

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.127 OF 2020****WITH****INTERIM APPLICATION NO.220 OF 2020****IN****CRIMINAL WRIT PETITION NO. 127 OF 2020**

Ganesh Benzoplast Limited

Through its authorized representative

Mr.Ramesh Pilani

....Petitioner.

Vs.

Morgan Securities Credits

Private Limited & Anr.

....Respondents.

WITH**CRIMINAL WRIT PETITION NO. 128 OF 2020****WITH****INTERIM APPLICATION NO.221 OF 2020****IN****CRIMINAL WRIT PETITION NO.128 OF 2020**

Ganesh Benzoplast Limited

Through its authorized representative

Mr.Ramesh Pilani

....Petitioner.

Vs.

Prakash Aggarwal & Anr.

....Respondents.

WITH**CRIMINAL WRIT PETITION NO. 129 OF 2020****WITH****INTERIM APPLICATION NO.222 OF 2020****IN**

CRIMINAL WRIT PETITION NO.129 OF 2020

Ganesh Benzoplast Limited
Through its authorized representative
Mr.Ramesh PilaniPetitioner.
Vs.
Meera Goyal & Anr.Respondents.

WITH**CRIMINAL WRIT PETITION NO. 130 OF 2020****WITH****INTERIM APPLICATION NO.223 OF 2020
IN
CRIMINAL WRIT PETITION NO. 130 OF 2020**

Ganesh Benzoplast Limited
Through its authorized representative
Mr.Ramesh PilaniPetitioner.
Vs.
Suresh Chand Goyal & Anr.Respondents.

WITH**CRIMINAL WRIT PETITION NO. 348 OF 2020**

Suresh Chand GoyalPetitioner.
Vs.
1 The State Of Maharashtra
2 Ganesh Benzoplast LimitedRespondents.

WITH**CRIMINAL WRIT PETITION NO. 349 OF 2020**

Prakash AggarwalPetitioner.
Vs.
1 The State Of Maharashtra
2 Ganesh Benzoplast LimitedRespondents.

WITH**CRIMINAL WRIT PETITION NO. 357 OF 2020**

Meera Goyal

....Petitioner.

Vs.

1 The State Of Maharashtra

2 Ganesh Benzoplast Limited

....Respondents.

Mr. M.G. Shukla a/w Ms. Chaula Solanki a/w Mr. H.H. Nagi i/by Nagi & Associates for the Petitioners in Writ Petition Nos.127 of 2020, 128 of 2020, 129 of 2020 and 130 of 2020 and for the Respondent No.2 in Writ Petition Nos.348/2020, 349 of 2020 and 357 of 2020.

Mr. Aabad Ponda, Senior Advocate a/w Mr. Abhishek Gupta and Mr. Ravi Mishra i/by MZM Legal for the Petitioners in WP Nos. 348 of 2020, 349 of 2020 and 357 of 2020 and for Respondent-accused in Writ Petition Nos.127 of 2020, 128 of 2020, 129 of 2020 and 130 of 2020.

Mr. A.R. Patil, APP for the Respondent-State in all Petitions.

CORAM : A. S. GADKARI, J.

RESERVED ON : 10th MARCH, 2021

PRONOUNCED ON : 26th APRIL, 2021.

JUDGMENT:-

1) The aforementioned Petitions are filed under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (for short, '*Cr.PC.*').

The Petitioner Ganesh Benzoplast Limited is Complainant in CC No.56/SW/2011 pending on the file of learned Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai. The Respondent No.1 in WP No. 127 of 2020 i.e. Morgan Securities Credits Pvt. Ltd. is accused No.1 and Petitioners in WP No.348 of 2020, 349 of 2020 and 357 of 2020 are original accused Nos.3, 4 and 2 respectively in the said complaint.

For the sake of brevity, the parties herein will be hereinafter referred to as per their nomenclature in the said complaint i.e.

‘complainant’ and ‘accused’.

2) All the Petitioners impugn Judgments and Orders dated 2nd December, 2019 passed in Criminal Revision Application Nos.128 of 2017, 167 of 2017, 168 of 2017 and 166 of 2017, by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai. The said Revisions were filed by Accused against the Order of issuance of process under Sections 406, 420 r/w Section 34 of the Indian Penal Code r/w Section 15-HA of the SEBI Act, 1992, by the learned Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai, below Exh-1, in CC No.56/SW/2011, by its Order dated 22nd March, 2017.

2.1) Writ Petition No.127 of 2020 filed by the complainant impugns Judgment and Order passed in Criminal Revision Application No.128 of 2017 by the Revisional Court, thereby completely exonerating accused No.1, Morgan Securities Pvt. Ltd.. The Criminal Writ Petition Nos.128 of 2020, 129 of 2020 and 130 of 2020 impugn Orders of the Revisional Court to the extent, it exonerated accused Nos.2 to 4 from the offences under Sec. 420 of IPC and under Sec. 15-HA of the SEBI Act.

