IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 290 OF 2003

1.	Mohan Nambiar, Adult, Indian inhabitant, aged 40 years residing at 2/21, Chembur Vaibhav Sahkar Nagar No. 5, Chembur Mumbai- 400 071.	]]]]]]
2.	N. Janardanan Adult, Indian inhabitant, aged 33 years residing at 1/1, Chempazhanthi, P.L. Lokhande Marg, Chembur, Mumbai- 400 043.	]]]]]
3.	K.R. Subramniam 35, Shell Colony Chembur, Mumbai- 400 071.	]]]]
4.	N.K. Pratapan 13, Om, Mangal Moorti Co-operative Housing Society, 4th Road, Pestom Sagar, Chembur, Mumbai 400 089.	]]]]]]
5.	Mr. Kuttikattu Kochamy Madhavan Adult, Indian inhabitant, aged 49 years residing at 12/136, Shell Colony, Chembur, Mumbai- 400 071.	]]]]]
6.	Mr. Vadakkedath Inttimakotha Bhaskaran, Adult, Indian inhabitant residing at 504-C Wing, Meena Towers Swastik Park, Chembur, Mumbai- 400 071.	]]]]]]
7.	Rajan Yohannan, Adult, Indian inhabitant, aged 43 years residing at Flat No. 23,	]]]

Annapurna Co-op. Hsg. Society,]
Jai Hind Colony, G-Gupta Road,]
Dombivli (West).]
]

8. Smt. Gopika Janardhanan]
Adult, Indian inhabitant, aged 27 years]
residing at 1/1, Chempazhanthi,]
P.L. Lokhande Marg, Chembur,]
Mumbai- 400 043.]
]

9. Smt. Shobha Madhavan]
Wife of Shri. K.K. Madhavan]
12/136, Shell Colony,]
Chembur, Mumbai 400 071.]
]

10. Smt. Mallika Bhaskaran]
Adult, Indian inhabitant, aged 42 years]
residing at 504-C Wing, Meena Towers]
Swastik Park, Chembur]
Mumbai 400071.]
]

11. Mr. Karunakaran Nair,]
Adult, Indian inhabitant, aged 49 years]
residing at 8, Yojana Apartments]
Near Amar Theatre, Chembur]
Mumbai 400 071.]
]

12. Mr. Pradeep K. Nair]
Adult, Indian inhabitant, aged 22 years,]
residing at Yojana Apartments,]
Near Amarn Cinema, Chembur]
Mumbai- 400 071.]
]

13. Smt. Ammini K. Nair]
Adult, Indian inhabitant, aged 42 years]
residing at 8, Yojana Apartments,]
Near Amar Theatre, Chembur]
Mumbai- 400 071.]
]

14. Mr. K.R. Unnikrishnan]
Adult, Indian inhabitant, aged 43 years,]
residing at 42, Pampa Co-op. Hsg.]
Society, Plot No. 81, Sector-29]

Vashi, Navi Mumbai.]
]

15. Mr. A. Kannan Nair]
Adult, Indian inhabitant, aged 40 years]
residing at B-15, Kanchan Shetal]
Cheeda Nagar, Chembur]
Mumbai- 400089.]
]

16. Mr. Shanmukhan Rajan]
Adult, Indian inhabitant, aged 40 years]
residing at Chaitali Co-op. Hsg. Society]
Flat No. 10, Sector-16, Vashi]
Navi Mumbai.]
]

17. Mr. Ravi Nair]
Adult, Indian inhabitant, aged 47 years]
residing at 7/8, Om Mangal Murti]
4th Road, Pestom Sagar, Chembur]
Mumbai- 400 089.]
]

18. Mario Fortes]
13, Kaveri, Chedda Nagar, Chembur]
Mumbai- 400 071.]
]

19. Mr. Dholandas Gurumukhdas Hassani]
Adult, Indian inhabitant, aged 52 years]
residing at 802, Sainath Park Mulund (E)]
Opp. Neelam Nagar, Mumbai- 400 081.]
]

20. Ashit Mahabal Kukian]
aged: 37 years, Occu: Service]
residing at 14, Airoli,]
Cheeda Nagar, Chembur]
Mumbai 400089.]...Petitioners

Versus

The State of Maharashtra]
(Through Tilak Nagar Polilce Station)]
L.A.C. No. 1705 of 1999.]...Respondent

APPEARANCES-

Mr. E.A. Sasi, Advocate for Petitioners.
Mr. A.R. Patil, APP for Respondent-State.

