complaint averment and subsequent police recorded statement versions with reference to the police final report as civil nature that must also be taken into consideration, however, same no way considered is reflecting from reading of the order but for under a wrong notion proceeded as if it is a first time private complaint though same is not since outcome of the protest application, even from the very order. The protest application averments and the sworn statement which alone considered by the learned Magistrate for taking cognizance, even it is not on a direct private complaint by recording sworn statement but on protest application against the referred report, therefrom if at all to take cognizance is after referring the material covered by investigation also as the very protest is to the referred report to consider how the protest is sustainable against the referred report contents to differ from the final report material with reference to the protest. There is nothing that reflects from the cognizance order of the learned Magistrate as any reference of any of the

material is only the protest petition and sworn statement and contentions of the counsel for the Complainant, which is not the correct way of judicial application of mind contemplated by law for taking cognizance on protest against final report; for final report material is also bound to refer and differ if found just by judicial application of mind, leave about reasons are required to be given or not that altogether is a different consideration. It is to say if at all reasons are to be required and for there are no valid reasons in the order is it perse unsustainable and even no reasons required to give but for judicial application of mind to the conclusion and if reflected from the material, not even given reasons for is it not to set aside, therefrom if otherwise sustainable to sustain.

54). In this regard, the Apex Court in the expression of five Judge Bench in **Dharampal Vs. State of Maharashtra**[43] held that the Magistrate has a role to play while committing a case to the Court of Sessions upon taking cognizance on the police final report submitted Under Section 173 of CrPC read with Section 190 CrPC. In the event, the Magistrate disagrees with the police final report, he has a choice to act on the basis of a protest petition that may be filed or made, while disagreeing with the police report to issue process and summoning the accused. From this, it is clear that even police filed final referred report, Magistrate may differ with the opinion of police and can take cognizance after going through the entire material or on even protest application filed by the Complainant the Magistrate may proceed to enquire into it to take cognizance or not thereunder. No doubt, it is not therefrom a mere proceeding like a private complaint case while proceeding against the accused on a protest application, even the Magistrate accepted or not of the police referred report, while proceeding on the protest application of the Complainant, leave about the Magistrate by going through the final report even differ with the police referred report opinion and can take cognizance. Here the Magistrate did not take cognizance by differing with police final referred report containing the witnesses examined, for no single sentence in the order supra. Then out of the options referred in ***Dharampal*** supra, one of it not availed by the Magistrate, one of the other is to proceed on the protest application. When such is the case, the Magistrate is bound not simply to accept the facts referred in the protest application and the sworn statement of protest petitioner and any other witnesses, but also bound to consider earlier police referred report material and also if necessary accept any explanation impugning the investigation including among those witnesses examined by the Investigating officer if explained away as to they did not so state before investigating officer or they were not even examined or of what they stated was not correctly reflected. Without which, that too, when police filed referred report outcome of earlier crime registered is part of the Court record and it is based on that final referred report alone, protest application is filed to consider in impugning the referred report, from the very protest raises that referred report is not correct to say same in the protest application formed part for consideration, to consider the protest against that existing material of final referred report. Then the Magistrate should not have been totally ignored the earlier investigation final referred report material. Thus, on that

count, the cognizance taken by the Magistrate simply by recording the sworn statement of Complainant referring to protest application averments won't survive without referring to original private complaint referring to police for investigation and the investigation material also as part of the protest and form part of the record to consider in its entirety.

55). Leave it as it is and before going in to other aspects, ***now coming to the other 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***:

55)(a). In this regard coming to the several expressions of the Apex Court placed reliance including of **Priyanka Srivastava Vs. State of Uttar Pradesh[44], Ramdev Food products Private Ltd. Vs. State of Gujarat[45], Anil Kumar Vs. M.K.Aiyappa[46], Madhao V. State of Maharashtra[47], *Nupur Talwar vs. CBI[48], Bhushan Kumar vs. State (NCT of Delhi)[49], Srinivas Gundluri Vs. SEPCO Electric Power Construction Corp[50], Rajiv Modi Vs. Sanjay Jain[51], U.P.Pollution Control Board Vs. Dr.Bhupendra Kumar Modi[52], Maksood Saiyed Vs. State of Gujarat[53], Dy. Chief Controller of Imports and Exports vs. Roshanlal Agarwal[54], U.P.Pollution Control Board vs. M/s. Mohan Meakins Ltd.*** [55] ***Kanti Bhadra Shah vs. State of W.B.[56]*** **Satvinder Kaur vs. State[57], *Smt.Nagawwa vs. Veeranna Shivalingappa Konjalgi*** [58], ***Sunil Bharti Mittal vs. CBI[59], Sarath Mathew vs. IOCVD[60]*** and ***Lalith Kumari Vs. State of U.P.[61]*** among others being discussed hereunder.

55)(b)(i). In ***Maksood Saiyed*** supra, 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.

55)(b)(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 (for short, 'DRT') 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 the appellant Maksood Saiyed against all.

55)(b)(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 a quash petition is filed against, which was later allowed and impugning said quash petition, the defacto-Complainant Maksood Saiyed approached the Apex Court by SLP No.923/2006 impugning the High Court's quash petition order dated 09.01.2006 of direction of the Magistrate for police investigation and the F.I.R. issued therein dated 10.05.2005. It is referred about the scope of Section 482 of CrPC in saying the 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.

55)(b)(iv). On factual matrix showing a DRT case before the Ahmadabad Tribunal pending as civil dispute filed in Vadodara in the year 2003 and in the prospectus issued reference to DRT case dated 28.03.2003 Nagami Nicotine Private limited Ahmadabad of the amount claimed as Rs.993.71 lakhs and the claim made against the bank for non-supplement of export bills and non-release of sanction limits, whereas the bank taken the plea of borrower has not cleared the dues and thereby not released the export bills as per the UCPDC rules.

55)(b)(v). The Apex Court observed 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.

55)(b)(vi). **The Apex Court therefrom observed in *Maksood* supra, that 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.**

55)(c). For that 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*** [62], that placed reliance on ***Everest Advertising Private Limited Vs. State Government of NCT of Delhi*** [63] and ***S.M.S.Pharmaceuticals***

Limited Vs. Neeta Bhalla[64] 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.**

55)(c)(i). 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.

55)(c)(ii). This Court in **Pepsi Foods Limited Vs. Special Judicial Magistrate**[65] at para-28 held that summoning of accused in a criminal case is serious matter. 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. He has to examine the nature of allegations in the complaint and evidence both oral and documentary in support of thereof and to see would that be sufficient for the Complainant to succeed in bringing charge the home to accused**. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. 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.

55)(c)(iii).***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***.

55)(d). In ***S.K.Alagh Vs. Stat of U.P.***[66] it was held 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 Vs. R.B.S.Channabasavaradha***[67].

55)(e). In ***Satvinder Kaur*** supra it was held that where the FIR discloses commission of cognizable offence, the Court does not normally stop investigation. In ***Rajiv Modi*** supra it is observed that High Court cannot go into deciding complicated questions of fact as also held in ***Madhoa*** supra, where it is discussed on perusal of the complaint that shows allegations of cognizable offence, the Magistrate referring under Section 156(3) is sustainable, for that the detailed reasoned order no way required but for judicial application of mind, in saying for reference no reasons are required but for judicial application of mind.

55)(f). 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.

55)(g)(i). The other subsequent expression in ***Anil Kumar*** supra 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.***

55)(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**.

55)(g)(iii). Thus what is laid down in ***Anil Kumar*** 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.

55)(h). As cognizance is defined under Section 190 of CrPC as held by a three Judge Bench expression of the Apex Court in ***State of U.P. Vs. Parasnath Singh***[68] of 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.

55)(i). Coming to the other decision ***Madhoa*** supra**,** the private complaint was filed for offences punishable Under Sections 420, 419, 468, read with 34 of IPC and the learned Magistrate referred the same for police investigation and the same when impugned before the Bombay High Court in Criminal Application No.3112 of 2006, the High Court dismissed the same and the appellant then approached the Apex Court vide SLP(Crl.) No.7293 of 2009 and the Supreme Court dismissed the same for no grounds to interfere in holding as observed by the High Court, Magistrate before taking cognizance of an offence can order police investigation under Section 156(3) of CrPC and the procedure adopted is in accordance with law. The discussion went on for that conclusion before the Apex Court was that the courses open to the Magistrate at that stage of private complaint filed of either to proceed for taking cognizance of a complaint by recording sworn statement of Complainant and witnesses if not by examination on oath as per the Sections 200 and 204 of CrPC or to refer the complaint for police investigation under Section 156(3) of CrPC and he is not always bound to adopt any of the course, but for on discretion to exercise on reading of a complaint in case of he finds the allegations discloses cognizable offence, can forward for police investigation to save valuable time of Court for enquiry into the matter when discharged primary duty of police to investigate to say the Magistrate is justified in adopting that course as an alternative to do only to record sworn statement and taking cognizance or not to decide and when the Magistrate if chosen to adopt recourse to take cognizance, he cannot revert back to direct the police for investigation as at pre-cognizance stage however when he chosen to refer to police before pre-cognizance stage on reading complaint, there is no bar.

55)(j). For that conclusion followed the well considered three Judge Bench expression in ***Devarapalli Laxminarayana Reddy Vs. V.Narayana Reddy***[69], besides ***CREF Finance Limited Vs. Shree Shanti Homes Private Limited***[70] and observed from the facts that ***Madhoa*** supra, the complainant, who was the appellant No.1 while working as District Welfare Officer did process and execution on behalf of District Collector, Yavatmal and appellant No.2 was a Warden at

Government Hostel, Gatanji working as Assistant of appellant-No.1 authorised to get sale deeds executed in favour of Government under the scheme and State purchased agricultural land at Koli-Bujruq Village of 8 persons and the vendors filed sworn affidavit in execution of sale deeds stating they are owners of the land. Later there is in newspaper item dated 04.06.2005 alleging agricultural land belongs to one Ramesh Shikaji Rathod shown as alive while he was died and Ramesh Shikaji Rathod signed as if Ramesh Shika Jadhav, therefrom enquiry made by the appellants and lodged the complaint with Gatanji police for the offence supra covered by the forwarding and registration of crime.

55)(k)(i). 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 **the order shows "Heard the counsel for the complainant, perused the allegation 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.

55)(k)(ii). Even from ***Madhoa*** supra there is nothing even to say any reasoned order is required equally from ***Maksood Saiyed*** and ***Srinivas Gundluri*** supra but for the clear requirement of judicial application of mind in passing the order for forwarding to police, the complaint averments with reference to other material and as per ***Anil Kumar*** *supra* same to reflect though not with detailed reasons.

55)(l). In ***Nupur Talwar*** supra at para No.9 it was observed that, *for taking cognizance and/or for issuing process, reasons may not be recorded, but for application of judicial mind. It referred several earlier expressions right from 1976 to 2012 of the Apex Court in this regard.*

55)(m). In ***U.P.Pollution Control Board(1)*** *supra*, on the issue whether it is necessary for the trial court to record reasons while issuing process, held at paras 5 & 6 as under:-

> "5..... In fact it was contended before the Sessions judge, on behalf of the Board, that there is no legal requirement in Section 204 of the Code of Criminal Procedure (For short the 'Code') to record reasons for issuing process. But the said contention was spurned down in the following words: My attention has been drawn to Section 204 of the Code of Criminal Procedure and it has been argued that no reasons for summoning an accused person need be given. ***I feel that under Section 204 aforesaid, a Magistrate has to form an opinion that there was sufficient ground for proceeding and, if an opinion had to be formed judicially, the only mode of doing so is to find out express reasons for coming to the conclusions. In the impugned order, the learned Magistrate has neither specified any reasons nor has he even formed an opinion much less about there being sufficient ground for not proceeding with the case.***
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> 6. *In a recent decision of the Supreme Court it has been pointed out that the legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process.* ***There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons vide Kanti Bhadra Shah supra***.

55)(n). ***Kanti Bhadra Shah*** supra, reads from para 12 that:

> "12. *If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work? The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them.* ***But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial***."

55)(o). In ***Dy.Chief Controller of Imports and Exports*** *supra,* on the question whether an order passed by a Magistrate issuing process requires reasons to record, held at para 9 that:

> "9*. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is 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 inquiry.* ***At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board(1) and Kanti Bhadra Shah*** **supra** that "The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

55)(p). In ***Bhushan Kumar*** *supra*, it was observed that:

> "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.
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> 9. A summon is a process issued by a Court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in Court. A person who is summoned is legally bound to appear before the Court on the given date and time. Willful disobedience is liable to be punished Under Section 174 Indian Penal Code. It is a ground for contempt of Court.
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> 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."***

It is therefrom concluded in Nupur Talwar *supra* ***that it is therefore apparent that an order issuing process cannot be vitiated merely because of absence of reasons.***

55)(q). 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. It was further held that 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*** by him. It was further held by the Apex Court that *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.*

55)(r). 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 or 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."

55)(s). The ultimate analysis from the above expressions put together is that for referring of private complaint 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 it must be to answer a prima facie accusation to face and from prima facie satisfaction of the Magistrate from material on record of the case on hand and it once it requires judicial application of mind for satisfaction of existence of such case, that no doubt has to be reflected in the order and 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*.