2.2) Writ Petition Nos.348 of 2020 and 349 of 2020 and 357 of 2020 are filed by accused Nos.3,4 and 2 respectively challenging the impugned Orders to the extent, it upheld issuance of process Order under Section 406 r/w Section 34 of the IPC against them, being Directors of accused No.1-company.

2.3) As common questions of facts and law are involved in all the aforestated Petitions, the same are decided and disposed off by this common Judgment.

3) Heard Mr. Aabad Ponda, learned Senior Advocate for the Petitioners in WP Nos.348 of 2020, 349 of 2020 and 357 of 2020 and for the Respondent-accused in WP Nos.127 of 2020, 128 of 2020, 129 of 2020 and 130 of 2020, Mr. M.G. Shukla, learned counsel for the Petitioners in WP Nos.127 of 2020, 128 of 2020, 129 of 2020 and 130 of 2020 and for the Respondent No.2 in WP Nos.348 of 2020, 349 of 2020 and 357 of 2020 and Mr. A.R. Patil, learned APP for the State in all the Petitions.

4) Complainant has filed the aforestated complaint bearing CC No.56/SW/2011 before the learned Magistrate on 11th February, 2011.

It is the case of the complainant that, the complainant is a company incorporated under the provisions of Companies Act, 1956. That, Ganesh Benzoates Pvt. Ltd. is the sister concern company of the complainant and as a Guarantor provided the security to the accused on behalf of complainant against the Inter Corporate Deposit (ICD) facility provided by the accused No.1, to the complainant to the extent of Rs.50 lacs. The accused Nos.2 to 4 are the Directors of accused No.1-company and are responsible for day to day affairs and acts of accused No.1.

4.1) In the month of March, 2000 accused No.1 Morgan Securities Credits Pvt. Ltd. (for short, '*Morgan*') agreed to provide an ICD facility to

the complainant, Ganesh Benzoplast Limited (for short, '*Ganesh*') to the tune of Rs.50 lacs. Accordingly, on 7th March, 2000, ICD Agreement, D.P. Note, Letter of Continuity, ICD Receipt, Personal Guarantee Deed and Corporate Guarantee Deed were executed between the parties. Morgan (A-No.1) paid Rs.50 lacs to Ganesh vide cheque No.048526 dated 7th March, 2000.

4.2) A Letter of Pledge dated 7th March, 2000 was executed by Ganesh in favour of Morgan and Ganesh pledged 15 lakh Equity Shares in Demat form, owned by it in favour of Morgan. The said shares were pledged with the accused only as a security. At the time of pledging of the said shares with accused, the value of each share was Rs.16 and 15 lakh shares were worth Rs.2 crore 40 lakhs. The said shares could not be sold and transferred pursuant to the Pledge Agreement and SEBI guidelines. A sudden market depression led to a fall in the value of the pledged shares. Morgan therefore, issued notice dated 3rd May, 2000 to Ganesh asking it to pledge additional shares as the value of pledged shares had decreased to Rs.1,24,50,000/-, resulting in a short-fall of Rs.75,50,000/- from the agreed security cover i.e. 200% of the ICD amount. At that relevant time, the value of shares was Rs.8.30 to 8.50 per share.

4.3) Complainant Ganesh faced acute financial hardship due to global recession and could not repay the ICD and therefore, on the due date of said ICD i.e. on 5th June, 2000 asked Morgan to recover ICD dues by

selling the pledged shares and remitting the balance sale proceeds to the complainant. At that time, the accused No.1 Morgan assured that, as and when they would sale Security then they will inform accordingly and give credit balance amount of sale proceeds. That, the accused despite sending notice kept assuring that, they will give details of shares in due course and kept on recovering interest on ICD and asked complainant not to mix the issue of sale of shares with interest on ICD. The complainant paid interest on ICD from time to time i.e. between 28th September, 2000 to 6th August, 2001. Morgan issued notice on 2nd August, 2001 to Ganesh (complainant) as the value of pledged shares had fallen to Rs.44,25,000/- and demanded repayment of ICD of Rs.50 lakhs, failing which the pledged shares would be sold.

4.4) The complainant by its communication dated 14th August, 2001 informed Morgan proposing to repay initially Rs.25 lakhs in 5 equal monthly installments at Rs.5 lakhs in cash starting from August, 2001. Complainant also informed Morgan that, the first installment of Rs.5 lakhs will be paid to it on or before 25th August, 2001.

4.5) That, on 14th August, 2001, the accused invoked clause No.17 of the ICD Agreement and appointed a Sole Arbitrator, claiming balance loan amount against the complainant. That, the accused even after invoking the Arbitration Clause, illegally sold 15 lakh pledged shares between 24th August, 2001 to 12th September, 2001 for an amount of

Rs.24,67,631/-, when the matter was already referred to the Arbitrator on 14th August, 2001. That, the accused No.1 with malafide intention and motive with its pre-planned scheme and arrangement gave effect to the sale of security by illegal ways. Complainant sought information on the sale of shares in the said Arbitration proceedings, and Morgan disclosed that the same took place via NSE from 24th August, 2001 to 12th September, 2001. Morgan filed evidence in the Arbitration proceedings, disclosed the transferees name as Doogar and Associates Ltd.. That, Doogar and Associates Ltd. changed its name to Morgan Ventures Ltd. in the year 2004. The complainant got suspicious about the conduct of accused and inquired with the Registrar of Companies for the details of the constitution of both the companies i.e. Morgan and the transferee company i.e. M/s. Doogar and Associates Ltd.. It was revealed that, the Directors of both the companies are the same i.e. accused Nos.2 to 4 herein.

