IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53325 of 2019

Arising Out of PS. Case No.-973 Year-2018 Thana- SITAMARHI COMPLAINT CASE District- Sitamarhi

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1. BRAHMAPUTRA INFRASTRUCTURE LTD, NEW DELHI represented through its vice president (Legal and H.R.) having Its registered office at A-7, Mahipalpur, NH-8 Mahipalpur Crossing, Vasant Kunj Road, P.S.- Nelson Mandela Road, Pocket-4, Sector-C, New Delhi- 110037.
2. Rajesh Gupta, aged about 56 years (male) Son of Sri S.D. Gupta Vice President (Legal and H.R.) of Brahmaputra Infrastructure Ltd., resident of A-7, Mahipalpur, New Delhi - 110037.

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Ram Sakha Chaudhary Son of Sri Vindeshwar Chaudhary Resident of Village - Barari Behta, P.S.- Pupri, District - Sitamarhi.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ashish Giri

For the Opposite Party/s : Mr.Navin Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 13-08-2020

The present petition has been filed for quashing the order dated 29.10.2018 passed by the learned Court of A.C.J.M-I, Sitamarhi in Complaint Case No. 973 of 2018, whereby and whereunder cognizance has been taken against the petitioners and other co-accused persons under Section 420 of the Indian Penal Code and summons have been issued vide order dated 21.01.2019 as also bailable warrant has been ordered to be issued vide order dated 28.03.2019.

The brief facts of the case are that a complaint petition dated 02.07.2018 was filed before the learned Court of Chief Judicial Magistrate, Sitamarhi by one Ram Sakha Choudhary, opposite party no. 2 herein against four accused persons including the petitioners herein, who have been arrayed as accused nos. 1 and 4 respectively in the complaint petition. The said complaint petition has been numbered as Complaint Case No. 973 of 2018 wherein it has been alleged that the complainant-O.P. No. 2 owns a firm in the name and style of M/s. Ram Sakha Chaudhary and he is the Director of the said firm. It is alleged that the accused no. 1 i.e. the petitioner no. 1 herein, namely, Brahmputra Infrastructure Limited had been awarded a contract by the Water Resources Department under the Adhwara River Project relating to raising and strengthening of embankment on both sides of the river whereafter the petitioner no. 1 had opened an office at Sitamarhi and appointed two employees who had called the complainant to their office on 15.05.2012 and requested him that in view of the contract awarded to the petitioner no. 1, they want to get some work conducted through the firm of the complainant, whereupon work order was given to the complainant by the accused persons on 20.11.2012. Thereafter, the complainant and his firm had carried out work to the tune of Rs. 3,41,10,388/- (Three crore forty one lakh ten thousand & three hundred eighty eight). In the complaint petition it has been alleged that subsequently, as per agreed rate of diesel etc., a sum of Rs. 1,54,99,948/- was paid by the petitioners to the complainant after deduction of 1% T.D.S. as also paid a sum of Rs. 22,70,668/- on the head of expenses pertaining to site management, however, a sum of Rs. 97,56,938.12 had remained outstanding for payment. It is the further allegation of the complainant that the complainant had contacted the accused persons over telephone on several occasions whereafter four cheques of Rs. 2,50,000/- each were given, however, when the complainant had deposited the same in his bank account, the same stood bounced and could not be honoured on account of lack of funds in the account of the accused persons whereupon the complainant is stated to have filed two complaint cases bearing Complaint Case No. C1/1854/16 and Complaint Case No. C1/35/17 before the learned Court of Chief Judicial Magistrate, Sitamarhi, however, in the midst of the said proceedings the accused persons had contacted the complainant and had entered into an agreement with the complainant stating therein that the balance amount of Rs. 70,50,541/- will be paid in nine instalments and the said agreement dated 08.06.2017 was signed by the petitioner no. 2

on behalf of the petitioner no. 1 in presence of the co-accused no. 3. It has been further stated in the complaint petition by the complainant that after payment of three instalments totalling to a sum of Rs. 23,50,179.00 and a sum of Rs. 10,00,000/- respectively, the complainant had withdrawn the aforesaid two complaints, however, thereafter the accused persons including the petitioners herein did not pay the balance outstanding amount as per the agreement to the tune of Rs. 37,00,362/-, hence the accused persons including the petitioners herein have cheated the complainant and had fraudulently entered into an agreement whereafter they have failed to comply with the terms of payment prescribed in the agreement. It has also been stated in the complaint petition that a legal notice dated 23.03.2018 was sent through the advocate of the complainant-opposite party no. 2 to the accused persons for payment of the outstanding amount, failing which it was specified therein that the complainant would take appropriate legal action by filing civil and criminal cases before the learned Court at Sitamarhi, however, the accused persons though had replied to the aforesaid legal notice dated 23.03.2018 but had not paid the outstanding amount. It is stated that on account of the aforesaid acts of the accused persons including the petitioner herein, the complainant-opposite party no. 2 has been cheated, his firm has suffered a financial loss and the accused persons including the petitioners herein, have deliberately, in conspiracy with each other and with the intention of swindling the outstanding amount payable to the complainant have engaged in cheating by entering into an agreement discreetly with the complainant. In such view of the matter, the complainant had prayed in the complaint petition to take cognizance against the accused persons and punish them.

