

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 97 OF 2018**

	Niranjan Lakhumal Hiranandani s/o Late Dr. Lakhumal Hiranandani Age 67 years, Occ: Business having his office at 514, Dalamal Towers, Nariman Point, Mumbai - 400 021	.. Petitioner
	Vs.	
1.	Central Bureau of Investigation, through the Superintendent of Police, ACB, Mumbai, having its office at Plot No. C-35A, G-Block, Behind MTNL Building, Bandra Kurla Complex, Mumbai - 400 098	.. Respondents
2.	The State of Maharashtra, through the Public Prosecutor, High Court, Bombay	

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Mr. A.H.H. Ponda i/b Mr. Brian A. D'Lima Advocate for Petitioner
Mr. H.S. Venegavkar Advocate for Respondent No.1 - CBI
Mr. Arfan Sait A.P.P. for the State

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**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

**RESERVED ON : FEBRUARY 16, 2018
DECLARED ON : APRIL 11, 2018
IN CHAMBER AT 2.40 P.M.**

JUDGMENT : [PER SMT. V.K.TAHILRAMANI, ACJ.]

1 Heard the learned counsel for the petitioner, the learned counsel for respondent no.1 - CBI and the learned A.P.P. for the State. Rule. By consent of the parties, Rule is made returnable forthwith and the matter is heard finally.

2 In this petition preferred under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure (Cr.P.C.), the petitioner is seeking quashing of charge-sheet dated 29.9.2010 filed by respondent no.1 - CBI qua the petitioner in Special Case No. 94 of 2010 which is pending before the Sessions Court at Mumbai. This case basically relates to evasion of payment of Employees Provident Fund (hereinafter referred to as the "PF dues") dues of persons who were employed by the contractors of Hiranandani Properties Pvt. Ltd. (hereinafter referred to as "the Company") of which the petitioner is a Director.

3 A preliminary objection was raised by respondents to the maintainability of the present writ petition on the ground that there was an alternate remedy of discharge. In this regard, on the point of alternate remedy, reliance was placed

by the learned counsel for the respondent no.1 – CBI on an unreported judgment of a Two-Judge Bench of the Supreme Court in Civil Appeal No. 1281 of 2018 decided on 30.1.2018 in the case of **Authorized Officer, State Bank of Travancore and Another Vs. Mathew K.C.**, in which it is observed that the High Court ought not to have entertained the Writ Petition in view of the adequate statutory remedy available.

4 Per contra, the learned counsel for the petitioner relied upon the judgment of a Bench of three Honourable Judges of the Supreme Court in **Prabhu Chawla Vs. State of Rajasthan and another**, reported in **(2016) 16 SCC 30**. Reliance was placed more specifically on para nos. 5, 6 and 7 of the judgment which read as under:

“Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same

Code. In *Madhu Limaye Vs. State of Maharashtra* (1997) 4 SCC 551 : 1978 SCC (Cri.) 10 this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution

'would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the

impugned order clearly brings about a situation which is an abuse of the process of the court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction' (SCC page 555-56, para 10).

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the Court in the face. In between is a tertium quid, as Untwalia, J.

has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p.556, para 10)

'10. ... The answer is obvious that the bar will not operate to prevent the abuse of the process of the court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible'.

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for

legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this Court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified."

6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:

"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."

A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where,

in the words of Krishna Iyer, J.

“abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more”. (Raj Kapoor Case i.e. Raj Kapoor Vs. State (1980), 1 SCC 43 : 1980 SCC (Cri.) 72, SCC p. 48 para 10).

We venture to add a further reason in support. Since Section 397 Cr.PC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders ! A situation wholly unwarranted and undesirable.

7. As a sequel, we are constrained to hold that the Division Bench, particularly in para 28, in Mohit Vs. State of U.P. (2013) 7 SCC 789 : (2013) 3SCC (Cri.) 727 in respect of inherent power of the High Court in Section 482 Cr.P.C. does not state the law correctly. We record our respectful disagreement.”

5 Learned counsel for the petitioner further pointed out that the judgments cited by the learned counsel for respondent

no.1 - CBI was on civil law more particularly, under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and had nothing to do with the scope of Section 482 of Cr.P.C., which has been invoked in the present case. Mr. Ponda further submitted that it would also be necessary to see the context in which the observations in ***State Bank of Travencore (supra)*** were made. He pointed out that the said case was under the SARFAESI Act and the Supreme Court observed that the SARFAESI Act is a complete Code by itself, providing for expeditious recovery of dues arising out of loans granted by financial Institutions, the remedy of appeal by the aggrieved under Section 17 before Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. In view of these facts, the Supreme Court made these observations. The present case is not under the SARFAESI Act but it relates to evasion of payment of PF dues in which case the Employees' Provident Funds and Misc. Provisions Act, 1952 (EPF Act) would be applicable, however, the authorities have not followed the procedure under the EPF Act especially Section 7A, in such case the petitioner cannot seek relief under

the EPF Act. He further submitted that as far as remedy of discharge is concerned, it cannot be said to be an alternate efficacious remedy, because the parameters to be taken into consideration for discharge are entirely different from the considerations to be kept in mind for quashing.

6 The law in relation to Section 482 of Cr.P.C. is well settled. The Supreme Court in the decision in the case of **Prabhu Chawla (supra)**, overruled an earlier decision of the Supreme Court in the case of **Mohit alias Sonu Vs. State of Uttar Pradesh** reported in **(2013) 7 S.C.C. 789**, which took a view that alternate remedy is a bar under Section 482 of Cr.P.C.. Other judgments relied upon by the learned counsel for the petitioner are as under:

- (1) **Vineet Kumar and others Vs. State of Uttar Pradesh and Another; (2017) 13 SCC 369;**
- (2) **State of Orissa Vs. Debendra Nath Padhi; 2005 (1) SCC 568.**

7 In **Vineet Kumar (supra)**, reliance was placed on paragraph nos. 22, 23, 24, 25, 29, 40, 40.1, 40.2, 40.4 and 41,

which read as under:

“22. Before we enter into the facts of the present case, it is necessary to consider the ambit and scope of jurisdiction under Section 482 Cr.P.C. vested in the High Court. Section 482 Cr.P.C. saves the inherent power 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.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 Cr.P.C. A three-Judge Bench of this Court in *State of Karnataka Vs. L. Muniswamy* (1977) 2 SCC 699 : 1977 SCC (Cri.) 404 held that 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. In para 7 of the judgment, the following has been stated:

(SCC p.703).

“7. ... In the exercise of this wholesome power, 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. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding 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. The 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. The compelling necessity for making these observations is that without a proper realization 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.”

24. The judgment of this Court in *State of Haryana V. Bhajan Lal*; 1992 Supp.(1) SCC 335 : 1992 SCC (Cri.) 426, has elaborately considered the scope and ambit of Section 482 Cr.P.C. Although in the above case this Court was considering the power of the High Court to quash the entire criminal proceeding including the FIR, the case arose out of an FIR registered under Sections 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. This Court elaborately considered the scope of Section 482 Cr.P.C. / Article 226 of the Constitution in the context of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements of this Court, this Court enumerated certain categories of cases by way of illustration where power under Section 482 Cr.P.C. can be exercised to prevent abuse of process of the Court or secure the ends of justice.