4.6) In the year 2006, complainant applied to BSE and NSE for details of the sale of shares by Morgan between 24th August, 2001 to 12th September, 2001. After receiving details from Stock Exchange and the registered agent of complainant, the doubt of complainant was confirmed and it was revealed that, most of the shares were sold by the accused at the closing time of the share market and that too, at the lowest price of the day.

4.7) It is the specific case of the complainant that, the shares which were entrusted with the accused were dishonestly misappropriated and

converted for illegal gains by the accused. That, when the first notice was given by the accused company to the complainant on 3rd May, 2000, the market price of the shares was Rs.8.50 per share. That means total price of 15 lakh shares was Rs.1,27,50,000/-. That, the accused in order to acquire more shares of complainant, waited for further fall in the share price and sold them only in August/September, 2001 for Rs.24,67,531/-. The accused thus, jointly and severally by fraudulent means not only committed criminal breach of trust but also committed the act of cheating against the complainant. That, by indulging into circular trading, the accused also committed violation of Sec.15 of SEBI Act. In this brief premise, the present complaint is filed before the learned Magistrate.

5) The record indicates that, learned Magistrate by its Order dated 6th August, 2011 had directed the Police Inspector of Andheri Police Station, Mumbai to make an inquiry under Section 202 of Code of Criminal Procedure, 1973 in the matter and to submit a report. Accordingly, on 16th March, 2012, the Senior Inspector of Police, Andheri Police Station, Mumbai, submitted his Inquiry Report before the learned Magistrate. The learned Magistrate by its Order dated 11th September, 2012 had earlier issued process against all the accused, for the offence punishable under Sections 403, 406, 420 and 120-B of the Indian Penal Code. The said Order of issuance of process was challenged by the accused before the Sessions Court by filing Revision Application Nos.1276 of 2012 and 132 to

134 of 2015. The said Revisions were allowed by the learned Additional Sessions Judge by its Judgment and Order dated 16th January, 2016, on the ground that, there was defect in recording verification statement of the representative of the complainant under Section 200 of Cr.P.C., as a pre-typed verification statement was produced by the learned Advocate for the complainant and the same was accepted by the Trial Court. The learned Additional Sessions Judge, while allowing the said Revisions directed the learned Magistrate to re-record verification under Section 200 of the Cr.P.C. and to proceed with the said case.

6) The learned Magistrate accordingly recorded fresh verification statement of complainant's authorized representative Shri. Bhupendra R. Pitale under Section 200 of Cr.P.C., on 9th February, 2016 and also recorded evidence after verification of Mr.Ramesh S. Pilani of the complainant on 12th July, 2016. The learned Magistrate after perusing complaint, verification of complainant and the documents filed in support thereof and the Inquiry Report under Section 202 of Cr.P.C. dated 16th March, 2012, submitted by Senior Inspector of Police of Andheri Police Station, was pleased to issue process under Sections 406. 420 r/w 34 of the IPC r/w Sec.15-HA of the SEBI Act, 1992 against the accused by its Order dated 22nd March, 2017 passed below Exh-1 in the said complaint.

7) Feeling aggrieved by the said Order dated 22nd March, 2017 passed by the learned Magistrate, issuing process, the accused filed

Criminal Revision Application Nos.128, 166, 167 and 168 of 2017, in the Court of Sessions at Dindoshi, Mumbai. The Revision Applications were partly allowed by impugned Orders dated 2nd December, 2019. The process issued against accused No.1 Morgan was set aside in its entirety. The process issued against accused Nos.2 to 4 under Section 420 of IPC and Sec.15-HA of SEBI Act has also been set aside. The Revisional Court, however, has upheld issuance of process against Directors (A-Nos.2 to 4) of Accused No.1 company to the extent of Sec.406 r/w 34 of the IPC.

8) As such, the Directors (A-Nos.3,4 & 2) have filed aforestated Criminal Writ Petition Nos.348, 349 and 357 of 2020, challenging the impugned Order to the extent it upheld the summoning Order under Section 406 read with 34 of the IPC against them.

The complainant Ganesh has filed aforestated Writ Petition No.127 of 2020 challenging complete exoneration of Morgan (A-No.1) vide impugned Order dated 2nd December, 2019. The complainant Ganesh has also filed aforestated Criminal Writ Petition Nos.128, 129 and 130 of 2020 challenging the impugned Orders to the extent it exonerated the Directors of Morgan for the offences under Section 420 of IPC and under Section 15-HA of SEBI Act.