55)(t)(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 ***Lalith 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.

55)(t)(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.**[71] and ***Indian Oil Corp. Vs. NEPC India Ltd***[72] 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.***

55)(u)(i). 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***[73] ***.*** *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***[74].

55)(u)(ii). *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.*

55)(v). 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[75], Manharbhai MK Vs. Shanleshbha[76]**, **Dilawar singh Vs. State of Delhi[77]**, **Mahammad Yousuf Vs. Afan Jan[78]** 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*.

55)(v)(i). 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. 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 preemptory 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.***

55)(v)(ii). 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.
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> 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."

55)(v)(iii). 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.

55)(v)(iv). Even in all the above expressions there is nothing to say a reasoned order is required to be passed disclosing the application of the judicial mind of the learned Magistrate while exercising the power under Section 156(3) of CrPC, but for judicial application of mind and perusal of the material by the superior Court reflects the same. Thereby such a contention of reasons necessary even for referring the complaint to police for investigation under Section 156(3) of CrPC is untenable. In fact what the expressions supra laid down is a judicial application of mind by the Magistrate concerned even to refer the complaint and if it discloses a cognizable offence for police investigation is required by going through the contents of the complaint with reference to the documents if any for satisfaction as to the existence

of the prima facie material.

55)(v)(v). Undisputedly in ***Priyanka Srivastava*** supra particularly at para-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.

55)(w)(i). No doubt, the other decision placed reliance is also recent expression dated 17.03.2015 in ***Vesa Holdings Private Limited Vs. State of Kerala***[79] by referring to the Apex Court's earlier expressions in **Uma *Shanker Gopalika Vs. State of Bihar***[80]***, All Cargo Movers(India) Private Limited Vs. Dhamesh Badarmal Jain***[81]***, V.Y. Josh Vs. State of Gujarat***[82]***, Vijayender Kumar Vs. State of Rajasthan***[83] on the scope of the offences under Sections 417, 420 IPC read with Section 34 or 120-B IPC as the case may be. There the 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 and the Magistrate referred the same to the police for investigation under Section 156(3) of CrPC that was sought for quashing before the Kerala High Court and from dismissing the quash petition, the accused preferred the appeal before the Apex Court. ***On facts it was 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 for investigation and thereby quashed said proceedings by setting aside of the dismissal order of the Kerala High Court.***

55)(w)(ii). Even from this 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.

55)(x)(i). The other latest three Judges bench expression placed reliance is ***Sunil Bharti Mittal*** *supra* in which, on facts, the C.B.I. registered the crime, investigated and filed final report. The person not named in the final report as accused by differing to the police Investigating officer's opinion, the learned Magistrate has taken cognizance under Section 190 CrPC after hearing public prosecutor and in issuing process against the non-accused of charge sheet and the same was impugned and the matter reached before the Apex Court on the question when a person not named in the charge sheet as accused though the trial court has adequate powers to take cognizance and summon if found from perusal of charge

sheet and documents and other material placed with the charge sheet disclosed sufficient prima facie material to proceed against such person as well, however where there is sufficient material or not be reflected in the order of the learned Magistrate.

55)(x)(ii). On facts held that the Special Judge for C.B.I. has not stated in the order that after examining of the final report with relevant documents and the statements of the witnesses satisfied on sufficient material incriminating to proceed against the police as well. ***The learned Special Judge did not record any reasons for his satisfaction to take cognizance on any incriminating material and even C.B.I. did not implicate the appellants in the final report.***

55)(x)(iii). It is held further that, the sine-qua-non of taking cognizance for an offence is application of judicial mind, for the Special Judge's satisfaction of the allegations if proved would constitute an offence; and it is imperative from the complaint or on the police report of the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion and then only to issue process to say said to have taken cognizance of the offence and the only consideration at this stage of taking cognizance if any is prima facie case to take from the material or not.

55)(x)(iv). It is held further that cognizance of the offence and prosecution of offenders are two different things. Section 190 of CrPC empowers taking cognizance of an offence and not to deal with the offenders. Thereby cognizance can be taken even offender is not known or named. When the complaint is filed and F.I.R. is registered and even their names may transform through investigation or in post-complaint enquiry. Thereby a person who is not even joined as an accused in the charge sheet, if there is material to take cognizance, he can be summoned to proceed with; as a Magistrate is not bound and otherwise empowered to ignore the conclusions arrived by the investigating officer, provided apply his mind independently on the facts emerging from investigation to take cognizance of the case and at this stage not permissible to consider any material other than the material covered by the police final report. On the other hand, Section 204 CrPC. deals with issuing process after taking cognizance on the private complaint from sworn statement recorded where there is sufficient ground for proceeding as per Section 204 of CrPC. which is of immense importance.

55)(x)(v). From that, coming to the facts it was observed in ***Sunil Bharathi Mittal*** supra that the learned Special Judge on the basis of the material on record, done no such exercise and thereby the impugned order dated 19.03.2013 is held unsustainable so far as it relates to implicating the appellants and summoning them as accused. For that on facts observed, the allegation against the appellants is a ground of additional spectrum by luring condition of 9 lakhs subscribers to 4.50 lakhs subscribers be only charging additional 1% A.G.R. instead of charging 2% AGR which caused loss to government's revenue and further the case of prosecution that this was the result of conspiracy hatched between the then Minister concerned as well as the accused- cellular operator. The decision taken in haste on 31.01.2002 itself exchanges notes prepared by J.R.Gupta, the then Secretary telecom, on that

day, which was agreed 2/5th and thereafter approved by the Minister on the same day. On that basis circular was issued on next day on 01.02.2002 as per the charge sheet, investigation has also revealed that all this was done in haste to help M/s. Bharati Cellular Limited which had come out with Initial Public Offer (IPO) that was opened and it was not getting good response from the public as it had remained under-subscribed. The moment such a decision of allocating additional spectrum was taken on 31.01.2002, on the very next day, the issue got over-subscribed. In that charge sheet filed, Mr.J.R.Gupta was not made accused as no material of any conspiracy or being a part of decision being attributed to him. In this charge sheet, the C.B.I. named Shyamal Ghosh-the Complainant and three companies namely Mr.Bharati Cellular Limited, M/s Hatchison Max Telecom(P) Limited and M/s Sterling Cellular Limited as accused persons in respect of offences under Sections 13(2) r/w 13(i)(d) of the P.C.Act and allied offences impleaded as accused persons in this charge sheet one of the two appellants, Sunil Bharathi Mittal Chairman—cum—Managing Director of Bharati Cellular Limited, was interrogated but in the opinion of the C.B.I. case was made out in the C.B.I. other appellant as Director of Sterling Cellular saying even summoned properly. The Special Judge in para-2 of the impugned order discussed the submissions of Public Prosecutor in respect of the proceedings who are made accused in the charge sheet and so far as ------ is concerned it has name of 'complaint' who was the public servant and other three accused are corporate entities. The submission of the learned Public Prosecutor is that there is enough incriminating material on record against them and they may be proceeded against as per law. Immediately thereafter the Special Judge in para-3 of the impugned order recorded his satisfaction on the perusal of the record namely FIR, charge sheet, submissions of witnesses and documents and states that he is satisfied that there is enough incriminating material on record to proceed against the accused persons. Para-30 clearly relatable to para-2. Here the accused persons referred to are those 4 persons whose names are mentioned in para-3 obviously till that stage, appellants were not accused persons as they are not named as such in the charge sheet.

55)(x)(vi). After recording satisfaction against said accused persons, discussion about other three individuals including two appellants supporters from para-4 where Special Judge also finds and reference to the decisions which these three persons held/hold in the three cases—(companies) respectively. In para-4 the special Judge did not mention about any incriminating material against them in the statements of witnesses and documents, etc. **On the other hand, the reason for summoning these persons and proceed against them are specifically described in this paragraph which prima facie are 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/Magistrate issued summons.

55)(x)(vii). 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.

55)(x)(viii). For that conclusion referred ***Dharampal Vs. State***[84], ***Aneeta Hada Vs. Godfather Travels and Tours (P) Ltd.***[85], ***Iridium India Telecom Limited***[86], ***Maksood Sayed*** *supra*, ***Sabita Rama Murthy Vs. R.B.S. Channabasavaradhya***[87], ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla***[88], ***Standard Chartered Bank Vs. Directorate of Enforcement***[89] among other expressions**.**

55)(y). In ***GHCL Employees Stock Option Trust V. India Infoline Limited***[90] 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***."
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> 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***.[91], 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.***
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> 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***."

55)(z). In ***Mehmood ul Rehman V. Khazir Mohammad Tunda***[92] it was held no doubt for the offence under Section 500 IPC in a complaint proceeding under Sections 200 and 202 CrPC, that there must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence. Therefore, if the complaint on the face of it does not disclose commission of any offence, the Magistrate shall not take cognizance under Section 190 CrPC but for rejecting the complaint under Section 203 CrPC.

55)(z)(a). The Constitution Bench of the Apex Court(5JB) in ***Sarah Mathew*** *supra* held that:

> "Cognizance is an act of the Court. The term 'cognizance' has not been defined in the Cr.P.C. To understand what this term means we will have to have a look at certain provisions of the Cr.P.C. Chapter XIV of the Code deals with 'Conditions requisite for initiation of proceedings'. Section 190 thereof empowers a Magistrate to take cognizance upon (a) receiving a complaint

of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Chapter XV relates to 'Complaints to Magistrates'. Section 200 thereof provides for examination of the Complainant and the witnesses on oath. Section 201 provides for the procedure which a Magistrate who is not competent to take cognizance has to follow. Section 202 provides for postponement of issue of process. He may, if he thinks fit, and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer for the purpose of deciding whether there is sufficient ground for proceeding. Chapter XVI relates to commencement of proceedings before the Magistrate. Section 204 provides for issue of process. **Under this section if the Magistrate is of the opinion that there is sufficient ground for proceeding and the case appears to be a summons case, he shall issue summons for the attendance of the accused. In a warrant case, he may issue a warrant.** Thus, after initiation of proceedings detailed in Chapter XIV, comes the stage of commencement of proceedings covered by Chapter XVI.

In Jamuna Singh & Ors. v. Bhadai Shah, relying on R.R. Chari and Gopal Das Sindhi & Ors. v. State of Assam & Anr., this Court held that it is well settled that when on a petition or complaint being filed before him, a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Cr.P.C., he must be held to have taken cognizance of the offences mentioned in the complaint.

After referring to the provisions of the Cr.P.C., quoted by us hereinabove, in S.K.Sinha, Chief Enforcement Officer, this Court explained what is meant by the term 'taking cognizance'. The relevant observations of this Court could be quoted:

> "19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.
>
> 20. "Taking cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial.

Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance." In several judgments, this view has been reiterated. It is not necessary to refer to all of them.

Thus, a Magistrate takes cognizance when he applies his mind or takes judicial notice of an offence with a view to initiating proceedings in respect of offence which is said to have been committed. This is the special connotation acquired by the term 'cognizance' and it has to be given the same meaning wherever it appears in Chapter XXXVI. It bears repetition to state that taking cognizance is entirely an act of the Magistrate. Taking cognizance may be delayed because of several reasons. It may be delayed because of systemic reasons. It may be delayed because of the Magistrate's personal reasons.

55)(z)(b). In ***B.Chandrika vs. Santhosh***[93] & ***Rakesh vs. State of U.P***[94] referring to some or other of the decisions in ***H.S.Bains vs. State (Union Territory of Chandigarh)***[95], ***Gopal Vijay Verma vs. Bhuneshwar Prasad Sinha***[96], ***India Carat (p) Ltd. vs. State of Karnataka***[97], ***Mahesh Chand vs. B. Janardhan Reddy***[98], ***Gangadhar Janardan Mhatre vs. State of Maharashtra***[99], ***Kishore Kumar Gyanchandani vs. G.D. Mehrotra***[100], it was held that after receipt of the police report under Section 173 of CrPC, the Magistrate has three options– (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report, even final referred report filed by differing to it-(The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the entire facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. Only because the Magistrate has accepted a final referred report, the same by itself would not stand in his way for he is no way '***functus-officio'*** to take cognizance of the offence on a protest petition; but the

question which is required to be posed and answered would be as to under what circumstances the said power can be exercised); (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the Complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint/protest petition or issue process, as the case may be. The expression of 5 judges Bench in ***Dharampal*** *supra* also clarified the same as stated supra.

56)(i). Having regard to the above, a Magistrate before whom a private complaint is filed, cannot casually for sake of mere asking to refer the Complaint for police investigation, without application of judicial mind and satisfaction of the material on record discloses a cognizable offence. Thus, what is required is where on perusal of the complaint with documents enclosed if any, discloses a cognizable offence and if so even no reasons assigned, the discretionary power of Magistrate in referring such complaint to the police for investigation under Section 156(3) CrPC is sustainable as what is required is judicial application of mind only and not further mandatory requirement of assigning reasons specifically reflecting the mind in the order under Section 156(3)CrPC, since referring such complaint to the police for investigation under Section 156(3) of CrPC is different to taking of cognizance under Section 190 of CrPC.