25. Para 102 which enumerates 7 categories of cases where power can be exercised under Section 482 Cr.P.C. is

extracted as follows: (Bhajan Lal case SCC pp. 378-79).

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case

against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.

29. In another case in Priya Vrat Singh Vs. Shyam Ji Sahai (2008) 8 SCC 232: (2008) 3 SCC (Cri.) 463, this Court relied on Category 7 as laid down in State of Haryana V. Bhajan Lal. In the above case the Allahabad High Court had dismissed an application filed under Section 482 Cr.P.C. to quash the

proceedings under Sections 494, 120-B and 109 IPC and Sections 3 and 4 of the Dowry Prohibition Act. After noticing the background facts and parameters for exercise of power under Section 482 Cr.P.C. the following was stated in paras 8 to 12 : (Priya Vrat Case (2008) 8 SCC 232:(2008) 3 SCC (Cri.) 463, SCC pp.235-36).

“8. Further, it is pointed out that the allegation of alleged demand for dowry was made for the first time in December 1994. In the complaint filed, the allegation is that the dowry torture was made sometime in 1992. It has not been explained as to why for more than two years no action was taken.

9. Further, it appears that in the complaint petition apart from the husband, the mother of the husband, the subsequently married wife, husband's mother's sister, husband's brother-in-law and Sunita's father were impleaded as party. No role has been specifically ascribed to anybody except the husband and that too of a dowry demand in February 1993 when the complaint was filed on 6.12.1994 i.e. nearly after 22 months. It is to be noted that in spite of service of notice,

none has appeared on behalf of Respondent No.1.

10. The parameters for exercise of power under Section 482 Cr.P.C. have been laid down by this Court in several cases. Ed: The reference seems inter alia to be to *Sunder Babu V. State of T.N.* (2009) 14 SCC 244 : (2010) 1 SCC (Cri.) 1349 and *Engg. Export Promotion Council Vs. Usha Anand*, (2013) 12 SCC 620 : (2014) 4 SCC (Cri.) 441

11. `19. The section does not confer any new power 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 or 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. 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 recognizes 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 course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa 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 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 process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers 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.

20. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of

course, no hard-and-fast rule can be laid down in regard to cases in which the High court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.'

40. Reference to the judgment of this Court in Prashant Bharti Vs. State (NCT of Delhi) (2013) 9 SCC 293 : (2013) 3 SCC (Cri.) 920 is relevant for the present case. In the above case the complainant lady aged 21 years lodged an FIR under Sections 328 and 354 IPC with regard to the incident dated 15.2.2007. She sent a telephonic information on 16.2.2007 and on her statement FIR under Sections 328 and 354 IPC was registered against the appellant. After a lapse of five days on 21.2.2007 she gave a supplementary statement alleging rape by the appellant on 23.12.2006, 25.12.2006 and 1.1.2007. The statement under Section 164 Cr.P.C. of the prosecutrix was recorded. Police filed charge-sheet under Sections 328, 324 and 376 IPC. Charge-sheet although mentioned that no proof in support of crime under Sections 328 / 354 could be found. However, on the ground of statement made under Section 164 Cr.P.C. charge-sheet was

submitted.

40.1. Para 10 of the judgment which notes the charge-sheet is as follows: (Prashant Bharti Vs. State (NCT of Delhi), (2013) 9 SCC 293 : (2013) 3 SCC (Cri.) 920, SCC p. 300)

“10. On 28.6.2007 the police filed a charge-sheet under Sections 328, 354 and 376 of the Penal Code. In the charge-sheet, it was clearly mentioned that the police investigation, from different angles, had not yielded any positive result. However, the charge-sheet was based on the statement made by the complainant / prosecutrix before the Metropolitan Magistrate, New Delhi under Section 164 of the Code of Criminal Procedure, which was found to be sufficient for the charges alleged against the appellant – accused. A relevant extract of the charge-sheet depicting the aforesaid factual position, is being reproduced below:

'I, the inspector, tried my best from all angles to recover the intoxicating substance Pepsi / Pepsi glass and undergarments worn at the time of the rape. But nothing could be recovered and for this

reason, the blood sample of the accused could not be sent to FSL. As from the investigation so far conducted, no proof could be found in support of the crime under Sections 328 / 354 IPC and even the position of accused Prashant Bharti is not available at Lodhi Colony at the date and time as his mobile phone ill (sic.). However, prosecutrix Priya Porwal made statement on 21.2.2007 and on 27.2.2007 under Section 164 Cr.P.C. which is sufficient in support of his challan for the offence under Section 376 IPC."

40.2. The writ petition was filed by the accused for quashing the FIR which was dismissed by the High Court on 27.8.2007. Thereafter, charges were framed on 1.12.2008. Dissatisfied with the framing of charges criminal revision petition was filed which was dismissed by the Delhi High Court on 16.1.2009 (Prashant Bharti Vs. State, 2009 SCC OnLine Del 4204). The order of the Additional Sessions Judge has been extracted by this Court in para 14 which is quoted below: (Prashant Bharati Vs. State (NCT of Delhi), (2013) 9 SCC 293 : (2013) 3 SCC (Cri.) 920, SCC p. 301).

"14. Dissatisfied with the action of the trial Court in framing charges against him, the appellant - accused filed Criminal Revision Petition No. 08 of 2009, whereby he assailed the order dated 1.12.2008 passed by the Additional Sessions Judge, New Delhi. The Delhi High Court dismissed the revision petition on 16.1.2009 (Prashant Bharati V. State, 2009 SCC OnLine Del 4204), by inter alia observing as under (Prashant Bharti Case i.e. Prashant Bharti Vs. State, 2009 SCC OnLine Del 4204 - SCC OnLine Del para 12):

'12. Truthfulness or falsity of the allegations, essentially pertains to the realm of evidence and the same cannot be pre-judged at this initial stage. I do not find any illegality or infirmity in the impugned order. Consequently, this revision petition is dismissed in limine while making it clear that anything herein shall not be construed as an opinion on merits at trial.'"

40.4. Thus, the above was the case where despite statement under Section 164 Cr.P.C. by the prosecutrix the Court referring to material collected during investigation had held that the case was fit where the High

Court ought to have quashed the criminal proceedings.

41. Inherent power given to the High Court under Section 482 Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana Vs. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri.) 426. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under category 7 as enumerated in *State of Haryana Vs. Bhajan Lal*; 1992 Supp (1) SCC 335: 1992 SCC (Cri.) 426, which is to the following effect (SCC p. 379, para 102)

“102. (7) 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.”

Above category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri.) 426, but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 Cr.P.C. and quashed the criminal proceedings”.

8 In ***State of Orissa Vs. Debendra Nath Padhi (supra)***, reliance was placed by the learned counsel for petitioner on paragraph 29 of the judgment in which the Supreme Court has observed thus:

“We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose of investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case”.

9 From the above judgments in the case of ***Prabhu Chawla, Vineet Kumar, Sunder Babu Vs. State of Tamil Nadu, Engg. Export Promotion Council, Priya Vrat Singh & Debendra Padhi***, it is clear that the powers under Section 482 Cr.P.C. and 226 of the Constitution of India can be used to

quash a case to prevent abuse of process of Court or to secure ends of justice. In addition, 7 categories are set out in Bhajanlal in which FIR / case can be quashed.