The aforesaid petition filed by the complainant-opposite party no. 2 was numbered as Complaint Case No. 973 of 2018. It appears that the learned court below had then examined witnesses on behalf of the complainant and on the basis of the record and oral evidence led by the complainant, the learned Court of A.C.J.M., Sitamarhi by an order dated 29.10.2018 had come to a finding that a *prima facie* case is made out under Section 420 of the Indian Penal Code only, as against the accused persons and had accordingly directed to issue notices to the accused persons. Thereafter, the learned Court of A.C.J.M.-I, Sitamarhi by an order dated 21.09.2019 has issued summons against the accused persons.

The learned counsel for the petitioners has submitted that a bare perusal of the complaint petition and the statements made by the complainant as also the witnesses clearly shows that as far as petitioner no. 2 is concerned, no role can be attributed to him in his individual capacity, especially in view of the fact that he is not a signatory to the work order given to the complainant's firm. It is further submitted that the petitioner no. 2 is merely a signatory to an agreement entered into with the complainant subsequently, hence mere signing of an agreement by the petitioner no. 2 would not attract applicability of the offence under Section 420 of the Indian Penal Code inasmuch as its ingredients are not satisfied. The learned counsel for the petitioners has further submitted that the dispute in question is purely a civil wrong and the contents of the complaint petition clearly demonstrate that the complaint pertains to a commercial transaction and breach of contract for which a civil remedy is available, hence the present criminal proceedings are unwarranted and has been filed malafidely for the purpose of applying pressure on the petitioners through criminal prosecution with the likelihood of imminent settlement, hence it is submitted that since the allegations levelled in the complaint petition do not constitute the essential ingredients of Section 420 IPC, the present criminal prosecution at the behest of the complainant-opposite party no. 2 is malafide and an abuse of the process of the Court, hence liable to be quashed. In this connection, the learned counsel for the petitioners has relied upon a judgment rendered by the Hon'ble Apex Court, reported in **(2014) 10 SCC 663 (Binod Kumar & Ors. vs. The State of Bihar & Anr.)**, paragraphs no. 11, 17, 18 and 19 whereof are reproduced herein below:-

> *"11. Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paragraphs (13) and (14) of the Indian Oil Corporation's case (supra), it was held as under:- "13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any*

criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 this Court observed:

> *"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

17. Section 420 IPC deals with cheating. Essential ingredients of Section 420 IPC are:- (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted *into a valuable security, and (iii) mens rea of the accused at the time of making the inducement.*

18. In the present case, looking at the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint *taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, the prosecution of the appellants under Sections 406/120B IPC, is liable to be quashed."*

The learned counsel for the petitioner has also relied on a judgment reported in **(2005) 13 SCC 699 (Murari Lal Gupta vs. Gopi Singh)**, paragraphs no. 1 and 6 whereof are reproduced herein below:-

"1. The respondent, Gopi Singh, filed a criminal complaint against the petitioner herein complaining of an offence under Sections 406 and 420 IPC. According to the complaint, the petitioner has a property in Delhi in respect of which he entered into an agreement to sell in favour of the respondent for a consideration of Rs. 4.50 lakhs. An amount of 3.50 lakhs was paid. The balance of Rs. 1 lakh was to be paid at the time of registration of sale deed and delivery of possession. Thereafter, the petitioner did not

honour the agreement in spite of three legal notices having been given. According to the respondent, the petitioner has thus cheated him.

6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the materials made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments are made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the

> *property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent."*

The learned counsel for the petitioner has also relied upon a judgment rendered by the Hon'ble Apex Court in the case of **Inder Mohan Goswami & Anr. Vs. State of Uttranchal & Ors.,** reported in **(2007) 12 SCC 1**. Paragraphs no. 21, 22, 42, 45 and 46 whereof are reproduced herein below:-

> *"21. We have heard the learned counsel for the parties at length. The appellants who are office-bearers of a charitable organization, namely, Sanatan Dharma Pratinidhi Sabha, in order to protect the interests of the Sabha cancelled the Power of Attorney by executing a registered Cancellation Deed after giving notice to the Power of Attorney holders. The appellants sold only that part of the land to Sunil Kumar on behalf of the Sabha for*

which an agreement to sell with the complainants (respondents) had already been terminated. The respondents earnest money had been forfeited. All of this was only done after appellants had given respondents due notice.

22. The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court. Scope and ambit of courts powers under section 482 Cr.P.C.

42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he *were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.*

45. Even if all the averments made in the FIR are taken to be correct, the case for prosecution under sections 420 and 467 IPC is not made out against the appellants. To prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither *possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained."*

A judgment rendered by the Hon'ble Apex Court reported in ***(2019) 2 SCC 401 (Vinod Natesan vs. The State of Kerala & Ors)***, has also been referred to by the learned counsel for the petitioner. It would be relevant to reproduce paragraphs no. 7, 10 & 11 thereof, herein below:-

***"7.** The appellant, party in person has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed grave error in quashing the criminal proceedings. It is vehemently submitted by the appellant-party in person that as the accused did not act as per the agreement entered into between the parties and did not make the payment due and payable under the agreement and a sum of Rs 3,00,000 (Rupees three lakhs only) was due and payable and, therefore, the accused committed the offence of* *cheating. It is submitted that after availing his intellectual services the accused did not make the full payment including one month's notice before terminating the contract/agreement.*

10. *Having heard the appellant as party in person and the learned advocates appearing on behalf of the original accused as well as the State of Kerala and considering the judgment and order passed by the High Court, we are of the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the appellant, it cannot be said that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into a criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month's notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 IPC as* *alleged. We are in complete agreement with the view taken by the High Court.*