9) It is to be noted here that, at the outset Mr. Shukla the learned counsel for the complainant on instructions from its authorized representative, submitted that, the complainant is not pressing for

application of Section 15-HA of SEBI Act and the allegations made in the complaint to that extent will not be hereinafter further pursued. The said statement is accepted.

10) Mr. Ponda, learned Senior counsel appearing for the accused pointed out various clauses from the Letter of Pledge (Agreement) dated 7th March, 2000 executed between the parties and submitted that, in view of the specific clauses in the said Pledge Agreement, the accused had given power to the complainant to sell the said shares in case of particular eventuality. That, as per the clauses of the said Agreement, the accused had right to sell shares, which they exercised and sold the said shares. That, the accused can even sell the said shares to its group companies. He submitted that, in view thereof, there cannot be any breach of trust and or cheating by the accused as alleged by the complainant.

10.1) He submitted that, at the time of issuance of process Order dated 22nd March, 2017, the arbitration award dated 9th December, 2015 was declared by the learned Arbitrator and the findings recorded therein were not taken into consideration by the Trial Court. That, the averments in the complaint and the objections raised by the accused persons in the arbitration proceedings are similar. That, the interpretation of clauses of the Pledge Agreement of the accused have been accepted by the Arbitrator. He submitted that, the arbitration award dated 9th December, 2015 has binding effect. That, the award mentions that, there are no breaches

committed by the accused and therefore, in his submission, no criminal act also has been made out by the complainant in his complaint. By relying on paragraph Nos. 25 and 26 of the decision delivered by the Hon'ble Supreme Court in the case of *Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. (Writ Petition (Civil) No.1074 of 2019) dated 27th November, 2019*, he submitted that, even if the said arbitration award is challenged under Section 34 of the Arbitration and Conciliation Act, 1996, its binding effect does not gets stayed automatically and it holds the field till it is set aside.

10.2) Mr. Ponda further submitted that, the whole case put-forth by the complainant has to be appreciated in view of the stringent terms incorporated in the said Agreement. That, by reading the clauses of Agreement, it can clearly be gathered that, accused were having power to sell the said shares to an entity of their choice. That, the clauses mentioned in the Letter of Pledge (Agreement) cannot be ignored and ought to have been taken into consideration by the Trial Court at the first place while issuing process against the accused. He submitted that, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion, as a matter of course. That, the allegations made in the complaint even if given face value and taken to be correct in its entirety, does not disclose an offence. He submitted that, the present complaint filed by the accused, is filed for causing harassment to the accused. He

submitted that, there is no legal evidence connecting the accused with any crime, much less the offences alleged as the materials are not capable of being converted into legal evidence and therefore, the proceedings against the accused are also liable to be quashed. He submitted that, a perusal of complaint would indicate that, the complainant has not made specific allegations against accused Nos.2 to 4 and therefore, also the present complaint is not maintainable. In support of these contentions, Mr. Ponda relied on the following decisions of the Hon'ble Supreme Court.

- 1 *Charanjit Singh Chadha & Ors. Vs. Sudhir Mehra, MANU/SC/0514/2001 : AIR 2001 SC 3721;*
- 2 *International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) & Ors. Vs. Nimra Cerglass Technics (P) Ltd. & Ors., MANU/SC/1063/2015 : (2016) 1 SCC 348;*
- 3 *Pepsi Foods Ltd. & Ors. Vs. Special Judicial Magistrate & Ors., MANU/SC/1090/1998 : AIR 1998 SC 128;*
- 4 *All Cargo Movers (I) Pvt. Ltd. & Ors. Vs. Dhanesh Badarmal Jain & Ors., MANU/SC/8047/2007 : AIR 2008 SC 247;*
- 5 *Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. & Ors., MANU/SC/7050/2008 : AIR 2008 SC 1683;*
- 6 *M. Mohan Vs. The State represented by the Deputy Superintendent of Police, MANU/SC/0161/2011 : AIR 2011 SC 1238;*
- 7 *The Superintendent & Remembrancer of Legal Affairs, West Bengal*

Vs. S.K. Roy, MANU/SC/0229/1974 : AIR 1974 SC 794;

8 *GHCL Employees Stock Option Trust Vs. India Infoline Ltd.,
MANU/SC/0271/2013 : AIR 2013 SC 1433;*

9 *Sushil Sethi & Ors. Vs. The State of Arunachal Pradesh & Ors.,
MANU/SC/0119/2020 : AIR 2020 SC 765;*

10 *Suresh Vs. Mahadevappa Shivappa Danannava & Ors.,
MANU/SC/0110/2005 : AIR 2005 SC 1047.*

10.3) Mr. Ponda further submitted that, it is well settled that, every breach of contract would not give rise to an offence of cheating and only on those cases breach of contract would amount to cheating where there was any deception played at the very inception. That, if the intention to cheat has developed later on, the same cannot amount to cheating. In support of his contentions, he relied on two decisions of the Hon'ble Supreme Court viz. (i) *Uma Shankar Gopalika Vs. State of Bihar & Ors. MANU/SC/1233/2004 : (2005) 10 SCC 336* and (ii) *Vesa Holdings Private Limited & Anr. Vs. State of Kerala & Ors.*, reported in *(2015)8 SCC 293*.