10 This petition is under Article 226 of the Constitution of India and under Section 482 of Cr.P.C. It has invoked the inherent jurisdiction of this Court under Section 482 of Cr.P.C. and extra ordinary powers under Article 226 of the Constitution of India. An application for discharge cannot be said to be an alternate efficacious remedy. As per the judgment of Three-Judge Bench of the Supreme Court in **Debendra Nath Padhi's case (supra)** in paragraph 29, it has laid down that a document which is not forming part of the charge-sheet is being pressed into service, which is of sterling quality, then, only the Court under Section 482 of Cr.P.C. can look into the said document whereas while considering a discharge application the Court cannot look into any such material. The judgment of the Three-Judge Bench of the Supreme Court in **Prabhu Chawla (supra)** is also important to show that the present petition is maintainable. Thus, the preliminary objection raised about the maintainability of this petition, has no substance.

11 Apart from the above, the learned counsel for the petitioner has also relied upon category 7 laid down in the decision in the ***State of Haryana Vs. Bhajan Lal case which is reported in 1992 (Suppl) (1) SCC 335***, wherein the FIR can be quashed which contention, we will deal a little later.

12 As far as the merits of the case are concerned, the learned counsel for CBI submitted that all the charges are attracted in the case of the petitioner i.e. Sections 120-B, 467, 468, 471 and 420 read with Section 511 of IPC. The brief facts of the prosecution case against the petitioner are as under:

(I) On 4.3.2006 there was a surprise inspection conducted on the company of the petitioner. Subsequently Inspection Report dated 14.3.2006 was prepared by a team of Provident Fund Officers, which admittedly (as seen from FIR) alleges incorrect figures of turnover and accordingly a fake figure of alleged evasion of payment of provident fund dues was stated. It is pertinent to note in relation to this, that

in the F.I.R. it is stated that the evasion of provident fund dues was to the tune of Rs.160 crores. This F.I.R. was lodged on 29.3.2008. The charge-sheet in the said case was filed in October, 2010, however, in the charge-sheet, this figure of evasion of provident fund dues to the tune of Rs. 160 crores has disappeared and instead, it is stated that the evasion of provident fund dues is about Rs. 9 crores.

(II) The second charge is that after registration of the F.I.R., meetings were held with contractors wherein, it was decided to prepare false wage records of the employees of the contractors, to show as if wages which were earned by the workers of the contractors of the company were above, Rs.250/- per day and above Rs. 6500/- per month so as to come out of the ambit of Section 3 of the Employees Provident Fund Act. Thus, it is a case of attempt to cheat.

(III) Thirdly, it is alleged that the petitioner

prepared forged records to show that 48 employees of the petitioner who were actually employed in the year 2006, were shown as employed in 2004 / 2005 and PF dues pertaining to them were paid.

13 Before going into these charges, it would be necessary to place on record a few facts which are as under:

The current proceedings arise out of an F.I.R. registered on 29.3.2008. The prosecution case is that on 4.3.2006, there was a surprise inspection conducted on the company. Thereafter the Inspection Report was prepared which is dated 14.3.2006 / 5.4.2006 (page no.419). This Inspection Report shows that there was evasion of payment of provident fund dues to the tune of Rs. 640 crores. As stated earlier, the raid on the premises took place on 4.3.2006, however, prior to that Writ Petition No. 2593 of 1997 was preferred before the High Court of Judicature at Bombay Bench at Nagpur in which the petitioners were Builders Association of India Vs. Union of India, (2) Central Provident Fund Commissioner, (3) Regional Provident Fund Commissioner, (4)

Legal Advisor of Ministry of Labour, (5) Joint Secretary to Government of India. In the said case, on 8.9.1997 the following order was passed:

“Rule. In view of the fact that the similar writ petition being W.P. No. 2047 of 1996 has been admitted and interim relief has been granted by this Court, interim relief in terms of prayer clause (iv):

“(iv) issue an ad-interim direction or order restraining the respondents, their servants, and / or agents from giving effect to the communication Annexure, D, E, F and F-1 or similar such communication to any of the petitioners in relating to the coverage of site workers under the PF Act and PF Scheme and payment of PF contribution, in respect of the site workers, or initiate any proceedings relating thereto and / or demanding any payment of any PF contribution from the petitioners or any of them. In so far as casual and / or temporary site workers engaged under the multi - tier system in their business, during the pendency final disposal of the writ petition.

Expedited. Place this matter for

hearing along with W.P. No. 2047 of 1996”.

14 This order pertained to site workers that is workers working on building construction sites. It is to be noted that the order was passed in the writ petition filed by Builders' Association of India of which the Hiranandani Group of Companies are members. It is further to be noted that Sandip Dwellers Pvt. Ltd. was one of the petitioners in the bunch of writ petitions along with Builders' Association of India.

15 This stay on payment of PF dues which was granted by Nagpur Bench of the High Court, continued till 28.2.2006 on which day, the said writ petition was disposed of. The raid on the company was conducted on 4.3.2006 i.e. within four days of the writ petition being disposed of. In such case, it would be impossible for anyone to comply with all EPF formalities and to pay the dues within a period of four days. When the petition filed by Sandip Dwellers Pvt. Ltd. was disposed of, in the last paragraph of the decision in the said case, it is stated that writ petitions are therefore, partially allowed. The impugned order under section 7-A dated 5.3.2001 at Annexure-S in W.P. No.

1164 of 2001 is quashed and set aside. Demands, if any, served upon petitioners in other petitions are also quashed. Petitioners to file appropriate replies / amendments to their reply if already filed, if necessary in response to notices issued by Regional Provident Fund Commissioner and said authority to proceed further to hold inquiry and investigate as per provisions of Section 7-A of Employees' Provident Funds and Misc. Provisions Act, 1952. The said inquiries shall be conducted and completed as early as possible and in any case within a period of six months from the date of communication of these orders to respondents. Rule made absolute accordingly. No costs.

16 Thus, it is seen from the last para of the judgment in Sandeep Dwellers Pvt. Ltd. that an inquiry under Section 7-A of the EPF Act was mandatory to ascertain the dues without which the dues could not be ascertained. In fact, this is also the prosecution case that this can be clearly seen from the statement of PW 1 Rajesh Kumar Sinha. Rajesh Kumar Sinha was the Regional Provident Fund Commissioner. In his statement, in the last paragraph he has stated that:

“On being asked, I state that in the case of inspection of Hiranandani Group of Companies on 04.03.2006 and 27.03.2006 as per the EPF Act and rules of the department inquiry under Section 7A of the EPF Act was necessary to determine the dues in respect of 137 uncovered employees as reflected in the report of Enforcement Officers dated 14.03.2006 as well as in respect of the salary, wages and labour components as reflected in the report of Enforcement Officer dated 27.03.2006 and 31.03.2006 which has not been done in this case.”

[EMPHASIS SUPPLIED]

17 By virtue of this, it is clear that no PF dues could be ascertained unless inquiry under Section 7-A of the EPF Act was conducted which has admittedly not been conducted in the present case till date.

18 Chapter IV of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for determination of Provident Fund and recovery of dues.