***11**. Insofar as the submissions made on behalf of the appellant-party in person that initially the learned Judge dismissed the application and, thereafter when the judgment was dictated and pronounced, the learned Judge has allowed the application and, therefore, the impugned judgment and order passed by High Court is required to be quashed and set aside is concerned, the aforesaid has no substance. What is produced as P-45 is the docket of the file, which does not bear the signature of the learned Judge. Therefore, it cannot be said that initially the learned Judge dismissed the petition and, thereafter, when the judgment was pronounced the order was changed and the application was allowed. Even otherwise, as observed hereinabove, we are more than satisfied that there was no criminality on part of the accused and a civil dispute is tried to be converted into a criminal dispute. Thus to continue the criminal proceedings against the accused would be an abuse of the process of law. Therefore, the High Court has rightly exercised the powers under Section 482 CrPC and has rightly quashed the criminal proceedings. In view of the aforesaid and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed."*

Lastly, the learned counsel for the petitioners has relied on a judgment reported in **(2019) 16 SCC 610, (*Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*)**, paragraphs No. 27, 28, 29, 33, 34, 35, 37, 55 and 56 whereof are reproduced herein below:-

> *"27. In National Bank of Oman v. Barakara Abdul Aziz and Another (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-*
>
> > *"9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:*

> *(i) on the materials placed by the complainant before the court;*
>
> *(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and*
>
> *(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."*

28. In Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the satisfaction of the Magistrate for issuance of process has been considered and held as under:-

> *"2. Chapter XV Cr.P.C. deals with the further procedure for dealing with "Complaints to Magistrate". Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person "for the purpose of deciding whether*

> *or not there is sufficient ground for proceeding". If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.*
>
> *3.Chapter XVI Cr.P.C deals with "Commencement of Proceedings before Magistrate". If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused."*

29. Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar and Another v. State (NCT of Delhi) and Another (2012) 5 SCC 424, it was held as under:-

> *"11. In Chief Enforcement Officer v. Videocon International Ltd.(2008) 2 SCC 492 (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of*

judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

33. *The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the* *accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , this Court held as under: (SCC p. 430, para 22)*

> *"22. ... The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in*

a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

(emphasis supplied)

34. In Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others, (1998) 5 SCC 749, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law governing the issue. In para (28), it was held as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case

and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The principle that summoning an accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in GHCL Employees Stock Option Trust v. India Infoline Limited, (2013) 4 SCC 505.

35. To be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one's dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, *there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are sufficient grounds for proceeding against the accused. In Punjab National Bank and Others v. Surendra Prasad Sinha 1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.*

37. Extensive reference to the case law would clearly show that the allegations in the complaint and complainant's statement and other materials must show that there are sufficient grounds for proceeding against the accused. In the light of the above principles, let us consider the present case whether the allegations in the complaint and the statement of the complainant and other materials before the Magistrate were sufficient enough to constitute prima-facie case to justify the Magistrate's satisfaction that there were sufficient grounds for proceeding against the respondents-accused and whether there was application of mind by the learned Magistrate in taking cognizance of the offences and issuing process to the respondents.

55. As held in Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Another AIR 1963 SC 1430 and in a series of judgments of the Supreme Court, the object of an enquiry under

Section 202 Cr.P.C. is for the Magistrate to scrutinize the material produced by the complainant to satisfy himself that the complaint is not frivolous and that there is evidence/material which forms sufficient ground for the Magistrate to proceed to issue process under Section 204 Cr.P.C. It is the duty of the Magistrate to elicit every fact that would establish the bona fides of the complaint and the complainant.

56. *The order of the Magistrate dated 8-10-2010 reads as under:*

> *"The representative of the complainant Company is present. This court takes the case record up for enquiry under Section 202 CrPC itself. Witness P.B. Dinesh is examined during the enquiry and his statement has been recorded. Purpose of the enquiry seems to have been meted out. Perused the affidavit filed for that purpose on behalf of the complainant company. Perused the documents (both original and xerox copies) supplied and relied on by the complainant company in support of its case. Considering all above, I find sufficient grounds for proceeding against all the sixteen accused persons for commission of an offence under Sections 380, 411, 120-B IPC. Cognizance is taken. Issue summons accordingly upon the accused persons fixing 10-12-2010 for S/R*

and appearance. Requisites at once."

For taking cognizance of the offence, the Magistrate thus inter alia relied upon the statement of the complainant and P.B. Dinesh to arrive at a conclusion that a prima facie case is made out against the respondents. As discussed earlier, neither the statement of the complainant nor the statement of P.B. Dinesh contain the particulars as to the commission of the offence to have satisfied the Magistrate that there were sufficient grounds for proceeding against the accused. By perusal of the above order passed by the Magistrate, we find absolutely nothing to indicate application of mind in taking cognizance of the offence against Respondents 1 to 16 including the respondents who are residents beyond the jurisdiction of the court. Though speaking or elaborate reasoned orders are not required at this stage, there must be sufficient indication that there was application of mind by the Magistrate to the facts constituting the commission of offence."