CORAM	**:**	**S. S. SHINDE, J**
RESERVED ON	**:**	**12th JUNE 2019.**
PRONOUNCED ON:		**7th OCTOBER 2019.**

JUDGMENT

1 This writ petition was heard at admission stage by this Court (Coram: J.A. Patil, J.) on 30th June 2003 and this Court was pleased to issue Rule and ad-interim stay in terms of prayer clause (b). It appears that, on the said date none appeared for Respondent. The said ad-interim relief granted is being continued till date.

2 Background facts for filing the petition are as under:-

The Petitioners herein are arraigned as Accused No. 3 to 22 respectively in L.A.C. No. 1705 of 1999 which was registered at the instance of one Mr. Prince Augustine, through the Tilak Nagar Police Station for the alleged offences punishable under the provisions of Sections 3 and 4 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 read with Section 34 of Indian Penal Code (hereinafter for sake of brevity referred to as "said Act").

3 It is the case of the Petitioners that, the investigation of the said crime is completed and the Police have filed the charge-sheet before the

learned Metropolitan Magistrate 34th Court, Vikhroli as far back in 2000 and the case is numbered as C.C. No. 333/P/2000. The prosecution case in brief as reflected in the charge-sheet, more particularly in the statement of Original Complainant Mr. Prince Augustine is that the complainant, Prince Augustine has been residing in Flat No. 3, Seagul Agnello Co-operative Housing Society, Pestom Sagar, Chembur, Mumbai, and that Flat No. 4 was purchased in his name from one Mr. Kuttan Pillai on 8.9.1999 for a consideration of Rs. 12 lakhs. The complainant was working with Castrol India Limited as a Senior Manager and that he took a loan from the company and purchased the said flat. The said Mr. Kuttan Pillai and his son, Mr. Jayakumar Pillai i.e. the Accused No. 1 and 2 were residing in his neighborhood and therefore, he knew both of them.

4 On 11.12.1999, at 11.00 pm, the complainant, Prince Augustine was arrested by the Tilak Nagar Police in connection with C.R. No. 1 of 1998 for the offences punishable under Sections 420, 421, 406 r/w. 34 of the Indian Penal Code. On 12.12.1999, the complainant was produced before the Holiday Court at Bhoiwada, Dadar where he was released on bail in the sum of Rs. 1 lakh cash. It is further the case of the Petitioner that, the complainant obtained a copy of complete set of papers filed against him through his advocate and that he came to know from his Advocate that, after his purchase of the Flat No. 4, for Rs. 12 lakhs the aforesaid Kuttan Pillai alongwith his son were

absconding. The complainant did not know as to where the said Kuttan Pillai and his son were absconding and thereofre the Police, in that C.R. arrestred the complainant. In the aforesaid C.R. No. 1 of 1998, one Mario Fortes is the complainant and there were 19 witnesses. The complainant came to know that Kuttan Pillai and his son were running a scheme in their flat. In the said scheme the Petitioners herein have allegedly participated and invested money. They also allegedly prepared affidavit in the Court.

5 It is further the case of the Petitioner that, Mr. Kuttan Pillai and Mr. Jay Kumar Pillai by becoming a member in the aforesaid financial scheme have invested money with the expectation of making profits for them. On receipt of the complaint from Prince Augustine, the offence came to be registered being LAC No. 1705 of 1999 under the provisions of Section 3 of the said Act read with Section 34 of Indian Penal Code., and on completion of the investigation the charge sheets came to be filed some time in the year 2000. The matter is not pending before the learned Metropolitan Magistrate 34th Court at Vikroli, Mumbai, and it is at the stage of framing of charge.