Section 7-A provides for determination of moneys due from employers :-

(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner or any Assistant Provident Fund Commissioner may, by order,----

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.

(2) The officer conducting the inquiry under subsection 1 shall, for the purposes of such inquiry have the same powers as are vested in a court under the code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:----

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses,

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1960).

(3) No order shall be made under sub-section 1, unless the employer concerned is given a reasonable opportunity of representing his case.

(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section 1 fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex-parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.-----

Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the exparte order.

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.

Section 7-C provides for determination of escaped amount :-

Where an order determining the amount due from an employer under section 7-A or section 7-B has been passed and if the officer who passed the order -

(a) has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;

(b) has, in consequence of information in his possession, reason to believe that any amount to be determined under section 7-A or section 7-B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer, he may, within a period of five years from the date of communication of the order passed under section 7-A or section 7-B, re-open the case and pass appropriate orders re-determining the amount due from the employer in accordance with the provisions of this Act:

Provided that no order re-determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case.

Section 7-D provides for Employees' Provident Funds Appellate Tribunal :-

(1) The Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

(2) A Tribunal shall consist of one person only to be appointed by the Central Government.

(3) A person shall not be qualified for appointment as a Presiding Officer of a Tribunal hereinafter referred to as the Presiding Officer, unless he is, or has been, or is qualified to be,----

(i) a Judge of a High Court; or

(ii) a District Judge.

Sub-section (1) of Section 7-L provides for Orders of Tribunal :-

(1) A Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against or may refer the case back to the authority which passed such order with such directions as the tribunal may think fit, for a fresh adjudication or order, as the case may be, after taking additional evidence, if necessary.

Section 7-N provides for finality of orders constituting a Tribunal.----

No order of the Central Government appointing any person as the Presiding Officer shall be called in question in any manner, and no act or proceeding before a Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of such Tribunal.

Section 7-Q :- provides for Interest payable by the employer.----

The employer shall be liable to pay simple

interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

Section 8. Mode of recovery of moneys due from employers – Any amount due -

(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or, as the case may be, the Insurance Fund, damages recoverable under section 14B, accumulations required to be transferred under sub-section 2 of section 15 or under sub-section 5 of section 17 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) from the employer in relation to an exempted establishment in respect of any damages recoverable under section 14-B or any charges payable by him the appropriate Government under any provision of this

Act or under any of the conditions specified under section 17 or in respect of the contribution payable by him towards the Pension Scheme under the said section 17, may, if the amount is in arrear, be recovered in the manner specified in section 8-B to 8-G.

Section 8-A provides for Recovery of moneys by employers and contractors.

(1) **The amount of contribution** that is to say, the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme and any charges for meeting the cost of administering the Fund paid or **payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.**

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution under any Scheme by deduction from the basic wages, dearness allowance and retaining allowance if

any payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance if any payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Explanation. - In this section, the expressions "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.

SECTION 8-F provides for **other modes of recovery.**

SECTION 14 provides for Penalties. It reads thus :-

(1) **Whoever**, for the purpose of avoiding any payment to be made by himself under this Act, the Scheme, the Pension Scheme or the Insurance Scheme or of enabling any other person **to avoid such payment**, knowingly **makes or causes to be made any false statement or false representation** shall be punishable with imprisonment for a term which may extend to one year, or with fine of five thousand rupees, or with both.

(1-A) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to three years but –

(a) which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

(b) which shall not be less than six months and a fine of five thousand rupees, in any other case:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

(1-B) An employer who contravenes, or makes default in complying with, the provisions of section 6-C, or clause (a) of sub-section 3-A of section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less

than six months and shall also be liable to fine which may extend to five thousand rupees:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

(2) Subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance Scheme may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to four thousand rupees, or with both.

(2-A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees.

Section 14-A provides for offences by companies :-

(1) If the person committing an offence under this Act, the Scheme or the Pension Scheme or the Insurance Scheme is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), **where an offence** under this Act, the Scheme or the Pension Scheme or the Insurance Scheme has **been committed by a company** and it is proved that the offence has been committed **with the consent or connivance of**, or is attributable to, any neglect on the part of, **any Director** or Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer **shall be deemed to be guilty of that offence and shall be liable to be**

proceeded against and punished accordingly.

Explanation –For the purposes of this section, -

(a) “Company” means any body corporate and includes a firm and other association of individuals; and

(b) “Director” in relation to a firm, means a partner in the firm.

14-AA. Enhanced punishment in certain cases after previous conviction - Whoever, having been convicted by a court of an offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme, commits the same offence shall be subject for every such subsequent offence to imprisonment for a term which may extend to five years, but which shall not be less than two years, and shall also be liable to a fine of twenty five thousand rupees.

Section 14-AC provides for cognizance and trial of offences.

Section 14-B provides for power to recover the damages in the case where an employer makes default in the payment of any contribution to the Fund and charges payable under any other provision

of this Act or of any Scheme.

ANALYSIS OF THE PROVISIONS :-

19 The Act is a complete Code in itself. It is a Special Act. The Act provides for a procedure for determination of moneys due from employers towards PF dues. During the course of inquiry under Section 7-A of the Act a dispute regarding the applicability of the Act to an establishment has to be decided. Thereafter, the determination of the amount due from any employer is to be made. The inquiry has to be conducted in accordance with the procedure laid down under Section 7-A of the said Act. The inquiry under Section 7-A shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code. Against the order passed under Section 7-A the aggrieved person has remedy of preferring an appeal to the Tribunal.

Section 8 provides for mode of recovery of moneys due from employers.

Section 14 provides for penalties in as much as

avoiding of any payment to be made under this Act or the Scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year or with fine of five thousand rupees, or with both.

Section 14-A is a provision which deals with the offences by companies.

Section 14-AB provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.

Section 14-AC provides for cognizance and trial of offences and upon sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government.

Section 14-B provides for power to recover damages in case where an employer makes default in the payment of any contribution to the Fund or charges payable under any

other provision of this Act or any scheme.

20 The reading of the provisions of the Act clearly indicates that the Regional Provident Fund Commissioner is empowered by law under Section 7A in a case where a dispute arises regarding the applicability of the Act to an establishment, to decide such dispute and determine the amount due from the employer under the scheme and for the purpose of conducting enquiry he has been vested with the same powers as are vested in the Court for trying a Suit under the Civil Procedure Code and the said enquiry is also deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the IPC. The said order passed under Section 7A is appealable before the Tribunal and the order passed by the Tribunal attains finality under section 7N. The said order passed under section 7A can also be reviewed under section 7B or re-determined under section 7C. For non-payment of the said amount, the employer can be prosecuted and penalty can be imposed under section 14 and recovery can be made as per procedure laid down under section 8.

21 This Court in the case of **Mr.E.S.Sanjeewa Rao Vs. Central Bureau of Investigation, Mumbai and ors.** reported in **2013 ALL MR (Cri) 933** has held that though the officer who passes an order under section 7A is not termed as a 'Judge', he falls within the definition of section 19 of the IPC as well as section 2 of the Judges (Protection) Act, 1985 since he is empowered by law to determine the amount and decide the dispute and the proceeding is 'legal proceeding' in view of section 7A (2) of the said Act. The proceeding therefore is a 'legal proceeding' and the order which is passed is a definitive order and if the order is confirmed in Appeal, it attains finality and on the basis of the said order recovery can be made and the mode of recovery is similar to the execution of decree as laid down under CPC which is evident from provisions of section 8A and 8B.