10.4) Mr. Ponda submitted that, the Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or Directors of the company, when the accused is the company. In the absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. That, a vicarious

liability can be fastened only by reason of a provision of a statute and not otherwise and for the said purpose, a legal friction has to be created. In support of these contentions, he relied on the following decisions of the Hon'ble Supreme Court :-

- 1 *Maksud Saiyed Vs. State of Gujarat & Ors.*, MANU/SC/7923/2007 : (2008) 5 SCC 668;
- 2 *S.K. Alagh Vs. State of U.P. & Ors.*, MANU/SC/7162/2008 : AIR 2008 SC 1731;
- 3 *R. Kalyani Vs. Janak C. Mehta & Ors.*, MANU/SC/8183/2008 : (2009) 1 SCC 516;
- 4 *Sharon Michael & Ors. Vs. State of Tamil Nadu & Ors.* MANU/SC/8454/2008 : (2009) 3 SCC 375;
- 5 *Keki Hormusji Gharda & Ors. Vs. Mehervan Rustom Irani & Ors.*, MANU/SC/0798/2009 : AIR 2009 SC 2594 : (2009) 7 scc 475;
- 6 *Sunil Bharti Mittal Vs. Central Bureau of Investigation*, MANU/SC/0016/2015 : AIR 2015 SC 923;
- 7 *Shiv Kumar Jatia Vs. State of NCT of Delhi*, MANU/SC/1154/2019 : AIR 2019 SC 4463 : (2019) 17 SCC 193.

10.5) Two contrary submissions were advanced by the learned counsel for the Accused i.e. (i) Company cannot be held liable for the acts of its Directors and (ii) Directors cannot be held responsible for the act of company as the Letter of Pledge dated 7th March, 2000 was executed in

favour of Accused No.1-company. He *inter-alia* contended that, none of the accused persons herein have committed any offence as alleged by the complainant.

10.6) He submitted that, the present complaint is filed in February, 2011 for the alleged offence which took place in the year 2001 and therefore it is hit by delay. He submitted that, before issuing the Order dated 22nd March 2017, thereby issuing process against the accused, the learned Magistrate did not call for fresh report under Section 202 of Cr.PC..

He therefore, prayed that, the Petition Nos.348, 349 and 357 of 2020 filed by the accused be allowed and the Petitions filed by the complainant may be dismissed summarily.

11) Per contra, Mr. Shukla, learned counsel for the complainant vehemently opposed the Petitions filed by the accused. He submitted that, in view of the specific allegation of the complainant of cheating as contemplated under Section 420 of Indian Penal Code in the present case, limitation would not apply to it and therefore complaint is not hit by delay. He submitted that, the alleged delay by the accused persons in filing the present complaint has been properly explained by the witnesses of the complainant namely Shri. Bhupendra R. Pitale and Shri. Ramesh S. Pilani while recording their verification statement dated 9th February, 2016 and evidence after verification dated 12th July, 2016 respectively. He submitted that, the facts in the present case are so complex and interwoven that the

dishonest intention of the accused can be derived at the time of trial only. That the legitimate prosecution initiated by the complainant should not be scuttled at its inception. He submitted that, the accused invoked provisions of Arbitration by giving notice on 14th August, 2001 and from 24th August, 2001 to 12th September, 2009 sold shares of the complainant company allegedly in open market, only to one single buyer i.e. Doogar and Associates Ltd. and it cannot be termed as a coincidence. That, the accused Nos.2 to 4 herein are also the Directors of the said Doogar and Associates Ltd. (now, Morgan Ventures Ltd.). That the accused sold shares of complainant company, to its sister concern at a very low rate and that too at the time of closure of share market. He submitted that, the report submitted by the Senior Inspector of Police, Andheri Police Station under Section 202 of Cr.P.C. dated 16th March, 2012 clearly mentions that, the accused herein sold the said shares subsequently for higher rate in the market. That, the police have found substance in the complaint of the complainant and have accordingly submitted report before the Magistrate.

11.1) While responding to the contention of the learned counsel for the accused that, the accused No.1 company cannot be held vicariously liable, Mr. Shukla submitted that, the companies and corporate houses can no longer claim immunity from criminal prosecution on the ground that, they are incapable of possessing the necessary *mens-rea* for the commission of criminal offences. That, a company is liable to be prosecuted and

punished for criminal offences. That, there is no immunity to the company from prosecution merely because the prosecution in respect of the offences for which the punishment prescribed is mandatory imprisonment. In support of his contention, he relied on a decision of the Hon'ble Supreme Court in the case of *Iridium India Telecom Ltd. Vs. Motorola Incorporated & Ors.*, reported in (2011) 1 SCC 74 : LAWS(SC) 2010 10 13. He submitted that, the Revisional Court has committed an error, by not taking into consideration the ratio laid down by the Hon'ble Supreme Court in the case of *Iridium India Telecom Ltd. (supra)* while allowing the Revision Application No.128 of 2017 filed by the accused No.1-Morgan. He submitted that, Morgan is equally responsible for the offence committed by other accused persons as the complainant has also alleged conspiracy. That the Trial Court while issuing process by its Order dated 22nd March, 2017 has applied Section 34 of the Indian Penal Code and therefore, also the presence of accused No.1-Company at the time of final adjudication of the complaint is must.