6 As stated in the petition the circumstances leading for lodging LAC No. 1705 of 1999 are as under:-

The original Accused Nos. 1- Kuttan Pillai and Accused No. 2- Jaikumar Pillai were conducting a conventional chit fund at the aforesaid Flat

No. 4, Seagul Agnello Co-operative Housing Society, Pestom Sagar, Chembur, Mumbai. It was alleged that, all the Petitioners herein have invested money in said conventional chit fund. An activities of investing into said conventional chit fund was conducted in the middle of 1998. However, the Accused Nos. 1 and 2 stopped returning the money to the Petitioners. Accused Nos. 1 and 2 converted the said amount collected from the Petitioners and others, and misappropriated the said amount for their own use. Said amount was used mainly for the purpose of purchasing a huge bungalow at home town in Kerala of Accused Nos. 1 and 2. Thereafter, when the Accused No. 1 and 2 in the present LAC were traced, they made promises to the Petitioner that they will pay the money to the Petitioners after selling of his Flat No. 4, Seagul Agnello Co-operative Housing Society. The Accused No. 1 and 2 however, thereafter, by a conspiracy hatched with the present complainant Prince Augustine, disposed of the said flat without the knowledge of the Petitioners. Thus, there had been a secret deal between the Accused No. 1 and 2 and the complainant Prince Augustine in respect of the said flat, and the Accused No. 1 and 2 sold the said flat at a very lower price than, what was then prevailing in the market, and the complainant herein has dishonestly and fraudulently purchased the said property of the Accused No. 1 and 2 without adequate consideration knowingly and intending thereby to prevent, or knowing it to be likely that he will thereby prevent the distribution of the proceedings of that property amongst the creditors that is the Petitioners herein. The Petitioners therefore, through

Petitioner No. 18 Original Accused No. 20 in the present LAC has lodged a complaint with the Tilak Nagar Police Station i.e. Respondent who initially was reluctant to register a FIR. The Petitioners therefore, through the Petitioner No. 18 has filed a private complaint being C.C. No. 646/MISC/1998 before the learned Metropolitan Magistrate 34th Court at Vikhroli against the complainant herein and Accused No. 1 and 2, and the learned Metropolitan Magistrate on 3.11.1998 was pleased to order an investigation under Section 156 (3) of the Code of Criminal Procedure (for short "Cr.P.C.") and the matter was accordingly entrusted to the Respondent for investigation, who has registered CR No. 1 of 1998 against them.

During the course of investigation of the case registered under the said C.R. on satisfying the role of the complainant herein viz. Prince Augustine, having committed an offence under Section 421 of IPC, the Respondent No. 1 has arrested the present complainant Prince Augustine on 11.12.1998 in the C.R No. 1 of n1998 of the offences punishable under Sections 420, 421, 406 and 34 of IPC. It was after coming out on bail, the complainant Prince Augustine has lodged the said LAC as a counter blast to the aforesaid CR No. 1 of 1998 against all the Petitioners herein stating that, the Petitioners herein have invested money in a finance scheme run by Accused No. 1 and 2. The said case later on came to be registered as LAC No. 1705 of 1999 for the alleged offences punishable under Section 4 of the said Act. On completion of the investigation of the said case, the charge-sheet came to be filed some time in the year 2000 and the case is numbered as CC No. 333/P/2000. Thereafter, the Petitioners herein have been attending before the learned Metropolitan Magistrate 34th Court at Vikhroli from time to time, for the last about three years. As far as the original complaint at instance of the Petitioners i.e. C.R. No. 1 of 1998 is concerned initially one Mr. Kadam, Inspector was investigating the matter and he could make some progress in the matter and was able to apprehend the complainant herein who is one of the accused therein. However, the Petitioners came to know that, after the arrest of the complainant Prince Augustan the said Inspector Kadam was got rid of the assignment of investigation of the said C.R. No. 1 of 1998, and some other officer was assigned the job of investigation of the said case. The Petitioner has also came to know that, the aforesaid act of changing the investigating officer was done at the instance of some senior police officer at the level of additional commissioner of police, who came all the way to Tilak Nagar Police Station to influence the then officer-in-charge of the said police Station so as to change the investigating officer Mr. Kadam. The Petitioners also came to know that, the complainant and the senior police officer was having good personal relation and that, it was on the advise of the said senior police officer that the complainant has lodged the said LAC to give counter blast to the FIR lodged by the Petitioners against the Prince Augustine. Thereafter, the investigation into the C.R. No. 1 of 1998 virtually came to a standstill for the reason best known the Respondent.