The learned counsel for the petitioner by referring to the aforesaid judgment rendered by the Hon'ble Supreme Court in the case of Birla Corporation Ltd. (supra) has submitted that a Magistrate, upon receiving a complaint, is obliged to find out if there is any matter which calls for investigation by a criminal Court and enquiry under Section 202 Cr.P.C. is limited to ascertainment of truth or falsehood of the allegations made in the complaint. It is also submitted that there should be sufficient materials before the learned Magistrate to show that there are sufficient grounds for proceeding against the accused persons. The learned counsel for the petitioner has further submitted that the order of the learned Magistrate, summoning the accused, must reflect that he has applied his mind to the facts of the case and the law applicable thereof, since summoning of an accused in a criminal case is a serious matter and a criminal law cannot be set in motion as a matter of course. It is submitted that the learned Magistrate has to examine the nature of allegations made in the complaint, the evidence, both oral and documentary in support thereof and also the sufficiency of the same for the complainant to succeed in bringing home charge against the accused. It is also submitted that the order passed by the learned Magistrate, summoning the accused in a case instituted on a complaint made by the complainant, should show application of mind as to whether allegations levelled in the complaint discloses existence of essential ingredients in order to constitute an offence and whether there are sufficient grounds to proceed against the accused. It is thus submitted that the impugned orders dated 29.10.2018 and 21.01.2019 passed by the learned

A.C.J.M., Sitamarhi in Complaint Case No. 973 of 2018 does not show any application of mind muchless depicts any satisfaction of the learned Magistrate regarding the allegations levelled in the complaint disclosing existence of essential ingredients to constitute an offence, as alleged and regarding sufficiency of ground for proceeding against the accused persons. The learned counsel for the petitioner has also relied on a judgment rendered by the Hon'ble Apex court dated 23.08.2019 passed in Criminal Appeal No. 1263 of 2019, reported in 2019 SCC OnLine SC 1090 (Shiv Kumar Jatia vs. The State of NCT of Delhi), to contend that an individual either in the capacity of a Director or a Managing Director or a Chairman of the Company, can be made an accused, along with the company, only if there is sufficient materials to prove his active role coupled with the criminal intent. It would be relevant to reproduce paragraphs no. 28 to 30 of the said Judgment herein below:-

"28. Though there are allegations of negligence on the part of hotel and its officers who are incharge of day to day affairs of the hotel, so far as appellant-accused no. 2 Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 of IPC. Taking contents of the final report as it

is we are of the view that, there is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s. Asian Hotels (North) Limited, which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent, so far as appellant-accused no. 2. Applying the judgment in the case of Sunil Bharti Mittal we are of the view that the said view expressed by this Court, supports the case of appellant/accused no. 2.

29. By applying the ratio laid down by this Court in the case of Sunil Bharti Mittal it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in the case of Maksud Saiyed v. State of Gujarat, this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. It is further held that Statutes indisputably must provide *fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.*

30. In the judgment of this Court in the case of Sharad Kumar Sanghi v. Sangita Rane while examining the allegations made against the Managing Director of a Company, in which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 of Cr.P.C. In the case on hand principally the allegations are made against the first accused-company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is accused no. 2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures. Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day to day affairs of the company. In absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned."

The learned counsel for the petitioner has finally submitted that the petitioner no. 2 is merely a representative of the company, hence he may not be prosecuted on that ground inasmuch as the doctrine of vicarious liability is not attracted for the offence alleged under the Indian Penal Code and furthermore no offence under Section 420 of the Indian Penal Code is made out against the petitioner no. 2 herein, merely because he is a signatory to the agreement. Lastly, the learned counsel for the petitioner has submitted that from a bare perusal of the complaint petition, it is apparent that the petitioner no. 1 is a company having its registered office at New Delhi and the petitioner no. 2 is the Vice President (Legal & HR) of the petitioner no. 1 and does not reside within the territorial jurisdiction of the Court taking cognizance i.e. the learned Court of A.C.J.M.-1, Sitamarhi but resides at New Delhi, hence summons could not have been issued against the petitioners without compliance of the mandatory requirements under the provisions of the Code of Criminal Procedure.

Per contra, the learned counsel appearing for the opposite party no. 2 has submitted that since the petitioner no. 2 is a signatory to the agreement in question dated 08.06.2017, he is definitely having fraudulent and dishonest intention of not ensuring payment of the outstanding dues of the firm of the opposite party no. 2. It is further submitted that though it is true that earlier complaint case under Section 138 of the N.I. Act was not instituted against the petitioner no. 2 but then since now he is a signatory to the aforesaid agreement dated 08.06.2017, it is his liability to ensure payment of the outstanding dues of the firm of the opposite party no. 2.

The learned counsel for the opposite party no. 2, though has fairly accepted the fact that the nature of allegations levelled in the complaint petition and the dispute raised therein are primarily in the nature of civil wrong but then it is submitted that the said agreement was executed by the petitioners with the opposite party no. 2 with the intention of cheating and defrauding the opposite party no. 2 of its legitimately payable outstanding dues only with the object of somehow nullifying the complaint cases filed by the opposite party no. 2 earlier, under Section 138 of the N.I. Act so that the accused persons could get away with the rigors of the criminal prosecution and stringent provisions of Section 138 of the N.I. Act and resultantly push the opposite party no. 2 into civil litigation. Thus, the thrust of the argument of the learned counsel for the opposite party no. 2 is that the execution of the agreement dated 08.06.2017 and the subsequent non-compliance of its terms and conditions, especially the one pertaining to non-payment of the balance outstanding amount of the opposite party no. 2, definitely attracts the ingredient necessary for constituting an offence under Section 420 of the Indian Penal Code, hence the present petition is liable to be dismissed and the criminal proceedings, as aforesaid, do not warrant any interference. In this connection, the learned counsel for the opposite party no. 2 has referred to the following judgments, which are being detailed herein below along with the relevant paragraphs thereof:-

(i) ***(1992) suppl 1 SCC 335*** (***State of Haryana & ors. vs. Bhajan Lal & ors.)***, paragraph no. 102 whereof is reproduced herein below:-

> "**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 channelised 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 concerned Act

(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 concerned Act, 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.