11.2) Mr. Shukla submitted that, the accused invoked Arbitration clause on 14th August, 2001, however, claimed and accepted interest on the complainant upto 6th August, 2001. He submitted that, the report under Section 202 of Cr.PC. filed by the police mentions the said fact of repayment of interest by the complainant. He therefore submitted that, it is thus clear that, all the accused persons had intention to commit act of cheating

against the complainant. He submitted that, all the ingredients for commission of offence under Sections 406, 420 read with 120-B or 34 of the Indian Penal Code have been incorporated in the complaint by the complainant and no fault of whatsoever nature can be found out for deleting Section 420 of the IPC from it. He submitted that, the Revisional Court has committed an error in setting aside the Order of issuance of process for the offence punishable under Section 420 read with 34 of the IPC against the accused Nos.2 to 4 by its impugned Orders.

He therefore prayed that, the Writ Petition Nos.127 to 130 of 2020 filed by the complainant be allowed in its entirety and Writ Petitions filed by the accused be dismissed summarily.

12) It is to be noted here that, most of the contentions and or submissions advanced by the learned Senior counsel for the accused, recorded hereinabove, have been answered by the Hon'ble Supreme Court in its recent decision, in the case of *Priti Saraf & Anr. Vs. State of NCT of Delhi & Anr. in Criminal Appeal No(s). 296 of 2021 dated 10th March, 2021*. The Hon'ble Supreme Court, after taking into consideration its various decisions in the field, has held that, it being a settled principle of law that, to exercise powers under Section 482 of Cr.PC., the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint /FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examined its correctness. That,

whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear *ex-facie* on the complaint/FIR/charge-sheet and other documentary evidence if any, on record. It is further held that, it is thus settled that the exercise of inherent power of the High Court is an extra-ordinary power which has to be exercised with a great care and circumspection in deciding whether the case is rarest of rare case, to scuttle the prosecution at its inception. That, in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Cr.P.C. contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction. The Hon'ble Supreme Court has further observed that, we would like to add that, whether the allegations in the complaint are otherwise correct or not has to be decided on a basis of the evidence to be led during the course of trial. Simply because, there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that, Civil remedy is the only remedy and the initiation of Criminal proceedings, in any manner, will

be an abuse of the process of the Court for exercising inherent powers of the High Court under Section 482 Cr.P.C. for quashing of such proceedings. It is further held that, in fact, many a times offence of cheating is committed in the course of commercial transactions and illustrations have been set out under Sections 415, 418 and 420 IPC. That, so far as initiation of arbitral proceedings is concerned, there is no correlation with the Criminal proceedings.

13) The Hon'ble Supreme Court has thus made it clear that, in fact, many a times offence of cheating is committed in the course of commercial transactions. That, initiation of arbitral proceedings has no correlation with the criminal proceedings. In view thereof, the contentions raised by the learned Senior Counsel and recorded in para Nos.(10),(10.1),(10.2) and (10.3) hereinabove, do not hold any substance in it, as the arbitral proceedings initiated by accused has no bearing on the present criminal case.

The criminal complaint filed by the complainant therefore, has to be considered independently.

14) It is the settled position of law that, at the stage of issuance of process or a challenge to an Order of issuance of process, the Court at this juncture would not consider the defence of the accused. That, ordinarily, defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. That, the High Court

at that stage would not ordinarily enter into a disputed question of fact. That the Order of 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 the allegations made in the complaint and the evidence, both oral and documentary in support thereof.

14.1) The complainant has filed a detailed complaint giving all the necessary facts, which constitutes an offence of criminal breach of trust under Section 406 of IPC and cheating under Section 420 of IPC.

It is an admitted fact on record that, the complainant availed ICD facility from the accused No.1 to the tune of Rs.50 lakhs and amongst other various documents also executed a Letter of Pledge (Agreement) dated 7th March, 2000. In pursuance of the said Letter of Pledge (Agreement) dated 7th March, 2000, the complainant pledged 15 lakhs equity shares in demat form owned by it in favour of Morgan. The accused No.1-Morgan issued notice dated 3rd May, 2000 to complainant asking it to pledge additional shares as the value of pledged shares had decreased to Rs.1,24,50,000/- from the agreed security cover i.e. 200% of the ICD amount. At that relevant time, the value of shares was Rs.8.30 to 8.50 per share. The complainant faced acute financial hardship due to global recession and could not repay the ICD and therefore, on its due date i.e. on 5th June, 2000 asked Morgan to recover ICD dues by selling the pledged shares and remitting the balance sale proceeds to the complainant. The