22 The provisions of the Act therefore envisages not only deciding the disputes regarding applicability of the Act to an establishment and determining amount due from any employer under any provisions of this Act but also provides for the procedure to recover the money due from the employers after

conducting the enquiry as laid down by provisions of the said Act. The Act also provides for penal consequences. An elaborate procedure laid down in the Act clearly indicates that the said Act is a complete code in itself.

23 When the Act itself has provided for a mechanism and elaborate procedure for determining the amount due from any employer by the Authorities under the said Act, it would run counter to the provisions of the Act if any other authority not empowered under the Act determines the amount due from any employer or arrives at a finding where there is any default in the compliance of the provisions of the said Act. It is only after the dispute regarding the applicability of the Act to an establishment is decided and upon determination of the amount due from any employer if upon the finding recorded that there has been any omission or failure on the part of the employer to make any document or report available or to disclose fully and truly all material facts necessary for determining the correct amount due from employer that the question of invoking the penal provisions will arise. The matters for determination of dues from the employer or his

liability to pay the contribution under the Act of the scheme is to be determined in the course of the enquiry to be conducted under the said Act.

24 The action of the enforcement agencies in initiating criminal prosecution on the basis of the enforcement agencies themselves coming to a conclusion that the employer / contractor has made default and not paid the dues to the employees is impermissible. The action of the enforcement agencies therefore in initiating the criminal proceedings is premature. The criminal prosecution lodged against the petitioners on the basis of the conclusion arrived at by the enforcement agency regarding non-payment of provident fund dues and manipulation of the record is not tenable in the teeth of the provisions of the said Act. The power to arrive at such a finding is vested with the authorities under the said Act.

25 The Act therefore covers all possible contingencies for recovery of the Provident Fund dues in cases where the employer makes a willful default in making of the payments under the Act or the Scheme framed thereunder. The employer

can raise dispute regarding the applicability of the Act or that he is not liable to pay the contribution under the Act towards the Provident Fund. The liability can be determined only after an inquiry under Section 7-A of the Act is conducted. The dues can be recovered only after an order is passed under Section 7-A after following the procedure laid down therein and after giving opportunity to the employer. The Act is a complete Code in itself. It is Special Act to deal with Provident Fund dues and hence, it will prevail over the General Act. An employer can be held liable only after his liability is determined after following the procedure laid down under the said Act. In other words, unless the procedure is followed i.e. an enquiry is conducted as contemplated under Section 7-A, the liability cannot be determined. The Act contemplates that an opportunity be given to the employer to answer after notice is issued to him. In the present case, no notice was issued to the petitioner. He was not given an opportunity of representing his case as visualized under Section 7-A (3). Thus, unless an enquiry is held under Section 7-A, an employer cannot be held liable. The enquiry has to be conducted in consonance with the principles of natural justice after giving the employer a

reasonable opportunity of representing his case. Thus, the provisions clearly stipulate that an officer conducting the enquiry may decide the applicability of the act and determine the amount due from any employer on the basis of the evidence adduced during such enquiry and other documents available on record. The Apex Court in the case of **Food Corporation of India Vs. Provident Fund Commissioner and others**, reported in **(1990) 1 Supreme Court Cases 68** has observed thus :

“8. It is of importance to remember that the Commissioner while conducting an inquiry under section 7-A has the same powers as are vested in a Court under the Code of Civil Procedure for trying a suit. The section reads as follows:

" 7-A Determination of moneys due from Employer-- (1) The Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner or any Regional Provident Fund Commissioner may, by order determine the amount due from any employer under any provision of this Act (the scheme or the Family Pension Scheme or the Insurance Scheme as the case may be) and for this purpose may

conduct such inquiry as he may deem necessary.

(2) The Officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for trying a suit in respect of the following matters, namely:

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses.

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code."

9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This

power was given to the Commissioner to decide not abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person."

26 We may also state that the petitioner is not being held liable to pay PF dues of his employees but the PF dues of employees of his contractors. The petitioner would be liable to pay dues only if his contractors failed to pay the dues of the workers. The dues which the petitioner would have to pay if the contractors defaulted can be determined only after an enquiry because the workers of all the contractors would not be working exclusively on the sites of the petitioner and would also be working on sites of other construction companies hence, if the contractors defaulted in paying PF dues of their

workers, the petitioner would not be liable for the entire amount as throughout the year the workers would have been working in various sites of different construction companies. Section 8-A provides for recovery of monies but the amount can be determined only after enquiry under Section 7-A. No amount can be determined without an enquiry under Section 7-A. The prosecution without holding an enquiry under Section 7-A cannot say that the petitioner has evaded or tried to evade payment of PF dues of about 9 crores.

27 We are of the firm opinion that as procedure under Section 7-A of the EPF Act was not followed, no FIR could have been registered against the petitioner which FIR essentially relates to evasion of payment of PF dues. Registration of this FIR against the petitioner amounts to abuse of process of Court which cannot be countenanced and in order to secure the ends of justice, such an FIR and the proceedings relating thereto have to be quashed. Despite this finding, we are dealing with the offences under IPC with which the petitioner has been charged with for the sake of convenience. As far as the offences under Indian Penal Code are concerned,

also for the below mentioned reasons, we are of the opinion that no case is made out against the petitioner.

28 The prosecution case is based on the Inspection Report on 4.3.2006 during the inspection of the office of the Company at Powai Mumbai. The said Inspection Report makes for very interesting reading, whereas under law, employees provident fund is required to be paid only on basic salary that too, in respect of employee who is drawing less than Rs.6500/- per month or less than Rs.250/- per day. As regards employees whose salary is above Rs.6500/-, the same is optional. The calculations in the Inspection Report are based on multiple errors, including the wrong heads, such as labour and wages, colour and painting, repairs and maintenance, security, professional fees, salary, staff welfare, garden development and maintenance, construction expenses, hire charges, house-keeping, doors and windows, excavation, fabrication, marble and tiles, polishing and rock cutting. The Inspection Report in respect of the Company records the following:

SALARY AND WAGES PAID UNDER DIFFERENT HEADS

<u>For the year 2003 - 2004</u>		<u>For the year 2004 - 2005</u>	
<u>Salary and wages paid under different heads:</u>		<u>Salary and wages paid under different heads:</u>	
Rs. 6412858 8 11=00		Rs. 34775549=00	
Wages on which PF paid as per Section 6	Rs.7026850=00	Wages on which PF paid as per Section 6	Rs.7563138=00
Wages on which PF not paid	Rs.6405831961=00	Wages on which PF not paid	Rs.272524111=00

29 From the FIR and the charge-sheet, it is clear that while copying the figure of Rs. 641285811=00, the same has been wrongly written as Rs. 6412858**8**11=00. Thus, instead of mentioning Rs.64 crores and odd on which PF had to be paid, the figure is shown as Rs.641 crores by writing the above figure 6412858**8**11=00. The figure “8” which is typed in bold print is either wrongly and carelessly written or mischievously written.