(ii) ***(2000) 1 SCC 709 (V.K. Jain vs. Union of India & Ors.)***, paragraph no. 2 whereof is reproduced herein below:-

"**2.** All the same, considering the plight of the petitioner in defending prosecution proceedings instituted at various places in India on the strength of the cheques issued by the Company of which he was the Director, we permit the petitioner to move the court concerned (before which the prosecution is pending in any of the cases) for exempting him from personal appearance. This can be done only after making the first appearance in the court concerned. If any such application is filed by the petitioner, we direct the court concerned to exempt him from personal appearance on the following conditions:

1. A counsel on his behalf would be present in the particular court on days when his case is taken up.

2. He will not dispute his identity as the accused in the case.

3. He will be present in court when such presence is imperatively needed.

(iii) ***A.I.R. 2000 SC 202 (Manohar M. Galani vs. Ashok N. Advani)***, paragraph no. 4 whereof is reproduced herein below:-

> *"4. So far as the quashing of the complaints and inquiry on the basis of FIR registered by the complainant are concerned, we also find that the High Court was not justified in interfering with the same and quashing the proceedings by an elaborate discussion on the merits of the matter and in coming to the conclusion that Section 195 of the Code of Criminal Procedure will be a bar. In our opinion, it was rather premature for the High Court to come to the aforesaid conclusion and on account of the orders passed, the investigation into several serious allegations are being throttled. We, therefore, set aside the orders quashing the two complaints and the investigation made thereunder and direct that those cases may proceed in accordance with law. Needless to mention that our setting aside the impugned order does not tantamount to expression of our opinion on merits and the accused, therefore, may not feel aggrieved and are entitled to take any appropriate remedy that is available to them under the law. "*

(iv) **(2000) 3 SCC 269** ***:: 2000(3) PLJR 56 (SC) (M/s.***

Medchl Chemicals & Pharma Private Limited vs. M/s. Biological E. Limited & Ors.), paragraph no. 5, 16 & 17 are reproduced herein below:-

> "**5.** *It is on the basis of the agreement as noticed above and failure to comply therewith, it is stated that the petitioner herein has lost a substantial amount of money to the extent of about one crore and the sufferance of loss has been by reason of specific assurance and representation which obviously turned out to be false. Misrepresentation on the part of the accused-respondent persons to the complainant, has been the major grievance and a definite and specific case has been made out that such a misrepresentation was intentionally effected since the accused persons were in the know of things that in the event the supplies are not effected, as per the agreement, the complainant is likely to suffer a wrongful loss which as the complaint proceeds, in the interest of the transaction between the parties, the accused persons were bound to protect. It is on this score that relevant extracts of the complaint ought to be noticed at this juncture. The complaint inter alia provides as below:*
>
> *"(i) … clause 9 of the agreement dated 31-8-1997 states that the schedule of supply of raw materials by the party of the 2nd part (A-1 company) and the delivery of the finished product by the party of*

the 1st part (complainant) shall be as in Annexure III (to the agreement).

(ii) Annexure III to the agreement dated 31-8-1997 would show that the supply of raw material DL-2 amino butanol by A-1 to the complainant must be 15,210 kg or 15.21 MT per month to facilitate and sustain a monthly production of 8500 kg or 8.5 MT of the finished product ethambutol hydrochloride per month.

(iii) Another main factor being that the complainant should not suffer any loss on account of the execution of the agreement with A-1. The complainant states that it entered into the agreement dated 31-8-1997 with A-1 under which the complainant has been converting the raw materials supplied by A-1 into the bulk drug ethambutol hydrochloride and supplying it back to A-1 on prescribed conversion charges….

(iv) … The complainant states that the supply of raw materials, particularly the principal imported raw material DL-2 amino butanol by A-1 was far from regular almost from the beginning of the agreement. This was often being informed to A-1 through A-2, A-3, A-4 and A-5. Based on the representations made by A-1 through A-2 to A-5, the complainant had planned its production according to the agreement i.e. on the basis of supply of 15,210 kg DL-2 amino butanol by A-1 for conversion every month, but the complainant's

production plans were totally dislocated and disrupted on account of A-1's wilful failure to supply the raw materials as represented by them through A-2, A-3, A-4 and A-5….

(v) … The complainant states that it had to incur a loss of over Rs one crore due to the wilful defaults committed by the accused. These defaults on part of A-1 were repeatedly brought to the notice of the accused through telephonic calls by the complainant, more particularly in the fax message of 15-12-1997 and 10-2-1998 to A-1 and A-3.

(vi) The complainant had a meeting with A-2 on 4-4-1998 which was also attended by A-3. At this meeting held on 4-4-1998, A-2 and A-3 agreed with the position stated by the complainant and made representations that the supply of raw material by A-1, particularly the critical raw material DL-2 amino butanol, would be kept up regularly to enable production of 8 MTs of the finished product. The complainant reduced these representations by A-1 through A-2 and A-3 into writing on the same day and wrote the letter dated 4-4-1998 to A-1 through A-3. The contents of this letter have not been rebutted by A-1. The complainant states that in spite of this, the accused deliberately failed to act on their representations made to the complainant on 4-4-1998 and thus continued to inflict huge losses on the complainant….

(vii) ... The complainant states that in its talks and discussions with the accused, it had been indicating to A-2, A-3, A-4, A-5 and A-6 that in case A-1 could not keep up to its representations which put the complainant to huge losses, this clause 15 could be invoked and the agreement terminated by the complainant giving 2 months' notice to A-1. But the accused would, on these occasions, persuade the complainant not to invoke this provision and make further representations to the complainant that the supply of raw materials would henceforth be kept at the agreed level. However, these representations were not acted upon by the accused while, on the other hand, believing these representations, the complainant made schedules of production, but was left without materials, holding on to an idle plant carrying idle labour and thus incurring huge monetary losses….