record clearly indicates that, by a letter/communication dated 14th August, 2001 the complainant informed Morgan, thereby proposing to repay initially Rs.25 lakhs in five equal monthly installments at Rs.5 lakhs in cash starting from August, 2001. It was also informed to Morgan that, the first installment of Rs.5 lakhs will be paid to it on or before 25th August, 2001. Despite receipt of the said communication dated 14th August, 2001 by the accused, the accused sold the pledged shares of complainant via NSE from 24th August, 2001 to 12th September, 2001 for an amount of Rs.24,67,631/-. It is the precise case of the complainant that, the accused with dishonest intention, misappropriated and converted for its illegal gains and sold the said shares when the price of the share was at its minimal in the market. The said shares were sold at the closing hours on those relevant days to the accused No.1 company's sister concern namely Doogar and Associates Ltd.. The said Doogar and Associates Ltd. subsequently changed its name to Morgan Ventures Ltd. in the year 2004. That, the Directors of both the said companies are the same i.e. accused Nos.2 to 4 herein. The accused did not sell shares of complainant company either on 3rd May, 2000 or on 5th June, 2000, when the price of the said shares were much more higher and was sufficient to square off the ICD amount accepted by the complainant.

14.2) The Senior Inspector of Police, Andheri Police Station, in furtherance of the Order passed under Section 202 of Cr.P.C. by the learned Magistrate, after conducting investigation into the matter, has submitted a

report dated 16th March, 2012 to it. In the said report, he has recorded a categorical finding that, the accused have sold the said shares to their own sister concern for a very minimal rate and subsequently the said Doogar and Associates Ltd. sold the said shares in open market at much higher price. It was revealed to him that, the accused have committed criminal breach of trust and cheating of complainant.

14.3) It is to be further noted here that, the complainant in complaint and its witnesses namely Shri. Bhupendra R. Pitale in his verification statement dated 9th February, 2016 and Mr. Ramesh Pilani in his evidence after verification dated 12th July, 2016, have explained delay in lodging the present complaint. The learned counsel for the complainant submitted that, as an offence under Section 420 of IPC has been alleged against the accused, there is no question of application of limitation in the present complaint. I find substance in the same.

14.4) The facts of the present case as noted hereinabove, leave no manner of doubt that, the accused have committed criminal breach of trust of the complainant and have deceived it thereby committing an act of cheating. As a matter of fact, the complainant has made out a strong *prima facie* case against the accused for issuance of process. Taking into consideration the aforestated facts, it clearly appears to this Court that, the learned Magistrate has not committed any error while passing the impugned Order dated 22nd March, 2017 below Exh-1 in the said complaint.

15) As far as the contention of learned counsel for the accused that, before passing Order dated 23rd March, 2017 below Exh-1, thereby issuing process against the accused the learned Magistrate did not call for fresh report under Section 202 of Cr.P.C. is concerned, it is to be noted here that, by an Order dated 6th August, 2011, the predecessor in title of the present Magistrate, had directed the Police Inspector of Andheri Police station, Mumbai to make an inquiry into the matter under Section 202 of Cr.P.C. and to submit report in that behalf. The record indicates that, accordingly on 16th March, 2012, the Senior Police Inspector, Andheri Police Station, Mumbai has submitted an Inquiry Report before the learned Magistrate. As per the inquiry conducted by the concerned police, it was revealed that, the accused in connivance with each other and in conspiracy, committed criminal breach of trust of the complainant and sold its shares to their own Company namely Doogar and Associates Ltd. and particularly when the price of the shares of complainant Company were fetching very low price and subsequently the said Doogar and Associates Ltd. further sold it to higher price in market. As the report under Section 202 of Cr.P.C. has already been submitted by the police on record, it was and is not at all necessary for the learned Magistrate to again call for it afresh. The facts inquired into on an earlier occasion have not at all changed and are the same till today. On an earlier occasion, by an Order dated 16th January, 2016, the Revisional Court had set aside the Order of Magistrate and

remanded the complaint back, only on the ground that, there was technical error in recording verification statement under Section 200 of Cr.PC. of the complainant and not for any other reason. It thus, appears to this Court that, there is no technical lapse or illegality committed by the Magistrate while issuing process against accused by its present Order dated 22nd March, 2017. This Court, therefore, finds that there is no substance in the aforementioned contention of the learned counsel for the accused.

16) As far as the contention of the learned counsel for the accused that, the complainant is foisting vicarious liability upon the accused No.1 is concerned, the pleadings in the complaint *prima facie* discloses that, there is no mention of vicarious liability of Accused No.1-Company in it. It is the defence of Accused No.1 that, 'vicarious liability' is being foisted upon it, which the learned counsel wants this Court to test it at the stage of issuance of process. The same is contrary to the settled principles of law. It is well settled that, at the time of issuance of process, the Magistrate is required to conduct an inquiry for the limited purpose of finding out whether a *prima facie* case for issuance of process has been made out and it is limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint.