7 It appears that, on 02.02.2002 Petitioners preferred a joint application under Section 239 of Cr.P.C. for discharge before the learned Metropolitan Magistrate 34th Court at Vikroli, Mumbai. There was prayer for expediting the hearing of the said application. However, since the learned Magistrate was not deciding the said application expeditously, the Petitioners approached this Court by way of filing Criminal Writ Petition No. 1394 of 2002. However, the said petition was withdrawn by the Petitioners with a direction to the learned Magistrate to dispose of the application for discharge filed by the Petitioners. Learned Magistrate vide his judgment and order dated 30.01.2003 was pleased to reject the application for discharge filed by the Petitioners. Hence, this petition.

8 Learned counsel appearing for the Petitioner made following submission:-

a) It is submitted that, it is apparent on the face of the record that the present LAC has been registered against all the Petitioners by the complainant herein, Prince Augustine, as a counter blast to the C.R. No. 1 of 1998 registered at the instance of the Petitioners herein against the complainant, Prince Augustine and others and thus the continuation of the criminal proceedings would be an abuse of process of the Court. The learned Metropolitan Magistrate 34th Court at Vikhroli, while passing the impugned judgment and order after prolonged hearing of the application for discharge on merits, has failed to point out *prima facie* case or any ingredients required to constitute the offences alleged in the complaint. Though by the said application for discharge, the learned Magistrate was only required to see as to, whether the process has been issued after due application of mind and after satisfying the presence of any of the ingredients required to constitute offences alleged. The learned Magistrate has rejected the application on the sole ground that the offences under the said Act are triable by the Chief Judicial Magistrate thereby the learned Magistrate failed to appreciate the law laid down on this aspect by the various High Courts as well as the Supreme Court to the effect that, if the Magistrate satisfied that the processes have been issued without having any essential ingredients or *prima facie* case to constitute offences alleged, he can recall the process and drop the proceedings for which no specific order is required from the Magistrate.

b) Learned counsel appearing for the Petitioners, without prejudice to what is stated above further submits that, there is no averment in the entire charge-sheet to constitute either the offences allege against the Petitioners or with regard to any offences at all. The entire allegations made in the charge-sheet or the statement of the witnesses recorded in support of the same taken at their face value, make out absolutely no case against the Petitioners. The entire charge-sheet along with the materials annexed thereto does not disclose the offences alleged against the Petitioner under Section 3 and 4 of the said Act read with Section 34 of IPC or any other offence at all against any of the Petitioners.

c) It is submitted that, the allegations made in the complaint are potentially absurd and inherently improbable as no prudent person can ever reach a conclusion on the basis of said allegations that, there is sufficient ground for proceeding against the Petitioners. The discretion exercised by the learned Metropolitan Magistrate in issuing process against the Petitioners was based on no evidence or the materials which are wholly irrelevant. A perusal of the charge sheet itself clearly establishes the fact that the present complaint has been instituted at the instance of the original complainant Prince Augustine as a counter blast for his having been involved in C.R. No. 1 of 1998, registered by the Tilak Nagar Police itself, against the said complainant and others for the offences punishable under Section 420, 421, 406 read with 34 of the IPC. It is submitted that, the said LAC is instituted as a counter blast to the complainant filed by the Petitioners against the original complainant is nothing but an abuse of the process of the Court.

d) It is further submitted that, assuming without admitting, the entire material on record as gospel truth and unrebuted by the defence, it does not disclose any *prima facie* case or any of the ingredients required for the offences as alleged or of any other offence at all, and thus the provisions of the said Act are not attracted to the present case. Thus putting the Petitioners for trial be an exercise in futility as well as abuse of the process of the Court. Perusal of the entire charge-sheet itself will disclose that the present complaint has been instituted by the complainant as a counter blast for his having been involved in C.R. No. 1 of 1998 as above and that, there is not at all a chance of an ultimate conviction of the Petitioners and therefore no useful purpose is likely to be served by allowing the criminal prosecution to continue. The entire material which the prosecution proposes to adduce to prove the case against the Petitioners even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, cannot show that the accused have committed any offence at all and thus, there is no sufficient ground for proceeding with the trial.

Therefore, learned counsel appearing for the Petitioners submits that, due to the continuation of prosecution against the Petitioners they have undergone several hardships and mental agony without even the *prima facie* case against them in the entire charge-sheet. Learned counsel appearing for the Petitioners in support of aforesaid contentions placed reliance on following judgments-

State of Haryana Vs. Bhajan Lal[1], State of W.B. V/s. Swapan Kumar Guha[2], Sanchaita Investments and others V/s. State of West Bengal and others[3],

1 1990 DGLaw (SC) 51
2 1982 DGLaw (SC) 200
3 1981 DGLaw (Cal) 25

Smt. Badamo Devi and Another V/s. State And Another[4], K. Ramakrishna V/s. State of Bihar[5], Ujjal Maitra and Ors. V/s. Kanchan Maitra[6] and Jayamurugan Dhanasekaran V/s. State Inspector of Police[7].