56(ii). So far as taking of cognizance under Section 190 CrPC of an offence and any ordering to issue summons while taking cognizance concerned, for that it not only requires application of judicial mind but also assigning of reasons necessary of existence of prima facie accusation to proceed with. However, mere non-giving reasons alone not a ground to set aside, but for from consideration of the material if the order is unsustainable otherwise. Thus an order taking cognizance and issuing process cannot be vitiated merely because of absence of reasons; if from consideration of the material the order is otherwise sustainable. Though the Magistrate has adequate powers to take cognizance and summon if found from perusal of charge sheet and documents and other material placed with the charge sheet or from private complaint with sworn statement/s and documents if any or from private complaint referred FIR and investigation and final referred report or from further protest petition and by consideration or reconsideration of the material with sworn statement/s; from the same (needless to say in case of protest petition, it is not therefrom by recording sworn statements, but also from original FIR and investigation material of the final report if any of all the same) discloses sufficient prima facie material to take cognizance and issue summons to proceed against any persons as accused, however where there is sufficient material or not be reflected in the order of the learned Magistrate. The ultimate analysis from the above expressions is that though reasons are required to be given, non-giving reasons no way vitiates the order, if otherwise from material justifies the decision though not given reasons and the law is further clarified from the below:

56)(iii). In this regard, it is apt to refer para 16 of the Apex Court`s expression in ***Sharon Michael v. State of T.N***[101] 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.***"

56(iv). The expression "taking cognizance" what tantamount to, was in fact well explained by the Apex Court in ***S.K.Sinha, Chief Enforcement Officer v. Videocon International Ltd***.[102] in the following:

> "19. The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of: and when used with reference to a court or a Judge, it connoted "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.
>
> 20. "Taking Cognizance" does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence...."
>
> Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.
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> Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.
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> Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See SWIL Ltd. v. State of Delhi[21]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (See Union of India v. Prakash P. Hinduja and another[22]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.
>
> On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the Complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.
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> A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.
>
> However, ***the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.***

56(v). As discussed supra, in the case on hand, leave about the stage of referring to police for investigation by Magistrate observed as outcome of non-application of judicial mind and also from non-filing of material documents with material facts those available even, even to say that stage crossed and therefrom crime registered even impugned unsuccessfully up to Supreme Court as referred supra by withdrawal of the S.L.P before Supreme Court from the police investigation ended in filing final referred report of civil nature; so far as the subsequent taking of

cognizance on the protest application by the learned Magistrate concerned, as referred supra, it is not simply like a private complaint from complaint with documents and sworn statement/s, as held in some of the expressions referred supra, but to refer to the original private complaint and the police investigation material in referring without filing charge sheet and the protest against the same within the limited scope and therefrom to take cognizance if at all there is material therefrom, by differing with police opinion or for no material by referring to the same along with the sworn statements and other material placed with reference to the protest, to reject.

56)(vi). The order of the learned Magistrate mainly reproduced contentions of the counsel for protest petitioner and though given his own reasons only from the protest application, that too not by properly referring from what is discussed supra, not supported by any substance and not even considered the earlier police investigation material on which the protest is filed on its correctness or otherwise to verify and not even referred original private complaint referred to police that registered as crime and the same in variance to the protest application version vis-à-vis even the contentions of the counsel for the Complainant as discussed supra at length and the same totally ignored even to decide any offence atleast of Section 406 IPC made out against A3, muchless against A6 or A1, not to speak for nothing against A9, leave about nothing against any of the officials but for an allegation against A14 on behalf of A1 in filing his affidavit in contempt petition relied on the copies of the documents saying secured from A3 if at all that is not a criminal breach of trust against A1 or A14, for nothing against A6 or any of the officials and nothing against any of the officials of A3 or other among A14 of A1. The learned Magistrate did not even consider who among the accused are personally responsible to rope any of them in the IPC offence, without any legal fiction by statutory provision from their mere status with the entity concerned and further nothing to say against which of the accused among the entities even the offence under Section 406 IPC, leave about no offence under Section 409 IPC that attracts and what is the material to say any conspiracy and any others are privy and parties to any conspiracy from any prior concert and for that with no material or basis and in the absence of which and in the absence of considering to the police investigation final report material also, the cognizance taken is unsustainable.

56)(vii). Thus, it makes clear from what is discussed in detail supra that on an erroneous presumption on facts and law, the learned Magistrate having been influenced by the contentions of the counsel for Complainant reproduced same in his order to serve as if same are the reasons to take cognizance and without proper verification of the entire material, as a result the reasons given turns out to be ex facie incorrect and with conflicting versions and the summons issued pursuant to the order to the petitioners therefrom are difficult to sustain. From the expressions referred supra said conclusion prone to scrutiny under Section 482 CrPC for its unsustainability so to hold. In ***Lee Kun Hee, President, Samsung Corporation, South Korea V. State of Uttar Pradesh*** [***[103]***] the scope of Section 178, 179, 181 and 182 Cr.P.C of territorial jurisdiction was considered in saying the mere fact that

some of the accused persons were foreign nationals or that they reside outside India and they were not present in India when the offence was allegedly committed held would not afford them protection under Section 2 I.P.C against cognizance and trial for their own acts which integrally connected with things done in India and consequences of which acts had insured in India. In fact it is not the defence of any of the accused of any of them are foreign residents and thereby they are not within the jurisdiction of the Court but for on other merits, thereby the proposition no way requires consideration in the factual matrix of the case on hand for in the defence raised by the accused.

57)(i). Leave it as it is, **so far as the respective accused, other than the entities concerned from the legal position till date on Vicarious liability**, from the expressions referred supra, particularly from ***Maksood Sayeed***, ***S.M.S. Pharmaceuticals, Standard Chartered Bank, S.K.Alagh, Iridium, Sunil Bharti Mittal*** *among others referred supra*, the law is very clear on the principle of **alter-ego**.

57)(ii). In ***R.Kalyani V. Janak C.Mehta***[104] 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.

57)(iii). In ***Keki Hormusji Gharda V. Mehervan Rustom Irani***[105] 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".

57)(iv). 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. Though it was held 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***[106] and subsequent expressions following it and conclusively mainly in ***Iridium India*** supra referring to the several expressions of the Apex Court and of 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***.***

57)(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*** [***[107]***](#) 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. 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. In ***Aneeta Hada*** supra it is observed with reference to Section 141 of N.I.Act that the deeming fiction therein makes the functionaries of the Companies to be liable as its own signification. In fact before ***S.M.S. Pharmaceuticals, Standard Chartered Bank, Aneeta Hada*** and ***Iridium India*** supra, some of which referred in ***Sunil Bharti Mittal;*** the expression of the Apex Court in ***Anil Hada Vs. India Accrelic Limited***[***[108]***](#) speaks in a case under Section 141 of the N.I.Act that even the

Company or Corporation not impleaded as accused the proceedings against a Director can be issued. The same was later held as not good law in ***Aneeta Hada (I) Vs. Godfather Travels & Tours (P) Ltd.***[109] saying without the Company impleaded as accused on the principle of ***Lex non cogit ad impossibilia*** and from that ***legal snag*** if the Company is not made accused, the proceedings against others cannot be. The said principle of ***Aneeta Hada*** (1) then came before three Judge bench expression in ***Aneeta Hada*** (2) supra, where the ***Anil Hada*** supra is over ruled and ***Aneeta Hada***(1) supra is affirmed in saying at paras 51 to 59 the relevancy of which reads the decision in ***Anil Hada*** has to be treated not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the Company on the doctrine referred supra. Section 141 of the N.I.Act makes the other persons vicariously liable for commission of an offence-------- For maintaining prosecution under Section 141 of the N.I.Act, arraying of a Company as an accused is imperative. The other categories of offenders can only be brought in the drag net on the touch stone of vicarious liability as the same has to be stipulated in the petition itself as held in ***State of Madras Vs. C.V.Parekh***[110]. The same question when again came for consideration before the two Judge bench in ***Anil Gupta Vs. Star India Private Limited***[111], ***Aneeta Hada(2)*** of two Judge bench referred supra is reiterated in para No.12 in saying the decision in ***Anil Hada*** supra is over ruled with the clarification as stated in Para No.51 of ***Aneeta Hada***(2) and the decision in ***U.P. Pollution Control Board*** supra has to be restricted to its own facts.

57)(vi). 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.

57)(vii). 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.

57)(viii). 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.

57)(ix). Same is also reiterated in another two Judge Bench expression of the Apex Court in ***Central Bank of India V. Asian Global Limited***[112] 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***[113].

57)(x). Even other latest expression in ***Poojari Ravinder Devi Dasani V. State of Maharashtra***[114] 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.***[115]

57)(xi). 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.

57)(xii). In ***Punjab National Bank V. Surender Prasad Sinha***[116] 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."*

57)(xiii). In another latest expression in ***Gunmala Sales Private Limited V. Anu Mehta***[117] 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.

57)(xiv). In ***G.M.Verma V. State of Jharkhand*** [118] 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.

57(xv). 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 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.*

58). Coming to the offence of criminal breach of trust, cheating and criminal conspiracy concerned, in addition to some of the expressions covering the area discussed supra:

58(i). In ***V.P.Srivastava Vs. Indian Explosives Limited*** [119] referring to several expressions including ***Ram Jas Vs. State of U.P*** [120], ***Medchal Chemicals & Pharma (P) Limited Vs. Biological E.Ltd*** [121] and ***Hira Lal Hari Lal Bhagwati Vs. C.B.I*** [122] 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.

58(ii). In ***Anil Mahajan Vs. Bhor Industries Limited***[123] (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.

58(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.

58(iv). In ***Ajay Mitra Vs. State of M.P.***[124] (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***[125].

58(v). In ***Vimala Vs. Delhi Administration***[126] and ***State of U.P Vs. Ranjit Singh***[127] 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.

58(vi). The Apex Court in **V.P.Shrivastava v. Indian Explosives Limited** [128] held in relation to the offence of cheating and criminal breach of trust that to hold a person guilty of cheating, it must be necessary to show with averments that at the time of making promise, the accused had fraudulent or dishonest intention to

deceive or to induce person so deceived to do something which he would not otherwise do and in the absence of such culpable intention right at the time of entering into agreement that cannot be presumed merely from failure to keep the promise subsequently and in the absence of specific averment in the report or complaint, the presumption is unsustainable and thereby the proceedings for cheating and criminal breach of trust alleged no way sustain and liable to be quashed.

58(vii). In ***National Bank of Oman V. Barakara Abdul Aziz***[129] in this case 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 held, ‘we find no error in the view taken by the High Court’ – and ultimately observed High Court instead of quashing the complaint should have directed the Magistrate to pass fresh orders following the provisions of Section 202 CrPC The submission therefrom is the taking of cognizance of an offence and issue of process, where ingredients are not made out is unsustainable.

58(viii). In ***S.W.Palanitkar Vs. State of Bihar***[130], 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".

58(ix). In ***Ghanshyam V. State of Rajasthan***[131] 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.

58(x). In ***Nrisingha Murari Chakraborty V. state of West Bengal***[132] it was held passport is a property within the meaning of Section 420 I.P.C, even it has no money value being a tangible capable of ownership being a document of impossible for travel abroad and without which it is impossible for a person to travel.

58(xi). In ***Ishwar Girdharilal Parekh V. State of Maharashtra***[133] it was held what is meant by property or valuable security for the offence of cheating under Section 420 I.P.C, that assessment order determining the total income of the assessee and the tax payable on the basis of such assessment on its being served on the assessee. The order communicated to and received by the assessee is observed in para Nos.12 to 14 as in the opinion of the Court as property being a document and valuable security. However, the documents herein are not even originals as valuable security but only Photostat copies.

58(xii). 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***[134] 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.***

58(xiii). Further the Constitution Bench expression of the Apex Court in ***Bhagwan Swarup Lal Bishan Lal Vs. State of Maharashtra***[135] 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.

58(xiv). The other decision placed reliance is of **Ford India Ltd V. Sunbeam Ancillary P. Ltd**[136] where it is observed, controversial 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**[137]**, Pepsi Foods, Anil Mahajan, Umashanker Gopalika, Hotline Telegubes and Components V. State of Bihar**[138] **& Ashok Sachdev V. G.S.Chauhan**[139]

58(xv). In **Girish Sarwate V. State of A.P.**[140]**,** the full bench of this Court on reference approved the expression in **Gudavalli Murali Krishna V. Gudavalli Madhavi**[141] 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.

58(xvi). In ***Rajib Ranjan V. R.Vijay Kumar***[142] 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 and High Court committed wring in not quashing and ultimately quashing the proceedings by the Apex Court.

58(xvii). In ***Rashmi Jain V. State of Uttar Pradesh***[143] 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.

58(xviii). In ***P.Swaroopa Rani V. M.Hari Narayana @ Hari Babu*** [144] 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*** [145]**.**

58(xix). In this regard, it is also necessary to refer the decision of the Apex Court in **Rishipal v. State of Uttar Pradesh** [146]**,** wherein it is held that mere dereliction of duty does not attract any penal consequences and continuation of criminal proceedings is a pure abuse of process of law and deserved to be quashed the proceedings.

58(xx). As also held in ***Madhavrao Jiwajirao Scindia V. Sambhajirao Chandrojirao Angre*** [147] which reads 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."