(viii) ... The complainant now understands that the above false representations were made by the accused solely with the purpose of putting the complainant to huge losses and crippling them since the accused themselves were planning to manufacture in their own facilities the bulk drug ethambutol hydrochloride and wanted to put the complainant out of competition by ruining them by keeping them out of production which was achieved by the accused by making false representations of supply of raw material at the

agreed levels and then wilfully failing and omitting to act as per these representations.

(ix) The complainant was also persuaded by the representations of the accused to desist from invoking clause 15 of the agreement and revoke it which would have reduced its losses to some extent. The above acts of the accused clearly attract the ingredients of the offence punishable under Section 415 IPC….

(x) … The accused were having dishonest intention and it was with such intention that the complainant Company was fraudulently and dishonestly induced to enter into the agreement dated 31-8-1997. The dishonest intention of the accused is further seen from the complaint lodged by A-6 on behalf of A-1 against three officers of the complainant.

(xi) The accused were fully aware that the complainant is a reputed manufacturer of ethambutol hydrochloride and they are having good reputation in Indian and overseas markets. The accused were themselves contemplating entering into production of ethambutol hydrochloride and wanted to eliminate the competition from the complainant who had established their name in the market. Keeping this in mind, the accused, in order to earn wrongful gain and cause wrongful loss to the complainant, acted in the aforesaid manner, inducing the

complainant through representations (by the accused) to commit to conversion work and consequently schedule its production accordingly and then wilfully failing to act as per the representations thus putting the complainant to huge losses.

(xii) The complainant further states that but for the false representations made by the accused at the time of entering into the agreement dated 31-8-1997, it (complainant) would not have entered into this contract. The aforesaid acts of the accused have ruined the finances of the complainant and it had to incur huge loss due to these acts of the accused. The complainant states that the abovesaid acts of the accused clearly attract the ingredients of Section 420 IPC….

(xiii) … The preceding paragraphs in this complaint would clearly reveal that the accused who are bound to protect the interests of the complainant in the transactions under the agreement dated 31-8-1997 have not only cheated the complainant by causing wrongful loss to it, but have also failed to protect the interests of the complainants in the transactions. Hence, the accused are liable to be punished under Section 418 IPC….

(xiv) … The complainant states that from whatever has been stated and set out hereinabove, it is absolutely clear that A-1 to A-6 had, in criminal

conspiracy with each other and in furtherance of the common intention of all, committed the above offences under Sections 415 and 420 IPC. Letter correspondence, the complaint and the documents relating to the agreement dated 31-8-1997 would prove that A-2 to A-6 have very much participated in the affairs of A-1 and in particular, those relating to the transactions under the agreement dated 31-8-1997."

16. *Be it noted that in the matter of exercise of the High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction. Recently, this Court in Trisuns Chemical Industry v. Rajesh Agarwal observed:*

> *"5. The respondent's counsel in the High Court put forward mainly two contentions. The first was that the dispute is purely of a civil nature and hence no prosecution should have been permitted, and the second was that the Judicial Magistrate of the First Class, Gandhidham has no jurisdiction to entertain the complaint. Learned Single Judge has approved*

both the contentions and quashed the complaint and the order passed by the Magistrate thereon.

6. On the first count learned Single Judge pointed out that there was a specific clause in the memorandum of understanding arrived at between the parties that disputes, if any, arising between them in respect of any transaction can be resolved through arbitration. The High Court made the following observations:

> *'Besides supplies of processed soyabean were received by the complainant Company without any objection and the same have been exported by the complainant Company. The question whether the complainant Company did suffer the loss as alleged by it are matters to be adjudicated by the civil court and cannot be the subject-matter of criminal prosecution.'*

7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited to very extreme exceptions (vide State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401]).

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is *not sufficient to denude it of its criminal outfit. We quote the following observations: (SCC p. 263, para 10)*

> *'10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.'*

9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana v. Bhajan Lal."

17*. On a careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they*

> *"are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal*

> *prosecution is completely barred. The two types of actions are quite different in content, scope and import". (vide Pratibha Rani v. Suraj Kumar) (SCC p. 383, para 21)"*

(v) ***2012 BBCJ (3) 495 (Annapurna Devi & ors. vs. the State of Bihar & ors.)*** paragraph no. 3 whereof is reproduced herein below:-

> *"**3**. Learned counsel for the petitioners, while assailing the order of cognizance, submits that no offence is made out even on the basis of F.I.R. itself. It was submitted that petitioners and informant of the case were co-sharers and allegation was made that the petitioners had sold lands in excess to their share and as such it was submitted that it was clear cut dispute of civil nature, for which the informant may not be allowed to proceed with the criminal case against the petitioners. It was submitted that for such dispute, civil case has also been instituted and matter is still pending. Learned counsel for the petitioners submits that if on perusal of the F.I.R. no offence is made out, the court, while exercising inherent power under Section 482 of the Code of Criminal Procedure may interfere with the case at initial stage. Learned counsel for the petitioners, in support of his argument, has relied on Apex Court judgment reported in 2009(8) SCC 751 (Mohammed Ibrahim and*

others Vs. State of Bihar and another) and 2009(7) SCC 495 (Devendra and others Vs. State of Uttar Pradesh and another). While referring to Md. Md. Ibrahims case (Supra), learned counsel for the petitioners has specifically relied on paragraphs 7 and 8 of the judgment, which are quoted herein below :

"7. The question that therefore arises for consideration is whether the material on record prima facie constitutes any offences against the accused. The contention of the appellant is that if the allegations made in the complaint and FIR, even if accepted to be true in entirety did not disclose the ingredients of any offence of forgery (Sections 467 and 471) or cheating (Section 420) or insult (Section 504) or wrongful restraint (Section 341) or causing hurt (Section 323) and there was no other material to show any offence and therefore, their application ought to have been accepted."