30 Similarly, in the case of Roma Builders Pvt. Ltd. the salary and wages paid under different heads is shown as Rs.2,36,88,749**5**/- instead of Rs.23,68,8749/-. Here also the last figure of 5 typed in bold print has been wrongly or mischievously written. The total expenses of the said Company

were Rs.21.85 crores approximately and hence, there could not be the total of selective heads of expenses of Rs.23.68 crores as alleged salary and wages. As far as the Company of the petitioner is concerned, in respect of PF dues of the employees working in the establishment of the petitioner's Company, there is **ZERO** liability. This is an admitted fact. As stated earlier, according to the prosecution, the evasion of payment of Provident Fund dues is not of the employees of the Company of the petitioner but of the employees of the contractors engaged by the Company. These employees were all site workers.

31 It is further pertinent to note that there is no complaint of non-payment or non-receipt of PF dues from any of the employees of the Hiranandani Group of Companies to the PF authorities nor has the prosecution been able to collect even a single statement of any such employee. Similarly, there is no complaint by any employee of any of the contractors working for the petitioner. Though the charge-sheet is filed, more than 2½ years after the lodging of FIR, it does not consist of single such statement of evasion of payment of PF dues. It is a matter of record that the FIR was lodged on

29.3.2008 and the charge-sheet was filed in October, 2010. It is significant to note that PW 6 Shri. Bhaskar Salunkhe who was working as Enforcement Officer in the office of Regional Provident Fund Commissioner has confirmed miscalculation and gross errors in the said Inspection Report. He has stated that:

“On being asked, I state that at page No.5 of our Inspection Report dated 27.3.2006 in the Inspection Note Book, inadvertently, instead of Rs. 64,12,85,811.00, we had mentioned Rs. 641,28,58,811.00 and as a result the wages on which Provident Fund was not paid was calculated to the tune of Rs.640,58,31,961.00 (Rs.641,28,58,811 – Rs.70,26,850”.

32 The same is the case with PW 7 Shri. Surendra Mayekar who was the Assistant Accounts Officer in the office of the Regional Provident Fund Commissioner. PW 7 Shri. Mayekar has stated as under:

“M/s. Roma Builders Pvt. Ltd. (PF Code No. MH/40383) Rs.23,68,87,495.00 (for the year 2004-05). Now, after going through this

document and upon being asked, I state that actually the above amount should be Rs.2,36,88,749.60. I state that due to calculation / totaling mistake, the above figure was arrived at in the calculation sheet.

On being asked, I state that at Page No.5 of our Inspection Report dated 27.3.2006 in the Inspection Note Book, inadvertently, instead of Rs.64,12,85,811.00, we had mentioned Rs.641,23,58,811.00 and as a result the wages on which Provident Fund was not paid was calculated to the tune of Rs.640,58,31,961.00 (Rs.641,28,58,811 – Rs.70,26,850).”

33 In this background, it is necessary to see the entire case. The charges against the petitioner are (1) Cheating under Section 420 read with Section 511 of IPC (Attempt to cheat), (2) Forgery under Sections 467, 468 and 471 of IPC and conspiracy to do the acts under (1) and (2).

34 In so far as the offence of cheating is concerned, the said offence of cheating requires deception and making a false representation and thus inducing a person to do an act which

he would not do or do being so induced. In the present case, if this is the test on the touchstone of the allegations, the following facts are revealed:

35 The allegation of the year 2008 is that in April 2008, a meeting was held wherein the petitioner allegedly told PW 34 Arjun Tikam and PW 35 Sudhir Panchal who are both partners in a construction company that they should show more wages of their employees, so that the EPF Act would not be attracted. The prosecution has recorded the statements of various witnesses and according to them also, there were meetings attended by contractors and several other persons and the representatives of the Company. In this connection, we would like to refer to the statement of PW 23 Dinesh Patel wherein he has stated as under:

“On being asked, I state that after CBI conducted search in the office of Hiranandani Group of Powai Mumbai in April, 2008, a meeting was called in the O/o Shri. C.K.Pithawalla, Director Hiranandani Group in which almost all civil contractors including me attended. In the said meeting Shri. Pithawalla

told that CBI is conducting investigation regarding non-payment of EPF dues by the companies of Hiranandani Group. He asked us to immediately get our firm registered with EPF department and submit wages register from 2003 onwards to his office and only then our payments would be released. He further told that unless we comply in this regard we will not get our dues and no further work will be given to us. We informed Shri. Pithawalla that we are not maintaining any wages register of the construction workers. Upon this, Shri. Pithawalla told that they will provide EPF consultants who will do this job for us. In the said meeting besides Shri. Pithawalla other officers of Accounts department and HR departments were present. Shri. Pithawalla also introduced us to Advocate Shri. B.K. Ashok. Shri. Ashok gave the name of Shri. Ketan Bhanushali and some other consultants who were present in the said meeting and asked us to contact them for preparation of wages register. In the said meeting we had taken our Income Tax Consultant Shri. Tulsibhai Patel. Myself and my brother Shri. Navinbhai Patel discussed the matter with Shri. Tulsibhai Patel and we introduced Shri. Tulsibhai Patel to Shri. Ketan Bhanushali.

Thereafter Shri. Tulsibhai Patel met Shri. Ketan Bhanushali at Dahisar, Mumbai. Shri. Bhanushali asked him to give income tax returns and balance sheet for last six years which Shri. Tulsibhai Patel did and thereafter Shri. Bhanushali prepared computerized wages register of M/s. Jeet Enterprises, M/s. Rahul Enterprises, M/s. Limani Associates and M/s. Limani Enterprises. We had paid Rs.20,000/- in cash to Shri. Bhanushali. The names of the labourers were incorporated from the wages card lying in my office. Shri. Pithawalla and Shri. B.K. Ashok had advised us to show daily wages of each labourer more than RS.250/- so that they do not fall under the EPF Act. Accordingly the per day wages of the labourers in the said computerized registers was shown Rs.270/- and above per day”.

36 From the above, it is clear that the said witness claims that he was told by Mr. C.K. Pithawalla (accused no.8) and Mr. B.K. Ashok (accused no.9) to show the daily wages of each labourer as more than Rs.250/- per day so that they do not fall under EPF Act and accordingly, the per day wages of the labourers were to be shown in the wage register of Rs.

270/- and above per day. The prosecution has also relied on the statements of some other witnesses like PW 24 Tulsidas Patel and PW 25 Ketan Bhansali, which are also to the same effect. Thus, it is clear that these witnesses have not stated anything against the petitioner. In such case, it appears inherently improbable that petitioner would personally tell only two witnesses i.e. PW 34 Arjun Tikam and PW 35 Sudhir Panchal who are the partners of M/s. Pranam Construction Company to prepare wage registers in the same way when already such instructions were given by Shri. C.K. Pithawalla (accused no.8) and Mr. B.K. Ashok (accused no. 9). Secondly, it is to be noted that there was no deception as the prosecution case appears to be that it was done with consent of the contractors. It is not a case of deception or false representation by the petitioner. From this, it is clear that charge of cheating read with Section 511 cannot be fastened on the petitioner.

37 The Supreme Court in the case of ***Mohammed Ibrahim and others Vs. State of Bihar and another*** reported in ***(2009) 8 SCC 751*** in paragraphs 18 to 28 has in detail dealt

with the offence of cheating. In para nos. 18 and 19, the Supreme Court has observed as under:

“ 18. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property;

19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the

person deceived;

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security.”