58(xxi). In ***Binod Kumar V. State of Bihar*** [148] 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. The act of the appellants was done in the discharge of their duties and there was no dishonest intention to misappropriate the amount and the essential ingredients of criminal breach of trust are not made out and the High Court has not properly appreciated the matter. Looking at the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. Since no case of criminal breach of trust or dishonest intention of inducement made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120B IPC is liable to be quashed."

58(xxii). 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.

58(xxiii). ***In Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin***[149], this Court 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.**"

58(xxiv). In ***M/s.Suryalakshmi Cotton Mills Ltd. V. Rajvir Industries Ltd.***[150] 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 and Others [(1992) 4 SCC 305], Rupan Deol Bajaj (Mrs.) and Another Vs. Kanwar Pal Singh Gill and Another [(1995) 6 SCC 194], Indian Oil Corp. Vs. NEPC India Ltd. and Others [(2006) 6 SCC 736].

58(xxv). In ***C.Velayudham Pillai V. S.C.Subramania Pillai***[151] In ***Naresh Treh***

58(xxvi). ***In fact, the party compelling to get information or party getting i***

58(xxvii). From the above, there are no ingredients to constitute any of the offences that could be made out to sustain the cognizance order of the learned Magistrate against any of the accused, leave about no sustainable reasons out of the detailed order reflecting only contentions of counsel for complainant without application of judicial mind to the facts as to how any of the offences made out and if so what are the specific allegations against any of the accused to make any of

them liable to take cognizance of the offences against all. Even the order of the learned Sessions Judge even in confirming the same(while deleting Section 409 IPC in confirming Sections 406 and 120-B IPC) without considering the lengthy order of cognizance without sustainable reasons, for saying as if in detail considered to substantiate is equally unsustainable.

59. **Coming to the scope of documents relied on by the accused can be received and any defence from material on record can be considered in a quash proceeding concerned**:

59(i). In ***Anita Malhotra V. Apparel Export Promotion Council*** [154] relying upon Harshendra Kumar D. vs. Rebatilata Koley [155] the Apex Court held that, in an appropriate case, if on the face of the documents which are beyond suspicion or doubt placed by the accused, 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.

59(ii) ***In All Cargo Movers (I) Pvt. Ltd. v. Dhanesh Badarmal Jain*** [156], it was observed that, Court may not only take into consideration the admitted facts but it is also permissible to look into other material. Breach of contract simplicitor does not constitute an offence. 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.. . . .

59(iii) In ***Rukmini Narvekar V. Vijay Sataredkar***[157], 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.

While concurring with the above conclusion of Justice Markandey Katju, Justice Altmas Kabir further observed as follows:

"While deciding the questions referred to it, the larger Bench made a conscious distinction between a proceeding under Section 227 CrPC before the trial court and a proceeding under Section 482 CrPC and made a reference to the Court's power to consider material other than those produced by the prosecution in a proceeding under Section 482 CrPC.

8. The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned counsel before the larger Bench and the same were negated as far as Section 227 CrPC is concerned. However, in paragraphs 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 CrPC can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred".

59(iv). In ***Prashanth Bharathi V. State (NCT of Delhi)***[158] it was held relying upon Rajiv Thappar[159] 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 leveled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations leveled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations leveled 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."

59(v). In ***Anita Malhotra Vs. Apparel Export Promotion Council***[160] 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.

59(vi). Thus, the probable defence of the accused can be looked into from any 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 no case to frame charges or to sustain accusation to exercise the inherent power to subserve the ends of Justice.

60). Coming to next aspect for consideration of the filing of the documents in the contempt petition by A1 through A14 officer of the A1, from whatever source A1 got need not even disclose from the settled law of evidence even illegally collected can be looked into if otherwise admissible but for the person who illegally collected if any to visit the legal consequence for that, for the same no way make the

admissible and relevant evidence inadmissible or irrelevant. In this regard in ***Olmstead V. United States***[161], the Supreme Court of United States observed that though machinery used to get the evidence amounted to a search and seizure there is violation of the 4th amendment against unreasonable searches and seizures without warrant with description of the place to be searched and person or things to be seized, particularly at para 38 observed the common law rule is that admissibility of the evidence is not affected by the illegality of the means by which it was obtained. So long as there is no violation of a constitutional guarantee but for violation of the statutory provision at para No.70 as per the majority expression in ***Olmstead*** with the conclusion that the power of the Court is not barred because plaintiff had committed a crime. The confirmed criminal is as much entitled to redress as is most virtuous fellow citizen, no record of crime, however long, makes one as a outlaw. The Court's aid is denied only when he who seeks it as violated the law in connection with the very transaction as to which he seeks legal redress. Then aid is denied despite the defendants wrong. It is denied in order to maintain respect for law, in order to permit confidence in the administration of justice; in order to preserve the judicial process from contamination. Rule is one, not of action, but of inaction. It is sometimes spoken of as a rule of substantive law. But it extends to matters of procedure as well. A defence may be waived. It is waived when not pleaded. But the objection that the plaintiff comes with unclean hands will be taken by the Court itself. It will be taken despite the wish to the contrary of all the parties to the litigation. The Court protects itself.- - - - to declare that the government may commit crimes in order to secure the conviction of a private criminal-would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face. Same is the law of document even not by lawful source obtained or any procedure violated in collecting; same is no way inadmissible as per Single Judge expression of the Madras High Court in ***Ganesan*** *supra* and from the expression of the Apex Court in ***Magraj Patodia V. R.K. Birla***[162], ***R.M.Malkani V. State of Maharashtra***[163], ***Pushpadevi M.Jatia V. M.L. Wadhawan***[164] referred and relied upon the expressionS of ***House of Lords*** in ***R.V.Sang***[165] and of the Judicial Committee of Privy Council in ***Kuruma V. Reginam***[166] that the test to be applied is whether the evidence is admissible and relevant to the matters in issue and once relevant and admissible, it is not concerned with where from secured and if it tortuous and it is excusable. Even the Constitution Bench expressions of the Apex Court reported in ***Pooran mal Vs. DOI***[167] & ***State Vs. Alassearry Md.***[168] Laid down the same proposition that if the evidence is relevant, the court is not concerned with the method by which it was obtained and the same is reiterated and in ***State of Punjab V. Baldev Singh***[169] by another Constitution Bench and subsequent five Judge Bench in ***Vijay Sinh Chandu Bha Jadeja V. State of Gujarat***[170] relying upon ***Baldevsingh*** supra however clarified the N.D.P.S. amended Act scope *that any evidence or information*

collected during the investigation where even any provisions in so doing are shown violated, that by itself the same is not inadmissible in evidence. Thus, the contention contra is untenable but for to consider whether A-1 or A14 are bound to disclose in the present prosecution, where from they collected, if any? For that the answer is very clear from right of silence of the accused and it is for the prosecution i.e., the complainant to establish to visit any penal consequence if it is illegally collected, left open to the parties to seek other remedies for any wrongful acts indulged in to obtain evidence as per Murphy on Evidence, 5th edition,1997. No doubt, the very collection of the material by A1 represented by A14 is if *per se* an offence though the evidence is admissible and relied upon in the contempt application, the penal consequence cannot be avoided. However, that *per se* not an offence for nothing shown of by such use it is a breach of trust or cheating muchless outcome of conspiracy as thoroughly discussed supra. Even taken for argument sake, that same is collected from A3 or the A3's agent A6 that does not tantamount to cheating muchless there is any breach of trust for the documents given are to show the performance appraisal for those to refer on financial credibility. 61) Leave it as it is, **now coming to the scope of Section 78 IPC and such a defence whether can be propounded in the quash petition (that otherwise can be adduced in defence during trial) under Section 105 of Indian Evidence Act for consideration concerned:**

61(ia). Section 78 IPC– Act done pursuant to the judgment or order of Court reads as follows:

> "Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction."

61(ib). ***Section 105- Burden of proving that case of accused comes within exceptions*** reads as follows***:***

> "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.
>
> **ILLUSTRATIONS:**
> (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A.
> (b) A, accused of murder, alleges, that by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.
> (c) Section 325 of the Indian Penal Code, (45 of 1860), provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be subject to certain punishments. A is charged with voluntarily causing grievous hurt under section 325. The burden of proving the circumstances bringing the case under section 335 lies on A."

61(i)©. ***Section 6- Definitions in the Code to be understood subject to exceptions- reads as follows:***

> "Throughout this Code ***every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions***", though these exceptions are not repeated in such definition, penal provision, or illustration".
>
> **ILLUSTRATIONS**
>
> (a) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences, but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.
>
> (b) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement for he was bound by law to apprehend Z and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it".

61(ii)(a). It is also to mention in the context that with out mensrea no offence cou

"The case of ***Reg. Vs Prince***, when rightly considered, is in favour of prisoner. The result of that d

61(ii)(b). In ***re: Ram Badan Chaubey***[172] a single Judge of the Calcutta High C

61(ii)(c). In ***Aekta Ltd V. Neelam Lamboria***[173] a single Judge of the Calcutta

61(ii)(d). In ***Shiv Kishan Agarwal V. State of West Bengal***[174] a single Judge

61(ii)(e). In the Full Bench expression of Allahabad High Court in ***Rishi Kesh Sin***

61(ii)(f). In ***M.N.Damani V. S.K.Sinha***[176] the two Judge bench in quashing a p

61(ii)(g). In ***State of West Bengal V. Shew Mangal Singh***[177] at para Nos.13 f

61(ii)(h). No doubt, in ***The State rep. by the Inspector of Police V. Mariya Ant***

61(ii)(i). The expression from the complicated questions of facts involved that can

61(ii)(j). In fact in ***Vadilal Panchal V. Dattatraya Dulaji Gha***

Digaonkar[179](3JB) of the Apex Court, it was held as follows:

"This is an unfortunate case in which a complaint filed in the Court of the Presidency Magistrate, Bombay, on October 31, 1956, by one Dattatraya Dulaji Ghadigaonkar, respondent herein, has to be finally disposed of in the year 1960 in circumstances which we shall state at once. On June 3, 1956, in the evening, a public meeting was held at a place called Chowpatty in Bombay which was to be addressed by the Prime Minister of India. The meeting was called in connexion with an agitation which was then going on for the reorganisation of the State of Bombay. There was considerable disturbance at the meeting as a result whereof it had to be dispersed, and large crowds of people began to wander about in various localities around Chowpatty including an area round Charni Road Station. The case of the complaining respondent was that at about 8 p. m. his younger brother Sitaram was crossing Queen's Road Dear a building called Laud Mansion. At that time there was a large crowd on the road and members of that crowd were stopping vehicles passing by that road. One taxi cab which had come from the direction of the Opera House and was going towards Churchgate was already stopped. Sitaram was then accompanied by Sashikant Kamtekar and Nand Kumar Vagal. When these three had crossed the road, they heard the reports of revolver shots and on looking back they found that a person called Bhayya was injured by one of the shots and fell down on the footpath. Sitaram and his friends went to help Bhayya; at this stage, another shot was fired by one of the occupants of a blue car which was near the taxi cab referred to earlier. Sitaram was hit on his chest, and the bullet having entered the chest cavity injured the right ventricle of the heart. Sitaram was removed to the G.T.Hospital but died before medical assistance could be given. Dr. H.S.Metha, Police Surgeon, who made a postmortem examination of the dead body, opined that Sitaram died of shock and hemorrhage as a result of the gun shot wound he had received. The doctor further said that the charring round the wound indicated that the shot had been fired from a distance of 2 to 18 inches only.

The case of the respondent was that Vadilal Panchal, appellant before us, fired the shot from the blue car. The occupants of the car were K. K. Shah, advocate, his son Vinay, and one Ratilal Sanghvi on the back seat, and the appellant and chauffeur Mohiddin on the front seat. K.K.Shah was mentioned in the complaint as one of the complainant's witnesses. He was examined and said that after the meeting was over, he and his companions were returning in his car to his house. Because of the trouble, the car travelled by a longer route and when it reached Queen's Road, there were large crowds on that road who were pelting stones. shouting slogans and committing other acts of violence; a public bus was burnt, and a taxi cab which was proceeding ahead of K. K. Shah's car was stopped. Some three or four hundred people surrounded his car, pelted stones and shouted "maro" "maro". Some of them attempted to drag out Ratilal Sanghvi who occupied a corner seat; some caught hold of the appellant by his neck and hair and wanted to drag him out of the car. The appellant then opened fire with his revolver. The rioters then held back, and the way was clear for the car to pass. The car then drove away and after some time K. K. Shah and the appellant went to Gamdevi Police Station where the latter made a report of what had happened. The appellant was sent to Nair Hospital where he was medically treated and allowed to go.

The Coroner of Bombay held an inquest into the death of Sitaram at which K. K. Shah, Sashikant Kamtekar and several other witnesses were examined. The Coroner's Jury returned a verdict that Sitaram died of the gunshot wound caused by a bullet fired by the appellant "under such circumstances as would render the firing to be in exercise of the right of private defence and as such justified ". This verdict was returned on October 16, 1956. Sometime earlier, on July 3, 1956, to be precise, the complaining respondent had made an enquiry through his advocate from the Commissioner of Police, Bombay, as to whether the appellant had been arrested: the reply received was that the enquiries made by the police did not reveal any offence having been committed by the appellant and the police proposed to take no action.