9 Learned APP appearing for Respondent-State relying upon the affidavit in reply made following submission-

a) The names of all the accused are clearly mentioned in the FIR. It is further mentioned in the FIR on Page 4 that, all the accused invested their money in the chit fund, in order to get the financial gains, which was contrary to the provisions of Section 3 and 4 of the said Act. It is admitted fact that, all these accused had taken part in the chit fund which was run by Kuttan Pillai and his son Jaykumar. Because the Advocate by name Sudhakar Shetty had given one letter dated 12.09.1999 to the authority holders of Segal Society, Pestom Sagar, where the complainant resides and also purchased another flat in same building from its owner Kuttan Pillai with whom these accused invested the money. Advocate Shetty had filed this letter on behalf of all these accused persons and through their letter they admitted the investment of money of all the accused in the financial scheme which was running by Kuttan Pillai. In this way all the accused were admitted their guilt.

4 (1981) ChdLR 251
5 2000 DGLaw (SC) 1363
6 1997 DGLaw (Ori) 54
7 2010 DG Law (Mad) 3265.

b) It is submitted that, all the accused had admitted that they were the members of that financial scheme run by one Kuttan Pillai & his son, and all the accused further admitted that they had invested the money in the said scheme. This facts was admitted by all the accused in this Court by filing affidavit in Writ Petition No. 1394/2002, and also admitted it by making separate affidavit on 31.08.1998. All these accused had filed the writ petition in this Court for quashing the proceeding. But they were not succeeded to obtain the order of quashing, and this example itself shows that there is substantial evidence against the accused persons. It is further submitted that, the evidence in the charge-sheet is more than sufficient against the accused persons. There are views of various High Courts that if there is slightest evidence against the accused, in such circumstances there will be no discharge. In this way, it is *prima facie* clearly disclosed involvement of the accused persons in the alleged offences. It is submitted that an accused had mislead this Court that, they are regularly attending Trial Court. But Court Roznama shows there frequent absentee. Therefore, learned APP appearing for Respondent-State submits that, the writ petition may be rejected.

10 Heard learned counsel appearing for the Petitioner and learned APP for Respondent-State at length. With their able assistance, perused the pleadings in the petition, grounds taken therein, annexures thereto, reply filed by Respondent-State, so also other documents placed on record. I have

carefully perused the FIR placed on record at Exhibit-F at Page No. 58 to 61 of the compilation of the writ petition. It would be apt to reproduce herein below the gist of allegations in the FIR which reads as under:-

> नमुद ता. वेळी व ठिकाणी यातीलनमूद इसमांनी, संगनमताने कुरटण पत्नी व त्यांचा मुलगा जयकुमार पिल्ले चालवित असलेल्या आर्थिक योजनेमये नांव नोंदवून सभासद होउन, आर्थिक लाभ होण्याच्या उद्देशाने पैसे गुंतवले म्हणून गुन्हा कलम ३, ४ प्राईम पिटस्, ॲण्ड मनी सर्क्युलेशन स्कीम (दैनिक) ॲक्ट १९७८, सह कलम ३४ भा.द.वि.सं. प्रमाणे असे.

11 In the entire FIR no where it is mentioned that the Petitioners invested the money in a scheme for making easy or quick money. At this juncture it would be apt to reproduce herein below Section 2 (c) of the said Act.

> *2. **Definitions**- In this Act, unless the context otherwise requires,-*
>
> *(a) xxxx*
>
> *(b)xxxx*
>
> *(c) "money circulation scheme" means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable*

thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolement of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

12 An allegations against the Petitioners are that, the Petitioners became member of scheme run by one Mr. Kuttan Pillai and his son, and that by becoming a member in the said chit fund scheme thereby investing money committed an offence under Section 3 and 4 of the said Act. If the allegations in the FIR, so also in the charge-sheet and statement of witnesses are considered in its entirety, an ingredientas of alleged offences do not get attracted, and consequently, an alleged offences are not disclosed.