38 The case of the petitioner would not be covered by any of the above categories. The Supreme Court has further observed in para 22 that “As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there is an offence under Section 420 of IPC”. In the present case, as far as purported act of the petitioner telling PW 34 Arjun Tikam and PW 35 Sudhir Panchal to show more wages is concerned, it would not fall under Section 420 of IPC.

39 In so far as the allegation of forgery in respect of the year 2006 is concerned, the prosecution has relied upon the statement of PW 37 Chander Thapper. According to Chander Thapper, 48 employees were all appointed in April 2006 by the

Company and the petitioner has given a letter to the CBI confirming this fact. There is no dispute as far as the petitioner or the CBI that the petitioner had confirmed that 48 employees were all appointed in April 2006. According to the prosecution, these 48 employees were appointed in April 2006 yet, they were shown as employed in the year 2005 and Provident Fund dues in relation to these 48 employees were paid as if they were employed in the year 2005. The question arises is, why would the petitioner and his company back-date the date of employment of these 48 persons and pay Provident Fund thereof when in relation to these 48 persons, they were not required to pay Provident Fund in the year 2005. This is absolutely absurd and it does not stand to reason that the Provident Fund was paid of 48 persons pertaining to the year 2005 when those employees were not on the rolls of the Company in the year 2004 or 2005. When these 48 persons were not on the rolls of the Company in the year 2005, there would be no question at all of paying any Provident Fund dues in relation to these 48 employees. Therefore, the prosecution case that the petitioner has done forgery by showing that these 48 employees though appointed in the year 2006, were shown

as employed in the year 2005 and Provident Fund of Rs. 2,20,962/- was paid accordingly, cannot stand as there is no reason for the petitioner to do so. It does not help the petitioner in any manner. On the contrary, the statements show that it was not the petitioner but it was Joseph Reddy (accused no.7) who was responsible for the records which is clear from the statement of PW 37 Chander Thapper.

40 Let us now deal with the law of “forgery”. The following are the important points to be noted as regards the law of “forgery” which is applicable to both the charges of forgery. The prosecution case as far as “forgery” is concerned, seems to be making incorrect recitals as regards charge no.1 and back-dating as regards charge no.2. A bare perusal of Section 463 of IPC which defines “forgery” shows that (1) making a false document within the meaning of Section 464 is a mandatory pre-requisite to fall in any of the provisions of “forgery” including Sections 465, 467, 468 and 471 of IPC and (2) making a false document is defined under Section 464 of IPC which reads as under:

“464. Making a false document.-- A person is said to make a false document or false electronic record –

First.--- Who dishonestly or fraudulently –

(a) makes, signs, seals or executes a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--- Who, without lawful authority,

dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.--- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

41 Thus, it is clear that “forgery” can be done only by three methods viz;-

- (1) by a person who signs or prepares a document, or by or under the authority of the person, he knows, he does not possess;
- (2) by altering a document in material particulars;

(3) by obtaining the consent of a person who cannot give consent, like a person who is insane or under intoxication or in any manner, unable to give free consent;

42 These are the only three methods of making a false document. The prosecution case does not fit into any of these three categories.

43 As regards charge no.2 of back-dating goes, it is the prosecution case that though 48 employees of the company of the petitioner were appointed in April 2006, they were shown as appointed in the year 2005 and the alleged arrears of PF dues were paid for the period 1.10.2005 to 31.3.2006. In this connection, it was submitted by the learned counsel for the petitioner that mere back-dating is not an offence after 17.10.2010 when Section 464 of IPC came to be amended. Prior to the said amendment, Section 464 clause (1) read as under:

“464. Making a false document.--

A person is said to make a false document—

First -- Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed sealed or executed, **or at a time at which he knows that it was not made, signed, sealed or executed;**"

44 After the 2010 amendment, Section 464 of IPC reads as under:

"464. Making a false document.--- A person is said to make a false document or false electronic record----

First.--- Who dishonestly or fraudulently---

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.--- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by

reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

45 Therefore, it is clear that the words **“or at a time when he knows that it was not made, signed, sealed or executed” are deliberately removed by the Legislature.** Therefore, back-dating is no longer an offence. As far as forgery is concerned, in fact, while making submissions, the prosecution had no answer to this contention and also as to why the petitioner would make such payments of PF dues of the 48 employees for the period from 1.10.2005 to 31.3.2006, when these 48 employees were appointed on 1.4.2006.

46 It is well settled by various judgments of other High Courts as well as the Apex Court that just making false recitals is no “forgery”. It is only if “forgery” is done by any of the three methods as mentioned in the Section, then only it can be said that the offence of “forgery” has been committed. For useful reference, we may refer to the below mentioned decisions:

(1) Mohammed Ibrahim and others Vs. State of Bihar and Another; (2009) 8 SCC 751 (supra);

(2) Motisinh Gambhirsinh Vs. The State; AIR 1961 Gujarat 117;

(3) State V. Parasram; AIR 1965 Rajasthan 9;

(4) Shankerlal Vishwakarma Vs. State of Madhya Pradesh; 1991 Cri.L.J. 2808;

47 If the case does not fall in any of the three methods by which “forgery” can be done, it cannot be said that “forgery” has been committed. The petitioner's case does not fall under any of these three methods. If the petitioner cannot be held liable for cheating or forgery he cannot be held liable for conspiracy to do these acts.

48 It is pertinent to note that the Company of the petitioner is not prosecuted. It is to be noted that the Company is a person, within the meaning of Section 11 of IPC. In the FIR, the Companies of Hiranandani Group of Companies were shown as accused persons i.e. original nos. 5 to 9. The petitioner was a Director of the said Companies, however, in the charge-sheet, it is clear that the said five companies have been dropped for the reasons best known to the prosecution. If the Company is dropped as an accused, then it necessarily

means that the Company which is the actual person involved in the present case, has committed no crime according to the prosecution.

49 That a Company can be prosecuted as an accused, is clear from the judgment of the Supreme Court in the case of ***Iridium India Telecom Ltd. Vs. Motorola Incorporated and others***; reported in ***(2011) 1 SCC 74***. This is reflected in para nos. 55, 59, 63 and 66. It is further clear that the Company cannot escape criminal liability for a criminal offence merely because punishment prescribed is that of imprisonment and fine and hence, not having made the Company as an accused, there can be no vicarious liability just because the person holds the designation as a Director of the Company. This is clear from the fact that the person necessarily is not vicariously liable unless he has done some specific acts which is clear from the observations in para nos. 42 to 44 of the decision of the Supreme Court in ***Sunil Bharti Mittal Vs. Central Bureau of Investigation***, reported in ***(2015) 4 SCC 609***.

50 The respondent no.1 - CBI has relied upon the

following decisions to support their contention that the case cannot be quashed. The said decisions are as under:

(1) State of Maharashtra through C.B.I. Vs. Vikram Anantrao Doshi reported in **2014 Cri.L.J. 4879 (SC)**;

(2) C.B.I. Vs. Jagjit Singh reported in **2013 (10) SCC 686**;

(3) Sam Zal Bastawala and Another Vs. State of Andhra Pradesh and others reported in **2014 Cri.L.J. 1513**;

(4) Central Bureau of Investigation Vs. Maninder Singh, reported in **(2016) 1 SCC 389**.