On October 31, 1956, the respondent filed his complaint. The learned Presidency Magistrate to whom,, the complaint was made referred it to the Superintendent of Police, C. 1. D., for enquiry and report. Presumably, he acted under s. 202 of the Code of Criminal Procedure. On November 15, 1956, the Superintendent of Police submitted the report of his Inspector in which it was stated:

"From the exhaustive enquiries made immediately after the incident it was disclosed that Shri Vadilal Panchal was justified in resorting to firearms in self defence of himself and the other occupants of the motor car ". On January 17, 1957, the learned Magistrate gave the respondent another opportunity to examine his witnesses before the enquiring officer, because by reason of a revision application made to the High Court earlier against the order referring the case to the police for enquiry, the respondent did not produce his witnesses before the enquiring officer. The enquiring officer then examined all the witnesses and submitted his report on March 12, 1957. This time also the enquiring officer said : " From their statements and other evidence on record, it is clear that Shri Wadilal Panchal opened fire in the exercise of his, right of private defence, which verdict the learned Coroner's Jury also brought after a protracted hearing of the Inquest Proceedings. Copies of all statements recorded by me, are attached for reference ".

On April 30, 1957, the learned Presidency Magistrate considered the report of the enquiring officer in great detail with reference to the statements of all the witnesses and said:

" The Police have recorded in detail the statements of all witnesses produced by the Complainant as well as of all the occupants of the car. There is, therefore, material on record showing fully whether the circumstances existed making out the right of private defence available to the accused. The fact whether the case falls within one of exceptions or not can be established on the evidence of the witnesses produced by the prosecution itself though of course the burden of proof lies on the accused. From the statements, recorded by the Police in this case and from the surrounding circumstances of the case, I have come to the definite conclusion that the report of the police stating that the shot was fired by the accused in self-defence is true. As I have stated the statement of the police surgeon conclusively supports the conclusion. I have come to the conclusion that the statements of the four eye witnesses brought by the Complainant are false. These eye witnesses are not credible witnesses. It will be harassment to the accused and waste of public time if any process is issued in this case ". Accordingly, he dismissed the complaint under Section 203 of Code of Criminal Procedure.

Against this order of dismissal the respondent-Complainant moved the High Court. The High Court set aside the order of dismissal and directed the learned Presidency Magistrate to issue process against the appellant and deal with the case in accordance with law, on a ground which the High Court expressed in the following words:

" Now, in the case before us, causing of the death of Sitaram being indisputable, if it was found as the petitioner alleges that it was the shot fired by the respondent that caused the death of Sitaram, the accused ,would have to establish the necessary ingredients of the right of private defence as laid down in Section 96 and onwards of the Penal Code. We do not find anything in any of the sections in Chapter XVI to show that such an exception can be held to be established from the mere report of the police. That, in our view, is contrary to the provisions of s. 105 of the Indian Evidence Act which are mandatory provisions. There is nothing in Sec.202 or Sec.203 of the Criminal Procedure Code which abrogates the rule as to the presumption laid down in Sec.105 of the Evidence Act and the mode of proof of exception laid down in imperative language in that section.

In these circumstances and for the reasons aforesaid, we find that this was not a case in which it was proper for the learned Magistrate to dismiss the complaint under Sec.203, there being no evidence before the learned Magistrate as and by way of proof to establish the exception of the right of private defence pleaded by the respondent The appellant then moved this Court and obtained special leave to appeal from the order of the High Court dated September 13,1957.

The short question before us is-was the High Court right in its view that when a Magistrate directs an enquiry under Section 202 of the Code of Criminal Procedure for ascertaining the truth or falsehood of a complaint and receives a report from the enquiring officer supporting a plea of self-defence made by the person complained against, it is not open to him to hold that the plea is correct on the basis of the report and the statements of witnesses recorded by the enquiring officer? Must he, as a matter of law, issue process in such a case and leave the person complained against to establish his plea of self-defence at the trial? It may be pointed out here that the High Court itself recognised that it would not be correct to lay down a proposition in absolute terms that whenever a defence under any of the exceptions in the Indian Penal Code is pleaded by the person complained against, the Magistrate would not be justified in dismissing the complaint and must issue process. Said the High Court: "As we have already observed, if there is a complaint, which itself discloses a complete defence under any of the exceptions, it might be a case where a Magistrate would be justified in dismissing such a complaint finding that there was no sufficient ground to proceed with the case." We are of the view that the High Court was in error in holding in this case that as a matter of law, it was not open to the learned Presidency Magistrate to come to the conclusion that on the materials before him no offence had been made out and there was no sufficient ground for proceeding further on the complaint.

The relevant sections bearing on the question are Sections 200, 202 and 203.

"Sec.200. A Magistrate taking cognizance of an Offence on complaint shall at once examine the Complainant and the witnesses present, if any, upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the Complainant and the witnesses, and also by the Magistrate:

Provided as follows:-

(a) ..... (aa) .....

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and where the complaint is made in writing need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing ;

(c) .....

S. 202(1). Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance, or which has been transferred to him under Section 192, may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other that a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer, or by such other person

as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Provided that .....(it is unnecessary to read the proviso.

(2) If any inquiry or investigation under this section is made by a person not being a Magistrate or a police-officer, such person shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant. (2A) Any Magistrate inquiring into a case under this section may, if he thinks fit, take evidence of witnesses on oath.

(3) This section applies also to the police in the towns of Calcutta and Bombay.

S. 203. The Magistrate before whom a complaint is made or to whom it has been transferred, may dismiss the complaint, if, after considering the statement on oath (if any) of the Complainant and the witnesses and the result of the investigation or inquiry (if any) under Section 202, there is in his judgment no sufficient ground for proceeding. In such cases he shall briefly record his reasons for so doing ".

The general scheme of the aforesaid sections is quite clear. Section 200 says inter alia what a Magistrate taking cognisance of an offence on complaint shall do on receipt of such a complaint. Section 202 says that the Magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order, to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. Section 203, be it noted, consists of two parts: the first part indicates what are the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. Section 204 says that if in the opinion of the Magistrate there is sufficient ground for proceeding, he shall take steps for the issue of necessary process.

Now, in the case before us it is not contended that the learned Presidency Magistrate failed to consider the materials which he had to consider, before passing his order under Sec.203 of the Code of Criminal Procedure. As a matter of fact the learned Magistrate fully, fairly and impartially considered these materials. What is contended on behalf of the respondent-Complainant is that as a matter of law it was not open to the learned Magistrate to accept the plea of right of self-defence at a stage when all that he had to determine was whether a process should issue or not against the appellant. We are unable to accept this contention as correct. It is manifestly clear from the provisions of Sec.203 that the judgment which the Magistrate has to form must be based on the statements of the Complainant and his witnesses and the result of the investigation or inquiry. The section itself makes that clear, and it is not necessary to refer to authorities in support thereof. But the judgment which the Magistrate has to form is whether or not there is sufficient ground for proceeding. This does not mean that the Magistrate is bound to accept the result of the inquiry or investigation or that he must accept any plea that is set up on behalf of the person complained against. The Magistrate must apply his judicial mind to the materials on which he has to form his judgment. In arriving at his judgment he is not fettered in any way except by judicial considerations; he is not bound to accept what the inquiring officer says, nor is he precluded from accepting a plea based on an exception, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the Magistrate has not misdirected himself as to the scope of an enquiry under Sec.202 and has applied his mind judicially to the materials before him, we think that it would be erroneous in law to hold that a plea based on an exception can never be accepted by him in arriving at his judgment. What bearing such a plea has on the case of the Complainant and his witnesses, to what extent they are falsified by the evidence of other witnesses-all these are questions which must be answered with reference to the facts of each case. No universal rule can be laid in respect of such questions.

In support of its view the High Court has relied on some of its earlier decisions: Emperor v. Dhondu Bapu; Emperor v. Finan and Tulsidas v. Billimoria. We do not think that any of the aforesaid decisions lays down any such proposition in absolute terms as is contended for on behalf of the respondent. In Emperor v. Dhondu Bapu a complaint charging defamation was dismissed by the Magistrate under Sec.203 without taking any evidence, on the ground that the accused was protected by Sec.499, exception.

8. It was held that the order of dismissal was bad. Patkar, J., significantly observed:

"If the Magistrate in this case had taken evidence on behalf of the prosecution and on behalf of the accused, and passed a proper order for discharge, the order of the District Magistrate ordering a further enquiry without giving reasons might have stood on a different footing. We do not think that, under the circumstances of this case, there are adequate grounds for interfering with the order of the District Magistrate."

In Emperor v. Finan the accused did not dispute the correctness of the statements made by the complainant, but in justification pleaded the order passed by his superior officer and claimed protection under ss.76 and 79 of the Indian Penal Code. It is worthy of note that the order of the superior officer was not produced, but that officer very improperly wrote a letter to the Magistrate saying that he bad given such an order. In these circumstances, the same learned Judge who decided the earlier case observed: "It was, therefore, incumbent on the Magistrate to investigate the complaint and to find out whether (1) (1927) 29 Bom. L.R. 713,715. (2) (1931) 33 Bom. L.R. 1182. (3) (1932) 34 Bom. L.R. 910 the allegation of the accused that he was protected by Sections 76 and 79 of the Indian Penal Code was made out by legal evidence before him."

The facts in Tulsidas v. Billimoria were different, and the question there considered was whether a member of the Bar in India had absolute privilege. That decision has very little bearing on the question now before us. Our attention has also been drawn to a decision of the

Lahore High Court where the facts were somewhat similar: Gulab Khan, deceased, through Karam Khan v. Gulam Muhammad Khan and Others. In that case also the person complained against took the plea of self-defence, which was accepted. In the High Court an objection was taken to the procedure adopted and it was argued that the order of discharge should be set aside. In dealing with that argument Broadway, J., said :

"Now a Magistrate is empowered to hold an enquiry into a complaint of an offence in order to ascertain whether there is sufficient foundation for it to issue process against the person or persons complained against. In the present case the Magistrate clearly acted in the exercise of these powers under Section 202 Criminal Procedure Code. He allowed the Complainant to produce such evidence in support of his complaint as he wished to produce, and after a consideration of that evidence came to the conclusion that that evidence was so wholly worthy (unworthy ?) of credence as to warrant his taking no further action in the matter."

Therefore, none of the aforesaid decisions lay down as an absolute proposition that a plea of self-defence can in no event be considered by the Magistrate in dealing with a complaint under the provisions of Sections 200, 202 and 203 of the Code of Criminal Procedure.

On the facts, there is very little to be said. Learned Counsel for the State of Bombay supported the order of the learned Magistrate and pointed out that even on the narrow view taken by the High Court, a view (1) (1932) 34 Bom. L.R. 910.

(2) A.I.R. 1927 Lah 30 to which he did not, however, subscribe, the learned Magistrate rightly held that there was no sufficient ground for proceeding; because the earlier version of some of the witnesses for the Complainant itself showed that there was a riotous mob on the road which attacked cars, burnt a public bus, pelted stones, etc., which was quite inconsistent with their later version that Sitaram and his companions were quietly crossing the road and a shot was fired from a passing or moving car. **There was overwhelming material to show Chat K. K. Shah's car was surrounded by the mob and some of the rioters tried to drag out and attack the appellant. K. K. Shah was one of the witnesses mentioned by the Complainant and so also two of the Inspectors of Police. Their evidence clearly supported the plea of the appellant and in any case, showed that the witnesses examined on behalf of the respondent were totally unworthy of credence as to the circumstances in which the shots were fired. We cannot therefore say that the learned Magistrate was wrong in his judgment that there was no sufficient ground for proceeding further on the complaint**.

We accordingly hold that the High Court set aside the order of the learned Magistrate on an erroneous view of the scope of Sec. 203 of the Code of Criminal Procedure. We allow the appeal, set aside the order of the High Court dated September 13, 1957, and restore that of the learned Presidency Magistrate dated April 30, 1957.

Appeal allowed."

61(ii)(k). In ***Vadilal Panchal*** supra, the three Judge Bench of the Apex Court with

61(ii)(l). Subsequently in other Three Judge Bench expression of Apex Court in ***Sev***

61(ii)(m). In ***Sonu Gupta V. Deepak Gupta***[181] (2JB) it was held that at the sta

61(ii)(n). In ***Chandra Deo Singh V. Prokash Chandra Bose @ Chabi Bose***[182]

61(ii)(o). It was also held by the Four Judge Bench in ***Chandra Deo Singh*** supra b

61(ii)(p). In this context, **it is needful to mention from the Three Judges Bench**

61(ii)(q). Apart from it even in a subsequent expression of the Apex Court in ***Veer***

61(ii)(r). From the above, apart from ***Vadilal*** three Judge unanimous expression r

61(ii)(s). Apart from all the above, in the subsequent Division Bench expression of

61(ii)(t). In this context it is necessary to repeat that in ***Sewakram*** supra, the thre

61(ii)(u). In ***Raj Kapoor Vs. Laxman***[188] the Division Bench of the Apex Court c

"The position that emerges is this. Jurisprudentially viewed, an act may be an offence, definitional

61(ii)(v). From the above, the expression in ***Raj Kapoor*** supra clearly speaks the

61(ii)(w). Leave about ***Raj Kapoor,*** the subsequent expression to ***Sewakram*** in ***R***

61(ii)(x). Apart from the above, a single judge expression of this Court in ***Vedurun***

61(ii)(y). In ***Ravindra Kumar Madhanlal Goenka V. Rugmini Ram Raghav Spi***

61(ii)(z). In ***State of M.P V. Awadh Kishore Gupta***[191] what the Apex Court he

61(ii)(aa). It is categorically held in para Nos.8 and 13 of ***Awadh Kishore Gupta*** t

61(ii)(ab). In ***Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai P***

61(ii)(ac). In ***Shankar Narayan Bhadolkar V. State of Mharashtra***[193] it was

61(ii)(ad). Therefore, general exceptions are part of the definition of every offenc

61(ii)(ae). Thus from the line of expressions referred supra, consideration of defer

62)(i). Apart from the above, the Larger Bench of this Court in ***A.P.Civil Liberties Committee (APCLC), Vijayawada V. Government of Andhra Pradesh***[194], held on anatomy of defences in criminal law and with reference to what defences entitled by the accused and how to construe the penal provisions with reference to special exceptions and particularly of general exceptions as per Section 6IPC as follows:

"Section 6 IPC (Chapter II – the General Explanations) reads:
6. Definitions in the Code to be understood subject to exceptions:-

Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration.