13 It appears that, the investigating officer has recorded statement of one witness Mr. M.V. Sahadevan who stated that, “I came to know that Mr. Jaykumar and Kuttan Pillai was running a financial scheme. In this scheme Mr. Mario, Mr. Bhaskaran, Mr. Pratapan and others participated and expecting financial benefits have invested money”. There are statements of other witnesses also, but an allegation in their statement do not attract the definition of “Money Circulation Scheme” defined under Section 2(c) and “Prize Chit”

defined under Section 2(e) of the said Act.

14 Gist of the allegations in the statement of complainant Prince Augustine is as under:-

"Kuttan Pillai and son were running a scheme in their flat. In this scheme the Accused persons participated, invested money with expectation of making profit for them".

The above allegations do not attract the definition of "Price Chit" defined under section 2(e) and "Money Circulation Scheme" defined under Section 2(c) of the said Act.

15 Careful reading of the charge-sheet reveals that offence came to be registered by Prince Augustine after his arrest and released on bail in criminal case registered against him at the instance of present Petitioners for various offences punishable under Section 420, 421, 406 and 34 of IPC. Hence it is apparent on the face of charge-sheet that, the prosecution lodged against the present Petitioners by said Prince Augustine is out of vengeance since, the Petitioners registered offence against him.

16 The Hon'ble Supreme Court in the case of State of West Bengal (supra) in para 73 discussed about the requirements to be met to attract definition of "Money Circulation Scheme" or "Price Chit" is as under:-

73. XXXX

(i) XXXX

(ii) XXXX

(iii) the scheme must be for the making of quick or easy money on any event or contingency relative or applicable to the enrolemnt of members into the scheme or there must be a scheme for the receipt of any money or valuable thing as the consideration for a promise to pay money on any event or contingency relative or applicable to the enrolment of members into the scheme;

(iv) the event of contingency relative or applicable to the enrolment of members into the scheme will however not be in any way affected by the fact whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscription.

17 In the facts of the present case on conjoint reading of allegations in the FIR, charge-sheet so also statement of witnesses, it will have to be held that none of the above requirements are met in the present case. The Hon'ble Supreme Court in Para 75 in the case of State of West Bengal (supra)has laid down that-

75. For properly appreciating whether the offence of promoting or conducting a money circulation scheme is disclosed or not, it becomes necessary to consider whether the materials, even if they are all accepted to be correct, indicate that the business carried on by the firm satisfies the requirements of money circulation scheme And disclose an offence under the Act.

18 In para 80 and 81 of the aforesaid judgment, in the facts of that case the Hon’ble Supreme Court concluded that, element of chance in the matter of business carried on by the firm and that no offence under the Act, is at all disclosed and it will be manifestly unjust to allow the process of criminal code to be issued or continued against the firm and to allow any investigation which will be clearly without any authority.

19 In the light of judgment of Hon'ble Supreme Court in State of West Bengal (supra), if the entire material brought on record by the prosecution against the Petitioner is considered, the ingredients of Section 3 and 4 are not attracted. As already observed, requirement to be made for attracting the definition of “Money Circulation” or “Price Chit”, the prosecution has not brought on record, the material showing that, the scheme in which the Petitioners alleged to have invested/deposited for quick or easy money.

20 It is also relevant to mention that, the prosecution is not able to trace out the main accused Mr. Kuttan Pillai and his son. In the light of observations made herein above, this Court is of the opinion that, there is no material/evidence collected by the prosecution agency which can form basis to continue further proceeding of conducting trial. As already observed the Petitioners registered Crime No. 1 of 1998 against Prince Augustine and it appears that, the complaint is filed with an ulterior motive for wreaking vengeance on the accused i.e. Petitioners, and with a view to spite them due to private and personal grudge. Therefore, the present case would be covered under the category No. 7 of the categories mentioned in the case of State of Haryana Versus Bhajan Lal (supra) which reads as under-

> *1. XXXX*
>
> *2. XXXX*
>
> *3. XXXX*
>
> *4. XXXX*
>
> *5. XXXX*
>
> *6. XXXX*
>
> *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.

21 In the light of discussion in forgoing paragraphs, I am of the opinion that, petition deserves to be allowed and accordingly, writ petition is allowed. Rule made absolute in above terms.

[S. S. SHINDE , J]