"8. This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the

accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. (See G. Sagar Suri v. State of U.P. and Indian Oil Corpn. V. NEPC India Ltd.) Let us examine the matter keeping the said principles in mind."

(vi) ***2019 (4) PLJR 386 (SC), (***Uttam Ram Versus Devinder Singh Hudan & Anr.), paragraph no. 27 whereof is reproduced herein below:-

"27. Once the agent of the respondent has admitted the settlement of due amount and in absence of any other evidence the Trial Court or the High Court could not dismiss the complaint only on account of discrepancies in the determination of the amount due or oral evidence in the amount due when the written document crystalizes the amount due for which the cheque was issued."

I have heard the learned counsel for the parties as also perused the materials on record, apart from having gone through the law laid down by the Hon'ble Apex Court in a catena of decisions, referred to herein above in the preceding paragraphs. This Court finds that admittedly the complaints filed by the opposite party no. 2 under Section 138 of the Negotiable Instruments Act have been withdrawn by the complainant-opposite party no. 2 and as far as the present complaint in question dated 02.07.2018 is concerned, the allegation in effect is regarding non-compliance of the provisions of the agreement dated 08.06.2017. At this juncture it may be stated that it is a trite law that before issuing process, a criminal court should exercise great deal of caution and it is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged in as much as there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors.

At this juncture, it would be relevant to quote Section 420 of the Indian Penal Code herein below:-

> "*420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*"

This Court finds, upon a bare perusal of the allegations levelled and averments made in the Complaint petition dated 02.07.2018 that the ingredient of Section 420 IPC is not at all satisfied. The dispute between the parties at the most can be said to be a civil dispute and the same is being tried to be converted into a criminal dispute. Therefore, this Court is of the view that continuance of criminal proceedings against the petitioners herein will be an abuse of the process of law, thus the criminal prosecution is fit to be quashed. Merely because the accused persons might not have paid the amount due and payable under the agreement, the same would not by itself amount to cheating and/or having committed an offence under

Section 420 IPC, as alleged.

This Court further finds that the impugned order 29.10.2018 and 21.01.2019 passed by the learned A.C.J.M., Sitamarhi in Complaint Case No. 973 of 2018, whereby and where under cognizance has been taken under Section 420 of Indian Penal Code and summons have been issued, does not depict any application of mind muchless any satisfaction of the learned Magistrate regarding the allegations levelled in the complaint disclosing existence of essential ingredients to constitute an offence, as alleged and regarding sufficiency of grounds for proceeding against the accused persons. It is a trite Law that the order of the learned Magistrate, summoning the accused, must reflect that he has applied his mind to the facts of the case and the law applicable thereof, since summoning of an accused in a criminal case is a serious matter and a criminal law cannot be set in motion as a matter of course. The learned Magistrate is required to examine the nature of allegations made in the complaint, the evidence, both oral and documentary in support thereof and also the sufficiency of the same for the complainant to succeed in bringing home charge against the accused. The order passed by the learned Magistrate, summoning the accused in a case instituted on a complaint made by the complainant, should show application of mind as to whether the allegations levelled in the complaint discloses existence of essential ingredients in order to constitute an offence and whether there are sufficient grounds to proceed against the accused. The Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. The impugned order dated 29.10.2018 passed by the learned A.C.J.M., Sitamarhi in Complaint Case No. 973 of 2018 reads as under:-

> *"The case of the complainant in nutshell is that the complainant entered in one business transaction with the Brahamputra Infrastructure Ltd and its authorized agents as named in the complaint petition. But later on, after the due completion of the work assigned the company did not pay as agreed and issued a cheque which was dishonoured, effected o compromise but then again did not pay as agreed even after serving a legal notice. Complainant went to police and other competent authorities but in vain as no one entertained her*

grievances.

IW1- Avinash, IW-2 Om Prakash Narayan, IW 3-Jitendra Kumar have supported the version of the complainant.

On perusal of record and oral evidence brought on record, prima facie case is made under section 420 of IPC only and not in other section as mentioned in complaint petition, against all named accused of the complaint petition. Complainant is directed to furnish requisites within 7 days. Office clerk is directed to act accordingly.

Put up on 21.01.19."

On going through the aforesaid order dated 29.10.2018, passed by the learned A.C.J.M., Sitamarhi, this court finds absolutely nothing to indicate application of mind in taking cognizance of the offence against the accused persons including the petitioners herein. Moreover, the aforesaid order also does not show existence of essential ingredients in the complaint in order to constitute an offence U/s. 420 of the Indian Penal Code as also existence of sufficient grounds to proceed against the accused persons, hence on this ground alone, the impugned order dated 29.10.2018 passed by the learned A.C.J.M., Sitamarhi in Complaint Case No. 973 of 2018, is fit to be set aside.