On a true and fair construction of the provisions of Sec. 6 IPC, considered in the context of the legislative scheme qua the several provisions of the IPC, ***it is apparent that Sec. 6 explicates a convenient legislative formula to avoid reproduction of lengthy exceptions in the description of the each of the several offences. Consequently all offences enumerated in the Indian Penal Code must be read subject to the provisions in Chapter IV relating to General Exceptions (Secs. 76 to 106 IPC). Therefore, when an act falls within any of these exceptions, by virtue of the provisions of Sec.6, the accused must be accorded the benefit of the appropriate General Exception even though such exception is not specifically indicated in the description of the offence elsewhere in the IPC.***

In Seriyal Udayar vs State of Tamil Nadu (1987)2 SCC 359) (per Oza,J) the Supreme Court observed that even if on the basis of the material on record the right of private defence of the accused-appellant is not established, still the material produced in cross-examination and the circumstances discussed (by the court) do indicate that the incident might have happened in the manner in which it was suggested by the accused appellant and therefore it could not be said that the prosecution has been able to establish the offence against the appellant beyond reasonable doubt, the accused is entitled to acquittal.

It is therefore apparent that the provisions of the General Exceptions are implicated into the description and definition of all offences enumerated in the IPC. It is consequently the duty of all executors of the legislative obligations under the Penal Code, the recording officer in charge of a police station, the investigating officer or the appropriate Magistrate or Court of Session as the case may be, to consider every offence defined and sanctioned by the provisions of the IPC in the light and context of the General Exceptions set out in Chapter IV IPC.

Anatomy of defences in Criminal Law- The substantive provisions of Criminal Law indicate a general, internal structure of offences. These are:

(a) An offence is committed where an actor satisfies all the elements contained in the definition of that offence. There are 2 defining facets to an offence:

(i) Actus reus elements or the objective criteria of an offence which may consist of the conduct of the actor, the circumstances in which the conduct takes place and the results consequent on the conduct; and

(ii) The mens rea or the culpability element such as purpose or intention, knowledge, recklessness, negligence, or lack of culpability with regard to the engaging in the conduct, causing the result, or being aware of the circumstances specified in the objective element(s). Every offence must contain at least one objective element (actus reus element) consisting of the conduct of the actor.

Every actus reus element must have a corresponding mens rea element, which however may be different for each of the objective elements of the same offence. Sometimes, a culpability element may be required without a corresponding objective element – See **Sir Mathew Hale – Historia Placitorum Coronae (London-1736)**.

General defences- in Criminal Law are accommodations of complex notions of fairness and morality homogenized by demands of efficiency and utility. Defenses, in a generic sense are a set of identifiable conditions or circumstances that may prevent conviction for an offence. There appear in contemporaneous legal systems, a bewildering array of such possible bars to conviction. These include alibi; amnesia; authority to maintain law, order and safety of the community; chromosomal abnormality; consent; custodial authority; defense of habitation; defense of others; of property; de minimus infractions; diplomatic immunity; domestic or special responsibility; double jeopardy; duress;

entrapment; executive immunity; extreme emotional disturbance, hypnotism; impaired consciousness; impossibility; incompetence; insanity; intoxication; involuntary act defences; judicial authority; judicial immunity; justification; law enforcement authority; legislative immunity; medical authority; mental illness apart from insanity; military orders (lawful or otherwise); mistake (of fact and sometimes of law); necessity; plea bargained immunity; provocation; **public duty authority**; reflex action; renunciation; self-defense; Statute of limitations; testimonial immunity and the like – See: **Paul H. Robinson – Criminal Law Defenses: A systematic Analysis.**

Non exculpatory public policy defences- include Statute of limitation(Sec. 468 CrPC); double jeopardy (Art.20(2) of the Constitution r/w.Sec.300 CrPC); diplomatic immunity; testimonial immunity [Art.20(3) of the Constitution]; plea bargained immunity (Chpt.XXI A, CrPC); ***Judicial, Legislative and Executive immunity (Sections 77 and 78 IPC, Art.361(2) and (3) of the Constitution);*** incompetence defenses (Sec. 82 and 83 IPC). Defenses of this class are not based on the lack of culpability of the actor. They are pure public policy arrangements. The immunity from conviction flows not on account of established non-culpability of the actor or the innocence of the defendant but on account of the countervailing public policy interests recognized, accommodated and provided by the legislature.

Justification Defenses: In justification defenses the offence caused by the justified behavior remains a legally recognized harm. Excusing conditions as defense constitute part of justification defenses and are available so long as the condition has been caused by a disability, transient or permanent and is present at the time of the offence. Under the special justifying circumstances however that harm is outweighed by the need to avoid a greater harm or to further a larger societal interest. Self-defense or defensive force justifications are all based on a threat in response to which the defensive force is justified. They are often distinguished by one another by the nature of the interest threatened. Statutes too often make special alterations or exceptions to the basic principle of defensive force justification depending on the interests threatened. The general exceptions enumerated in Sections 96 to 106 in Chapter IV of the IPC fall within this category of defences.

In our considered view these apprehensions are misplaced. Sections 77 and 78 IPC carve out a general exception from culpability in favour of judicial authority or acts done pursuant to a judgment or an order of a Court. Where the information conveyed is that the conduct complained of is by a judicial authority or pursuant to a judgment or an order of the Court, the information is inherently not as to the commission of any offence (in view of Sections 6 r/w.77 & 78 IPC); further convictions and sentences are by the court, the officer performing the functions of office. Where however the information is to the effect that a person masquerading as judge or not acting in such capacity had committed a cognizable offence, then and in such circumstance the recording officer must record the information and register the same as a First Information Report. We perceive no serious or grave public mischief ensuing as a consequence of interpreting Section 154 (1) CrPC on its normal textual terms.

It requires to be noticed that Article 261 of the Constitution enjoins that Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State. The appointment of a judge is a public act and the particulars and designation of appointment as a judge are matters of public record. Even if a mischievous complaint is made that a named individual masquerading as a judge had passed an order; whether the named individual is a judge is an easily discoverable public act and a matter of public record. Even the provisions of Section 81 of the Evidence Act enjoin that a Court shall presume the genuineness of any official gazette or government gazette. Judicial appointments of every hue and hierarchy through out the territory of India are gazetted appointments.

For reasons alike, as discussed in the preceding paragraphs, complaints against persons entitled to incompetence defenses such as infants (Sections 82 and 83 IPC) or against medical authority (Sections 88, 89 and 92 IPC) may either require to be recorded and registered as FIR or not, depending upon the idiosyncratic facts, context and circumstances of the information. In any event, the failure to record the information or register the FIR wherever warranted by law, is productive of far greater public mischief than the inconvenience occasioned by recording and registering the FIR. It must also be recognized that the exceptions in favour of judicial authority or the immunity vouchsafed to acts done pursuant to an order or judgment of a Court comprise public policy class of defenses. The language of Sections 77 and 78 IPC shows that the exculpation is absolute and not hedged in by limitations as in the case of private/self-defense justifications. As we have earlier herein considered on analyses of the textual, juridical and precedential exposition of defense justifications, private defense is a right available as only a preventive and not a retributive measure and proportionality of the defensive force employed to an initial aggression, is an integral component that defines the contours of justifiable claims to a defensive force justification. The general exceptions enumerated in favour of judicial authority or in respect of acts done pursuant to a judgment or order of the Court are thus qualitatively dissimilar and provide an absolute exculpation. We perceive no substance in this contention except sophistry.

Empirical analysis, textual and curial authority with respect to self defense justifications considered supra indicates that the need of self-preservation is rooted in the doctrine of necessity. It is the rule of necessity to which a party may have a recourse under certain situations to prevent greater personal injury or injury to others which he may apprehend. Self-preservation is more an instinctive than a cognitive condition of a majority of the living species and in particular human beings. This instinct is recognized a lawful defense in the laws of civilized Nations and finds legislative expression in Sections 96 to 106 IPC. These statutory provisions per se and as expounded in decisions are clearly to the effect that the Exceptions are hedged in and circumscribed by conditions and limitations including the imminence and gravity (standard) of the threat and conditions as to the requirement of proportionality of the response/defense."

62)(ii). At para No.146 in ***A.P.Civil Liberties Committee*** supra, it is observed that the provisions of CrPC must be understood and executed in conformity with the contemporaneous contours of Article 21 as by curial opinions expounded.

62)(iii). At para No.152 in ***A.P. Civil Liberties Committee*** supra it is observed that the inexorable mandate of law cannot be sacrificed at the altar of expediency or to placate executive phobia of the legal processes.

63)(i). Apart from it, the Apex Court in ***Amit Kapoor V. Ramesh Chander***[195] 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 (Munniswamy) for administration of which alone the Courts exercise.

63(ii). ***The principle thus laid down is before issuing a process and taking cognizance the Court has to consider from the existing material whether case falls within the exception and only if not, to say prima facie accusation on a complaint to take cognizance for criminal defamation if makes out. It is something different of prima facie consideration at pre-cognizance stage to the post-cognizance defence available to the accused under any of the exceptions in detail to make out. In the said defence the accused is entitled to participate and defend by placing material as of right; whereas at the pre-cognizance stage, the Court has to consider from the material placed by the Complainant to come to a conclusion from that enquiry, whether that material benefits the accused who is not even before the Court to any of the exceptions.***

64(i). When such is the case, so far as the quash Court under Section 482 CrPC fro

64(ii). Said three Judge Bench expression in ***Vadilal*** supra and several expressior

64)(iii). Apart from several expressions on the above scope referred supra, the o

64)(iv). It was also way back laid down by the Apex Court in ***Narshi Thakershi Vs.***

64)(v). No doubt, in ***M.Arumugam V. Kittu @ Krishna Murthy***[198], the scope of inherent powers and consideration of the material placed by accused, it was observed in a case for defamation under prosecution that,

> "It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bonafide would, thus, be on the appellant alone.
>
> At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities. Strong reliance has been placed by Mr. Sivabalamurugan on a decision of this Court in Rajendra Kumar Sitaram Pande Etc. v. Uttam and Another [1999 (1) SCR 580]. Accusation against the accused therein related to the conduct on his part before the Treasury Officer. The learned Magistrate, when the complaint was filed, instead of issuing process called upon the Treasury Officer to hold an inquiry and submit a report in the court. Pursuant thereto and/or in furtherance thereof, a report was submitted. In the said report, the Treasury Officer clearly indicated that pursuant to the report made by the accused persons against the

complainant, a departmental enquiry had been made and the Complainant was found guilty. It was in the aforementioned situation, the Magistrate's order refusing to issue summons was upheld by this Court".

64)(vi). In ***Jawarlal Darda V. Manoharrao Ganpatrao Kapsikar***[199] in a defamation case against accurate news item published of the statement of Minister disclosing misappropriation of Government funds and the Complainant is mentioned as one of the persons involved therein, it was upheld the order of the Sessions Judge quashing the proceedings by setting aside the reversal order by High Court by the Apex Court and in that context held that:

"It is quite apparent that what the accused had published in its newspaper was an accurate and true report of the proceedings of the Assembly. Involvement of the respondent was disclosed by the preliminary enquiry made by the Government. If the accused bona fide believing the version of the Minister to be true published the report in good faith it cannot be said that they intended to harm the reputation of the complainant. It was a report in respect of public conduct of public servants who were entrusted with public funds intended to be used for public good. Thus the facts and circumstances of the case disclose that the news items were published for public good. All these aspects have been overlooked by the High Court".

65)(i). From the above, **coming to order or direction of Court bound to comply not only by parties to the petition before the authority in passing the order but also any other person having knowledge with no right to violate and otherwise liable for contempt or other legal consequences concerned**, the law is well settled that no person can violate judicial orders of the Courts, having come to knowledge of such orders, only on ground that they have not received the orders or they are not parties before the Court while passing the orders.