51 All these decisions would not apply to the present case as the same relate to quashing by consent and these decisions are not on the point of quashing of case under Section 482 of Cr.P.C.

52 Learned counsel for the petitioner has placed reliance on the decision of the Supreme Court in the case of **State of Haryana Vs. Bhajan Lal, 1992 Suppl. (1) SCC 335**. He has submitted that various categories of cases have been laid

down by the Supreme Court in the case of **Bhajan Lal (supra)**. whereunder criminal cases can be quashed. Category 7 which according to learned counsel, is relevant, is as under:

“(7) 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.”

53 The learned counsel for the petitioner contended that category 7 laid down in **Bhajan Lal's case** squarely applies in the present case because the inspection sheet makes use of fake figures of evasion of payment of Provident Fund dues of Rs.160 crores, which the prosecution has not been able to substantiate, though the investigation was going on for more than two years. The FIR also bears out that the said figure of Rs.160 crores which is entirely incorrect and now according to the prosecution, the correct figure is about 9 crores. It is pertinent to note that this figure of 9 crores is also arrived at, without any inquiry under Section 7-A of the EPF Act which is mandatory. In fact, the statements of PW 1 Rajesh Sinha and

PW 2 Ambadas Wasnik show that enquiry under Section 7-A should have been conducted but it has not been done. PW 1 Rajesh Sinha has stated that as per the EPF Act and Rules, inquiry under Section 7-A of the EPF Act was necessary to determine the dues which has not been done in this case. Without conducting such inquiry under Section 7-A the figure of 9 crores is arrived at which is mentioned in the charge-sheet. Learned counsel for the petitioner submitted that despite knowing that the figure of Rs.160/- crores are false figures, the FIR was registered and once FIR was lodged, then they had to justify it and sought to arrest the petitioner. He submitted that the prosecution is nothing but mala fide and out of vengeance and oppression against the petitioner. Hence, he submitted that the prosecution case is fully covered by category 7 as stated in Bhajan Lal's case, hence, the case against the petitioner, be quashed.

54 Learned counsel for the petitioner submitted that the present case is also a clear case of abuse of process of Court as the prosecution has been launched without conducting an inquiry under section 7-A of the EPF Act. He submitted that a

case can be quashed to prevent abuse of process of Court or to secure ends of justice which principle has been recognized in three celebrated judgments i.e. ***Prabhu Chawla (supra)***, ***Vineet Kumar (supra)*** and ***Priya Vrat Singh Vs. Shyam Ji Sahai (2008) 8 SCC 232; (2008) 3 SCC (Cri.) 463.*** The observations of the Supreme Court in these cases have already been reproduced above. It may be stated that the same principle has been stated in ***Sunder Babu Vs. State of Tamilnadu; (2009) 14 SCC 244, Engg. Export Promotion Council Vs. Usha Anand; (2013) 12 SCC 620 and State of Orissa Vs. Debendra Nath Padhi; 2005(1) SCC 568.***

55 The learned counsel for the petitioner submitted that where the chances of conviction of a person are bleak then quashing has to be resorted to and the case should not be sent to the trial. In support of his contention, he has placed reliance on para no.7 of the decision of the Supreme Court in the case of ***Madhavrao Jivajirao Scindia Vs. Sambhajirao Chandrajirao Angre*** reported in ***1988 (1) SCC 692; 1988 AIR 709; 1988 SCR (2) 930.*** Para no.7 in the said decision reads as under:

“7. 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 as to whether the uncontroverted allegations as made prima facie establish the offence. **It is also for the court 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.”

[Emphasis supplied]

56 The Supreme Court in para no.9 of the decision in the case of ***Manik Taneja and another Vs. State of Karnataka and Another*** reported in **(2015) 7 SCC 423**, has held as under:

“**9.** 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 as to whether the uncontroverted allegations

as made, prima facie, establish the offence. **It is also for the Court 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 the prosecution to continue.**

Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage."

57 The special features of this case are that it revolves around evasion of payment of PF dues and without holding an enquiry under Section 7-A the prosecution came to be launched. Such a prosecution cannot be allowed to continue. The case is also such that chances of conviction are bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue.

58 The entire case revolves around the evasion of payment of Provident Fund dues. Here it is to be noted that even as per the prosecution case, this evasion of payment of PF dues is not in relation to any employees of the petitioner but

it relates to employees of the contractors engaged by the petitioner's Company. In such case, the primary liability would be that of the contractors and only if the contractors fail in making payment of PF dues then only would the question arise of the petitioner's Company to pay the same.

59 The learned counsel for the petitioner submitted that taking the prosecution case at its highest against the petitioner, there is no offence disclosed against him in the first place. Secondly, assuming that there is some element of creation of some record i.e. showing the employees who were appointed in the year 2006 as having been appointed earlier year and accordingly their Provident Fund dues being paid does not cause any loss to anyone. In any event, as discussed above the acts of the petitioner would not amount to an offence of "forgery" or "cheating". There is no question of there being any forgery for the reasons mentioned above inasmuch as there is no false document within the meaning of Section 464 of IPC as it stands after amendment.

60 The learned counsel for the petitioner reiterated that it is a clear case of malafide where the prosecution has multiplied the amounts for reasons best known to them with

oblique motives and has written an extremely higher inflated amount in the FIR and thereafter charge-sheeted the petitioner simply because, he is mentioned in the FIR, only to take revenge out of vendetta.

61 No doubt, it was submitted by the learned counsel for the petitioner that the entire case of the prosecution squarely falls in category 7 of **Bhajan Lal's** case as interpreted by the Supreme Court in the case of **Vineet Kumar (supra)** and **Priya Vrat Singh (supra)**, hence, it is the fit case for this Court to exercise its inherent jurisdiction and quash the charge-sheet against the petitioner. However, as stated earlier, the entire case revolves around evasion of payment of Provident Fund dues. As stated earlier, these dues did not even pertain to the employees of the petitioner but to the employees of the contractors of the petitioner. It is the primary duty of the contractors to pay the PF dues and only if they fail to do so, then the liability would fall on the petitioner, however, whether there is any liability to pay the PF dues can only be determined after an inquiry under Section 7-A of the EPF Act is conducted. In the present case, admittedly, till today for the said period,

no inquiry has been conducted to determine the dues which are to be paid by the petitioner. After the liability is determined and the petitioner is called upon to pay and if the petitioner fails to pay the same, then only he can be prosecuted and held liable for the same.

62 In the present case, no inquiry under Section 7-A of the EPF Act has been conducted till date. Looking to the fact that the petitioner is being prosecuted in a case revolving around non-payment of PF dues without any inquiry being conducted under Section 7-A of the EPF Act, we are of the opinion that it amounts to an abuse of the process of the court and in order to secure the ends of justice, the FIR and the proceedings relating thereto need to be quashed. Accordingly, the FIR and proceedings relating thereto i.e. Special Case No. 94 of 2010 pending before the Special Court (CBI Cases), Court Room No. 48, Court of Sessions, Mumbai, are quashed. Petition is allowed and is disposed of accordingly. Rule is made absolute in above terms.

M.S.KARNIK, J.

ACTING CHIEF JUSTICE