Now, coming to the arguments advanced by the learned counsel for the opposite party no. 2, this Court finds that it is farfetched to contend that only in order to cheat the complainant-opposite party no. 2, the agreement in question dated 08.06.2017 has been executed by the petitioners with the opposite party no.2. It is equally implausible to argue that the said agreement dated 08.06.2017 was entered into with the intention to entice the complainant-opposite party no. 2 to withdraw the earlier complaint petitions filed under Section 138 of the Negotiable Instruments Act, in order to circumvent criminal prosecution inasmuch as admittedly the opposite party no. 2 admits that the outstanding liability at the time of executing the aforesaid agreement dated 08.06.2017 had stood reduced, upon negotiation, substantially and even after execution of the agreement dated 08.06.2017, substantial amount has been paid and only a sum of Rs. 37 lakhs an odd is outstanding for payment. Thus, if there is any breach of the said agreement dated 08.06.2017, the remedy of the complainant-opposite party no. 2 lies before a competent court having appropriate civil jurisdiction and the remedy of criminal prosecution is misplaced as well as amounts to abuse of the process of the Court.

Now, coming to the judgments referred to by the learned counsel for the opposite party no. 2, it would suffice to state that as far as the judgment rendered by the Hon'ble Apex Court in the case of Bhajan Lal (supra) is concerned, a broad outline has been laid down by the Hon'ble Apex Court with regard to the categories of cases wherein power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court to either prevent the abuse of the process of any Court or to secure the ends of justice. This Court finds that the Hon'ble Apex Court in the afore-said judgment has drawn out the broad contours with regard to the exercise of powers under Article 226 of the Constitution of India or under Section 482 Cr.P.C. by the High Courts and there cannot be any dispute with regard to the same. As far as the judgments rendered in the case of V.K. Jain (supra) is concerned, the same has got no applicability in the present case and does not lay down any law, which can be said to be germane to the issue involved in the present case. As regards the judgment rendered by the Hon'ble Apex Court in the case of **Manohar M. Galani** (supra) is concerned, the same is also not applicable in the present case inasmuch as the same has been passed in the facts and circumstances of the said case in hand before the Hon'ble Apex Court and the facts of the present case are entirely different and distinguishable from the same. Now, coming to the judgment referred to by the learned counsel for the opposite party no. 2, as rendered by the Hon'ble Apex Court in the case of ***M/s. Mdchal Chemicals & Pharma Private Limited*** (supra), it would suffice to state that the same has also been passed considering the facts and circumstances of the case in hand before the Hon'ble Supreme Court and the facts and circumstances of the present case are entirely different, hence the said judgment is distinguishable in the facts and circumstances of the present case. Now, coming to the judgment rendered in the case of Annapurna Devi & Ors. (supra), the learned counsel for the opposite party no. 2 has referred to the broad contours of law laid down by the Hon'ble Apex Court for the purposes of exercise of inherent powers under Section 482 Cr.P.C., however, there is no disagreement as far as the principles of law laid down by the Hon'ble Apex Court pertaining to quashment of criminal proceedings, while exercising powers under Section 482 Cr.P.C., by the High court, are concerned. Lastly, coming to the judgment rendered by the Hon'ble Apex Court in the case of Uttam Ram (supra), this Court would only state that the said judgment has got no applicability in the facts and circumstances of the present case inasmuch as the same deals with a case under

Section 138 of the Negotiable Instrument Act, 1881 whereas the present case is one under section 420 IPC.

Having considered the facts and circumstances of the case as also the rival submissions made by the learned counsel for the parties apart from the catena of judgments referred to herein above by the learned counsel for the parties, this Court finds that the only dispute in the instant case is regarding non-payment of the full amount due and payable under the agreement dated 08.06.2017, hence from a bare perusal of the complaint petition, it cannot be said that the ingredients of Section 420 IPC are at all satisfied. If there is any breach of the said agreement dated 08.06.2017, the remedy of the complainant-opposite party no. 2 lies before a competent court having appropriate civil jurisdiction and the remedy of criminal prosecution is misplaced as well as amounts to abuse of the process of the Court. The dispute between the parties in the present case can at best be said to be a civil dispute which has been tried to be converted into a criminal prosecution and the ingredients of dishonest intention of inducement is clearly missing, hence the petitioner cannot be said to have committed any offence under Section 420 IPC, as alleged, thus the prosecution of the petitioners under Section 420 IPC is liable to be quashed. This Court is further of the view that the impugned order 29.10.2018 and 21.01.2019 passed by the learned A.C.J.M., Sitamarhi in Complaint Case No. 973 of 2018, whereby and whereunder cognizance has been taken under Section 420 of Indian Penal Code and summons have been issued, does not depict any application of mind and also does not show existence of essential ingredients in the complaint in order to constitute an offence U/s. 420 of the Indian Penal Code as also existence of sufficient grounds to proceed against the accused persons, hence on this ground as well, the impugned order dated 29.10.2018 and 21.01.2019 passed by the learned A.C.J.M., Sitamarhi in Complaint Case No. 973 of 2018, is fit to be set aside.

Having considered the relevant facts and circumstances of the present case and for the reasons mentioned herein above, I am of the considered view that this is a fit case to exercise the powers under Section 482 Cr.P.C. and to quash the criminal proceedings against the petitioners for the offence under Section 420 of the IPC. As observed hereinabove, neither any prima facie case for the offence under Section 420 of the IPC is made out nor there is any criminality on the part of the petitioners and on the contrary a civil dispute has been tried to be converted into a criminal dispute, thus the impugned orders dated 29.10.2018 and 21.01.2019, passed by the learned A.C.J.M.,-I, Sitamarhi in Complaint Case No. 973 of 2018 as also the criminal prosecution qua the petitioners herein are quashed.

The petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

S.Sb/-

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