65(ii). ***In Aligarh Municipal Board vs. Ekka Tonga Mazdoor Union***[200] the Supreme Court held that the omission to annex a certified copy of the stay order is not material and that in order to justify action for Contempt of Court for breach of a prohibitive order, it is not necessary that the order should have been officially served on the party against whom it is granted, if it is proved that he had notice of the order aliunde and he knew that it was intended to be enforced. A similar view was reiterated by the Supreme Court in ***Bunna Prasad vs. The State of U.P.***[201]**.**

Similar is the expression of this Court(another bench) in ***T.Nagaratnamma V. G.Ram Murthy***[202]**.**

65(iii). In ***Supreme Court Bar Association V. Union of India***[203], the Apex Court constitutional bench on the scope of Contempt jurisdiction observed that:

"The contempt of court is a special jurisdiction to be exercised sparingly and with caution, whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely effects the Majesty of Law or dignity of the courts. **The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperiled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. it is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice**".

65(iv). In ***Pavan Talkies, Nizamabad V. Rajesh Kumar***[204] referring to the

expression of ***Supreme Court Bar Association*** supra among others of the Apex Court, it was held at para No.42 that the case law discussed above reveals that Courts are sensitive to the deliberate flouting or overreaching of its orders and whenever such instances are brought to their notice, they are dealt with heavy hand. Such an approach is made in order to uphold of Majesty of Courts of Law and protect the public faith and confidence in the judicial system. The acts calculated at overreaching or circumventing the judicial orders passed by the Courts are viewed with all seriousness they deserve and the perpetrators of such acts are appropriately punished.

65(v). In this expression even the binding nature of the orders on persons not parties to obey it was observed that - - - - indeed the law is well settled that if a person, who is not a party to the judicial proceedings, had knowledge of an order and if he violates the same is equally liable for punishment as those, who are parties to the proceedings. The leading English Case on this aspect is Seaward V. Paterson 1897(1) CH 545, that "there is no injunction against him – he is no more bound by the injunction granted against Paterson than any other member of the public. He is bound like other members of the public, not to interfere with, and not to obstruct, the course of Justice; and the case, if any, made against him must be this – not that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been aiding and abetting others in setting the Court at defiance, and deliberately treating the order of the Court as unworthy of notice".

65(vi). In ***Satyabrata Biswas V. Kalyan Kumar Kisku*** ***[205]*** it was observed regarding the violation of the Court order and consequences that in the suit filed by 1st respondent for declaration of right and title to the property, *status quo* order passed as on that date by the High Court dated 15.09.1988 in respect of the property, however, violating the same appellants/defendants by putting padlock on the entrance of the premises, disconnected water supply and blocked sewerage etc, a special officer of the Court pursuant to the direction inventoried and put his padlock and an oral application of 2nd respondent made claiming as sub-tenant based on alleged agreement dated 10.05.1993. The High Court directed removal of the padlock though 2nd respondent was then not a party to the proceeding and the appeal filed by the appellants/defendants complainant said removal of the padlock and against said single Judge's order, Division Bench of the High Court observed instead of allowing the 2nd respondent to occupy the premises went beyond the contempt jurisdiction saying tenant was not entitled to grant sub-lease and when the matter went before the Apex Court, it was held tenant was not entitled to sub-lease in violation of the *status quo* order and on the maxim *actus curia nevanim gravabit* all actions in violation of *status quo* order are held illegal. It was observed the order is binding on the 2nd respondent even not a party to the contempt proceedings supra for he cannot gain any advantage in derogation of the rights of the parties who were litigating before the Court.

65(vii). After a detailed analysis, a Full Bench of the Madras High Court in ***Vidya Charan Shukla V. T.N.O.A***[206] held as follows:

> "we can see this clearly that the Courts in India invariably accepted the law applied in English and found (i) a party to the suit, if he had notice or knowledge of the order of the Court and (ii) a third party or a stranger, if he had aided or abetted the violation with notice or knowledge of the order of injunction, guilty of civil contempt and otherwise found a third party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order or direction".

66)(i). **Coming to non-filing of material documents and non-disclosure of material disclosures by the Complainant and entitlement of assistance of the Court with that to prosecute the accused concerned**:

66(ii). In ***Chandrapal Singh V. Maharaj Singh***[207] it was held on abuse of process under Section 482 CrPC that landlord lease case in civil Court implicating tenant in frivolous prosecution amounts to abuse of process of law, which must be prevented by High Court by quashing the proceedings under Section 482 CrPC.

66(iii). In ***Padal Venkata Rama Reddy @ Ramu V. Kovvuri Satyanarayana Reddy***[208] 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.

66(iv). In ***K.D.Sharma V. Steel Authority of India Limited***[209] it was held in a civil matter as to what is abuse of process that in a case the Court may dismiss a petition at the threshold without considering the merits of the claim where the petitioner makes false statements or conceals material facts or misleads the Court and Court would be failing in its duty if it does not reject the petition on that ground apart from petitioner in such a case is also required to be dealt with contempt of Court for abusing the process of the Court. It was on facts held appellant did not approach with clean hands by disclosing all facts and the true facts ascertained show contrary to what was sought to be placed before the Court in saying in this ground appellant cannot claim equitable relief in dismissing the civil appeal with costs.

66(v). In **Inder Mohan Goswami V. State of Uttaranchal**[210] **(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.

66(vi). In ***Manohar Lal V. Ugrasen*** [***[211]***](), in a matter pertaining to U.P. Urban Planning and Development Act enforcement pointing out about a superior authority cannot exercise the power of the original statutory authority and on the power to grant relief not specifically asked in writ jurisdiction and on the entitlement of relief by a writ petitioner who did not come to Court with clean hands and the power of contempt under the Act 1971 observed as follows:

> "When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. "Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice." Who seeks equity must do equity. The legal maxim "Jure naturaw aequum est neminum cum alterius detrimento et injuria fieri locupletiorem", means that it is a law of nature that one should not be enriched by the loss or injury to another. (vide The Ramjas Foundation & Ors. Vs. Union of India & Ors. AIR 1993 SC 852; K.P. Srinivas Vs. R.M. Premchand & ors. (1994) 6 SCC 620 and Nooruddin Vs. (Dr.) K.L. Anand (1995) 1 SCC 242).
>
> 48. Similarly, in Ramniklal N. Bhutta & Anr. Vs. State of Maharashtra & Ors. AIR 1997 SC 1236, this Court observed as under:-
>
> "The power under Article 226 is discretionary. It will be exercised only in furtherance of interest of justice and not merely on the making out of a legal point.....the interest of justice and the public interest coalesce. They are very often one and the same.....The Courts have to weigh the public interest vis-à-vis the private interest while exercising.....any of their discretionary powers (Emphasis added).
>
> 49. In M/s Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr. AIR 1970 SC 898; State of Haryana Vs. Karnal Distillery, AIR 1977 SC 781; and Sabia Khan & Ors. Vs. State of U.P. & Ors. AIR 1999 SC 2284, this Court held that filing totally misconceived petition amounts to abuse of the process of the Court. Such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court. A litigant is bound to make "full and true disclosure of facts."
>
> 50. In Abdul Rahman Vs. Prasony Bai & Anr. AIR 2003 SC 718; S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors. (2004) 7 SCC 166; and Oswal Fats & Oils Ltd. Vs. Addl. Commissioner (Admn), Bareily Division, Bareily & Ors. JT 2010 (3) SC 510, this Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it."

66(vii). It was held at para No.26 on the duty of a party to approach with clean hands and otherwise disentitled to the judicial equitable and discretionary reliefs, as follows:

> "26. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it."

66(viii). Ultimately, relying upon ***Vijay Syal V. State of Punjab*** [***[212]***]() it was held as follows:

> "In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is

a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice".

67). **Coming to consider further in addition to what is discussed supra with reference to several expressions on what is ends of justice and what is abuse of process**;

67)(i). In ***Chandran Ratnaswami V. K.C.Palanisamy***[213] it was held on abuse of process and duty of the Court to quash the proceedings in such case that:

"29. The doctrine of abuse of process of court and the remedy of refusal to allow the trial to proceed is well-established and recognized doctrine both by the English courts and courts in India. There are some established principles of law which bar the trial when there appears to be abuse of process of court. Lord Morris in the case of Connelly vs. Director of Public Prosecutions, (1964) 2 All ER 401 (HL) observed: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. A court must enjoy such powers in order to enforce its rule of practice and to suppress any abuse of its process and to defeat any attempted thwarting of its process". "The power (which is inherent in a court's jurisdiction) to prevent abuse of its process and to control its own procedure must in a criminal court include a power to safeguard an accused person from oppression or prejudice." In his separate pronouncement, Lord Delvin in the same case observed that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial.

30. In Hui Chi-Ming vs. The Queen [(1992) 1 AC 34 (PC)], the Privy Council defined the word "abuse of process" as something so unfair and wrong with the prosecution that the court should not allow a prosecutor to proceed with what is, in all other respects, a perfectly supportable case.

31. In the leading case of Bennett vs. Horseferry Road Magistrates' Court, (1993) 3 All ER 138, on the application of abuse of process, the court confirms that an abuse of process justifying the stay of prosecution could arise in the following circumstances:

(i) where it would be impossible to give the accused a fair trial; or
(ii) where it would amount to misuse/manipulation of process because it offends the court's sense of justice and propriety to be asked to try the accused in the circumstances of the particular case."

67(ii). In ***Central Bureau of Investigation v. Ravi Shankar Srivastava***[214] 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.

67(iii). Thereby, Court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution, as easy access to Justice not to be used as a licence to file misconceived petitions or by non-disclosure of material facts or by non-filing of material documents.

68(i). Coming to duty of the Court in exercise of the inherent power to subserve the ends of justice, as laid down in ***Surender Prasad Sinha*** supra is by keeping in mind that- 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 or to allow to work for vengeance.

68(ii). It was also observed referring to ***Smt.Nagowwa*** supra that where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the Complainant does not disclose the essential ingredients of an offence which is alleged against the accused or where the discretion exercised by the Magistrate in issuing process is arbitrary having been based either on no evidence or on materials which are wholly irrelevant order of the Magistrate issuing process against the accused can be quashed or set aside.

68(iii). It was also held in ***Popular Muthaiah*** *supra* that the inherent power is not confined to procedural or adjectival law but even extending to determine substantial rights of the parties and it can be exercised in respect of even incidental or supplemental power irrespective of nature of proceedings; as it acts ***ex debito justitiae***-to mean to do real and substantial justice in the lis for which alone the power exists inherently.

68(iv). In **Nawabganj Sugar Mills Vs. Union of India**[215] it was held that, ***though there are limitations on the powers of the Court, it cannot abandon its inherent powers. The inherent power has its roots in necessity and its breadth is coextensive with the necessity***.

68(v). **In South Eastern Coal Fields Ltd. Vs State of M.P.**[216] it was held that **act of court does not confine to act of primary court, but even appellate or other superior court as it is an act of court as a whole**. **The Maxim *actus curiae neminem gravabit*-principle is not confined to erroneous act of court, but is applicable to all acts which the court would not have passed if correctly appraised of the facts and the law.**

68(vi). In **B.P.A.Anand Vs. S.A.Reddy**[217] **the Apex Court observed by**

referring to-Law in the scientific era and the theory of dynamic positivism by **Justice-Markandey Katju; Cicero** on jurisprudence; **Justinian's *corpus juris civilis;* Lord Denning's** 'the due process of law' and from **Hart's** *open texture of Law* that- **'Justice is constant and perpetual wheel to render everyone that to which he is entitled. Justice is the disposition of the human mind to render every one the due. Law does not remain static or stand still; it does not operate in a vacuum. It moves continuously so as to serve the needs of the time**. ***As social values and norms change, laws too have to be reinterpreted and recasted*.** Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment of human relations by elimination of conflicts. An unusual fact situation posing issues for resolution is an opportunity for innovation'. Thus Life if law generally speaking is not logic but experience, which is the basis for development and evaluation of law. In fact legislation alone cannot radically change the fabric of society in a span of time. Attitude and values in society have to change, for common good.

68(vii). In **Merla Veera Venkata Satyanarayana Chowdary Vs. State of Andhra Pradesh**[218] a Division Bench of this Court held that remedies are the life of rights, it is the availability of a right to sue in a Civil Court that turned the English law into a law of liberty and where a new combination of circumstances arise, it is incumbent upon the Court to apply rule of law which could be derived from the general principles in furtherance of justice.

68(viii). In **Jaipur Mineral Development Syndicate Vs Commissioner of Income Tax, New Delhi**[219]- it was held that every Court is constituted for the purpose of rendering justice according to law and must be deemed to possess necessary and inherent power that of elasticity in its very constitution in exercise of or, as may be necessary, to do a right or undo a wrong in the course of administration of justice.

68(ix). It is needless to say ends of Justice are higher than the ends of mere law, though justice has got to be administered according to laws made by the legislature. Without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction. Having regard to all the above, the cognizance taken by the learned Magistrate is liable to be quashed. The learned Sessions Judge in deciding the revision petitions did not properly advert to all the material facts covered supra and thus went wrong in saying the order of the magistrate is by consideration of material and thereby it requires no interference but for to delete Section 409IPC in retaining the cognizance order for offences under Sections 120B, 420 and 406 IPC. Consequently the quash petitions against the revision orders are to be allowed and the other set of quash petitions of self same petitioners against revision orders can be closed for no more orders but for others by allowing for very cognizance order in its entirety is unsustainable as concluded supra for various reasons from consideration of the material on record within the scope of the inherent powers of the High Court under Section 482 CrPC.

68(x). The impugned revision orders of the learned Sessions Judge as if the order of cognizance taken by the learned Magistrate so far as the offences under Sections 120B & 406 IPC is by consideration of the material in a proper perspective is untenable and unsustainable and as referred supra the order of cognizance taken by the learned Magistrate so far as the offences under Sections 120B, 406& 409 IPC is outcome of non-application of judicial mind to relevant material and influenced by irrelevant material and by non-consideration of no offence made out against the accused persons, even against A1 or A14 leave about A3 or A6 or A9 for nothing against others.

69) Accordingly and in the result:

(I). The criminal petitions

i)(a) Crl.P.No.3972 of 2015 against the Crl.Rev.Ptn.No.68 of 2014 filed by A1,

ii)(a) Crl.P.No.4305 of 2015 against the Crl.Rev.Ptn.No.80 of 2014 filed by A-2,

iii)(a) Crl.P.No.3875 of 2015 against the Crl.Rev.Ptn.No.115 of 2014 filed by A-3,

iv)(a) Crl.P.No.4773 of 2015 against the Crl.Rev.Ptn.No.118 of 2014 filed by A-4,

v)(a) Crl.P.No.4772 of 2015 against the Crl.Rev.Ptn.No.119 of 2014 filed by A-5,

vi)(a) Crl.P.No.4237 of 2015 against the Crl.Rev.Ptn.No.81 of 2014 filed by A-6,

vii)(a) Crl.P.No.3873 of 2015 against the Crl.Rev.Ptn.No.82 of 2014 filed by A-9,

viii)(a) Crl.P.No.4455 of 2015 against the Crl.Rev.Ptn.No.83 of 2014 filed by A-12 and

ix)(a) Crl.P.No.4238 of 2015 against the Crl.Rev.Ptn.No.84 of 2014 filed by A-14

are all allowed and the revision orders supra are set-aside and consequently the proceedings in C.C.250 of 2013 against the above accused persons 1 to 6, 9, 12 and 14 are quashed. The bail bonds of the above accused, if any, shall stand cancelled.

II).

i)(b) The quash petition of A-1 in Crl.P.No.5797 of 2015 is closed for no more orders are required;

ii)(b) The quash petition of A-2 in Crl.P.No.5798 of 2015 is closed for no more orders are required;

iii)(b) The quash petition of A-3 in Crl.P.No.3882 of 2015 is closed for no more orders are required;

iv)(b) The quash petition of A-4 in Crl.P.No.5776 of 2015 is closed for no more orders are required;

v)(b) The quash petition of A5 in Crl.P.No.5777 of 2015 is closed for no more orders are required;

vi)(b) The quash petition of A-6 in Crl.P.No.5689 of 2015 is closed for no more orders are required;

vii)(b) The quash petition of A-9 in Crl.P.No.5799 of 2015 is closed for no more orders are required;

viii)(b) The quash petition of A-12 in Crl.P.No.5800 of 2015 is closed for no more orders are required;

ix)(b) The quash petition of A-14 in Crl.P.No.3883 of 2015 is closed for no more orders are required;

III). However the quash petitions of (a).A-7 in Crl.P.No.4906 of 2015, (b).A-10 in Crl.P.No.4696 of 2015 and (c).A-11 in Crl.P. No.6159 of 2015 are all allowed and consequently the proceedings in C.C.250 of 2013 against the above accused persons 7,10 & 11 are quashed. The bail bonds of the accused, if any, shall stand

cancelled.

IV). Though A-8 did not file any quash petitions, in view of the entire proceedings in C.C.250 of 2013 are held liable to be quashed, same is quashed against A-8 also and the bail bonds of the A-8, if any, shall stand also cancelled.

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

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Dr. B. SIVA SANKARA RAO, J

Dt.01.04.2016

Note: L.R.copy to be marked.
Ksh/Vvr

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[1] (2010)7 SCC 449
[2] (1979)2 SCC 305=AIR 1979 SC 87
[3] AIR 1990 SC 1605
[4] (1981)1 SCC 500
[5] (2001)1 SCC 169
[6] 2003 CrLJ 3087 (MP)
[7] (1975)3 SCC 706
[8] (1988)1 SCC 537
[9] 1990 (19) DRJ 139(Delhi)
[10] 1984 CrLJ 1866(Delhi)
[11] 1990 Supt SCC 132
[12] AIR 1993 SC 1361
[13] 1995 (5) SCC 751
[14] 1999 (6) SCC 326
[15] (2003)6 SCC 641
[16] AIR 2009 SC 1032=(2009)2 SCC 370
[17] (2013)7 SCC 789
[18] (1980)1 SCC 43
[19] AIR 1961 SC 218
[20] AIR 1962 SC 527
[21] AIR 1977 SC 1489
[22] AIR 1979 AP 146
[23] (2012)9 SCC 460
[24] (1997) 4 SCC 241= AIR 1997 SC 987
[25] (1977)4 SCC 551=AIR 1978 SC 47
[26] (1980) SCC (Crl) 695
[27] Crl.A.No.1686 and 1687 of 2009 decided on 13.01.2015
[28] (2005)2 SCC 571
[29] (2009) 3 SCC 310
[30] (1999)5 SCC 622
[31] (2009)7 SCC 495
[32] (2014)3 SCC 389
[33] (2012)6 SCC 782
[34] 2006(3) SCC-245 at paras-30&31 page-260.
[35] 2000(1)CTC 545.
[36] 2014(2) ALD (Crl) 693
[37] (2000) 4 SCC 459
[38] (2012)2 SCC 731
[39] AIR 1961 SC 1808
[40] (2010)6 SCC 1
[41] AIR 1978 SC 1025
[42] 384 US 436 (1966)
[43] 2014 (3) SCC 306=AIR 2013 SC 3018
[44] 2015 (6) SCC 287
[45] 2015 (6) SCC 439

[46] 2013(10) SCC 705
[47] 2013 (5) SCC 615
[48] 2012(11) SCC 465
[49] 2012 (5) SCC 424=AIR 2012 SC 1747
[50] 2010(8) SCC 206
[51] 2009(13) SCC 241
[52] 2009 (2) SCC 147
[53] 2008 (5) SCC 668
[54] 2003 (4) SCC 139
[55] 2000 (3) SCC 745
[56] 2000 (1) SCC 722
[57] 1999 (8) SCC 728
[58] 1976 (3) SCC 736
[59] (2015) 4 SCC 609
[60] (2014)2 SCC 62
[61] 2014(2)SCC page 1
[62] 2007(3) SCC 693
[63] 2007(5) SCC 54
[64] 2005 4 SCC 70
[65] 1998(5) SCC 749
[66] 2008(50SCC 662
[67] (2006) 10 SCC 581
[68] (2009) 6 SCC 372
[69] (1976) 3 SCC 252
[70] (2005) 7 SCC 467
[71] 2002(2) SCC 636
[72] (2006)6 SCC 736
[73] AIR 1955 SC 196
[74] 2003 (2) SCC 649
[75] 2012(12) SCC 321
[76] MP (2012) 10 SCC 517
[77] 2007 12 SCC 641
[78] 2006 1 SCC 627
[79] 2015 3 Scale 782
[80] (2006)2 SCC (Crl.) 49
[81] (2007) 14 SCC 776
[82] (2009) 3 SCC 78
[83] (2014) (3) SCC 389
[84] (2014) 3 SCC 206
[85] (2012) 5 SCC 661
[86] (2011)1 SCC 74
[87] (2006) 10 SCC 581
[88] (*2005*) 8 SCC 89
[89] (2005) 4 SCC 530
[90] (2013)4 SCC 505
[91] 2011 (13) SCC 412
[92] (2015) SCC OnLine SC 320 (CrlA.No.1347 of 2010, dated 31.03.2015 (2JB))
[93] 2014 (13) SCC 699
[94] 2014 (13) SCC 133
[95] 1980 (4) SCC 631
[96] 1982 (3) SCC 510
[97] 1989 (2) SCC-132
[98] 2003 (1) SCC 734
[99] 2004 (7) SCC 768
[100] 2011(15) SCC 513
[101] (2009) 3 SCC 375
[102] 2008)2 SCC 492
[103] (2012)3 SCC 132
[104] (2009)1 SCC 516
[105] (2009)6 SCC 475
[106] (2010)3 SCC 330
[107] (2012)5 SCC 661
[108] (2000)1 SCC 1

[109] (2008)13 SCC 703
[110] 1973 SCC 491
[111] (2014)10 SCC 373
[112] 2010(2) ALD (Crl.) 564 (SC)
[113] 2013(2) ALD (Crl.) 331 (AP)
[114] AIR 2015 SC 675
[115] 2015(3) L.S 239
[116] AIR 1992 SC 1815=(1993) Supp. 1 SCC 499
[117] (2015)1 SCC 103
[118] (2014)4 SCC 282
[119] (2010)10 SCC 361
[120] (1970)2 SCC 740
[121] (2000)3 SCC 269
[122] (2003)5 SCC 257
[123] (2006)1 SCC (Crl) 746
[124] 2003 Crl.L.J 1249
[125] (1991) SCC (Crl.) 84
[126] AIR 1963 SC 1572
[127] (1999)2 SCC 617
[128] (2010) 10 SCC 361
[129] (2013)2 SCC 488
[130] 2002(1)ALD (Crl.)108(SC)
[131] (2014)2 SCC 683
[132] (1977)3 SCC 7
[133] AIR 1969 SC 40
[134] (2010)10 SCC 479
[135] AIR 1965 SC 682
[136] MANU/DE/2535/2008 dated 04.07.2008
[137] (1992) Supp.1 SC 335
[138] (2005) 10 SCC 261
[139] MANU/DE/2077/2012 dated 09.07.2012
[140] 2005 (1) ALD (Crl.) 150 (AP) (FB)
[141] 2001 (1) ALD (Crl.) 489 (A.P)
[142] (2015)1 SCC 513
[143] (2014)13 SCC 553
[144] (2008)5 SCC 765
[145] (1998)2 SCC 493
[146] 2014 (7) SCC 215
[147] (1988)1 SCC 692 = AIR 1988 SC 709
[148] (2014)10 SCC 663
[149] AIR 1953 SC 478
[150] AIR 2008 SC 1683
[151] ILR 1940 Mad 968
[152] 2014 SCC Online Del 6600
[153] (2013)1 SCC 212
[154] (2012) 1 SCC 520
[155] (2011) 3 SCC 351
[156] 2007 (12) SCALE 391
[157] (2008)14 SCC 1
[158] (2013)9 SCC 293
[159] 2013(3)SCC-330
[160] 2012(1)SCC-520
[161] 1928 SCC OnLine US SC 131
[162] (1970)2 SCC 888
[163] (1973)1 SCC 471
[164] (1987)3 SCC 367
[165] 1979(2) All.E.R.1222
[166] 1995(1) All.E.R.236
[167] 1974(1)SCC-345
[168] 1978(Crl)SCC-198
[169] AIR 1999 SC 2355

[170] (2011)1 SCC 609
[171] Vol.13 Queens Bench Division page 168(1889)= 23 Q.B.D. 168.
[172] 1982 CriLJ 1960
[173] 2004 SCC Online Cal 602
[174] 2001 SCC OnLine Cal 43
[175] AIR 1970 All. 51
[176] AIR 2001 SC 2037
[177] (1981)4 SCC 2
[178] (2015 SCC Online SC 583 (Crl.A.No.836 of 2015, dt.01.07.2015) (2JB)
[179] AIR 1960 SC 1113
[180] (1981)3 SCC 208
[181] (2015)3 SCC 424, dt.11.02.2015
[182] (1964)1 SCR 639
[183] AIR 1983 SC 1155
[184] (2005)1 SCC 149
[185] (2002)5 SCC 111
[186] (1981)1 SCC 722
[187] 1999(3)SCC-134
[188] 1980 (2) SCC 175
[189] 1997 Crl.L.J 3851
[190] (2009)11 SCC 529
[191] (2004)1 SCC 691
[192] (2012) 10 SCC 517
[193] (2005)9 SCC 71
[194] 2009(2) ALD 1 (LB)(AP)
[195] (2012)9 SCC 460
[196] 2003 CBC 393(SC)
[197] (1971)3 SCC 844
[198] (2009)1 SCC 109
[199] (1998)4 SCC 112
[200] (1970)3 SCC 98
[201] AIR 1968 SC 1348
[202] *2015 (5) ALT 21*
[203] (1998)4 SCC 409
[204] 2008(6)ALD 460(AP)
[205] (1994)2 SCC 266
[206] AIR 1991 Mad.323
[207] (1982)1 SCC 466
[208] (2011)12 SCC 437
[209] (2008)12 SCC 481
[210] (2007) 12 SCC 1
[211] (2010)11 SCC 557
[212] (2003)9 SCC 401
[213] (2013)6 SCC 740
[214] (2006) 7 SCC 188
[215] 1976-1-SCR-803
[216] 2003(8) SCC-648 at paras-27&28 page-664.
[217] 2005(3) SCC-313 at 318.
[218] AIR 1980 AP 154
[219] AIR 1977 SC 1348