17) The aforementioned contention in paragraph No.(10.5) cannot be accepted and has to be rejected at its threshold. It is the settled principle of law that, a Company is a juristic person and it can sue or can be sued. No

doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman etc.. It's affairs are governed by or conducted by its Directors. If the offence alleged against the accused is proved, then the accused-Directors will have to be sentenced as the Company though being a juristic person, cannot be sentenced with corporal punishment.

18) The Hon'ble Apex Court in *Iridium India Telecom Ltd. (Supra)*, while considering the issue of criminal liability of a Company/Corporation in para Nos.63 to 66 has held as under :-

63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of "alter ego" of the company.

64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in Standard Chartered Bank v. Directorate of Enforcement [(2005) 4 SCC 530 : 2005 SCC (Cri) 961]. On a detailed consideration of

the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para 6)

"6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents."

65. This Court also rejected the submission that a company could avoid criminal prosecution in cases where custodial sentence is mandatory. Upon examination of the entire issue, it is observed as follows: (Standard Chartered Bank Case [(2005) 4 SCC 530 : 2005 SCC (Cri) 961], SCC pp. 548-50, paras 27-28 & 30-32)

"27. In the case of Penal Code offences, for example under Section 420 of the Penal Code, for cheating and dishonestly inducing delivery of property, the punishment prescribed is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and for the offence under Section 417, that is, simple cheating, the punishment prescribed is imprisonment of either description for a term which may extend to one year or with fine or with both. If the appellants' plea is accepted then for the offence under Section 417 IPC, which is an offence of minor nature, a company could be prosecuted and punished with fine

whereas for the offence under Section 420, which is an aggravated form of cheating by which the victim is dishonestly induced to deliver property, the company cannot be prosecuted as there is a mandatory sentence of imprisonment.

28. So also there are several other offences in the Penal Code which describe offences of serious nature whereunder a corporate body also may be found guilty, and the punishment prescribed is mandatory custodial sentence. There are a series of other offences under various statutes where the accused are also liable to be punished with custodial sentence and fine.

30. As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Penal Code, mandatory custodial sentence is prescribed for graver offences. If the appellants' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine. ...

31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be read into the section so far as the juristic person is concerned. Of course, the court cannot exercise

the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy.

32. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment (sic and fine). We overrule the views expressed by the majority in Velliappa Textiles Ltd. [Commr. (Assessment) v. Velliappa Textiles Ltd. (2003) 11 SCC 405 : 2004 SCC (Cri) 1214] on this point and answer the reference accordingly. Various other contentions have been urged in all appeals, including this appeal, they be posted for hearing before an appropriate Bench."

66. These observations leave no manner of doubt that a company/corporation cannot escape liability for a criminal offence merely because the punishment prescribed is that of imprisonment and fine. We are of the considered opinion that in view of the aforesaid judgment of this Court, the conclusion reached by the High Court that the respondent could not have the necessary mens rea is clearly erroneous.”

19) After applying a ratio laid down by the Hon’ble Supreme Court in the case of *Iridium India Telecom Ltd. (Supra)*, it is clear that, the accused No.1-Morgan is a necessary party for proper adjudication of the complaint. It is to be noted here that, the Letter of Pledge (Agreement) dated 7th March, 2000 is executed by the Authorized Signatory of the complaint on behalf of it, in favour of the accused No.1 company and therefore also impleadment of Morgan (A-No.1) is necessary for proper adjudication of the present complaint. The contention that, the accused No.1 is being foisted with vicarious liability, is the defence and a specious plea raised by the said accused. The accused No.1 will have to prove the said defence at the time of trial by leading cogent and plausible evidence in that behalf.

The aforestated deliberation leads to draw an irresistible conclusion that, the accused No.1 company is a necessary and relevant party to the said complaint and it cannot be dropped from the present proceedings at its inception.

20 That, the accused with dishonest intention have committed criminal breach of trust, deceived the complainant and have committed the act of cheating against it. In view thereof, the complainant succeeds.

 The impugned Orders dated 2nd December, 2019 passed in Criminal Revision Application Nos.128 of 2017, 167 of 2017, 168 of 2017 and 166 of 2017 filed by the accused are quashed and set aside and the Order dated 22nd March, 2017 passed by the learned Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai, below Exh-1 in CC No.56/SW/2011 is upheld and restored to the file. However, in view of the statement made by the complainant in the present proceedings that, the complainant hereinafter will not pursue application of Section 15-HA of the SEBI Act in the said complaint, Section 15-HA of SEBI Act is dropped from the Order dated 22nd March, 2017 passed below Exh-1 in CC No.56/SW/2011. The Order dated 22nd March, 2017 passed by the learned Magistrate is modified to that extent only.

21) In view of the above, Writ Petition Nos.127 of 2020, 128 of 2020, 129 of 2020 and 130 of 2020 filed by the complainant are allowed. Writ Petition Nos.348 of 2020, 349 of 2020 and 357 of 2020 filed by the accused are accordingly dismissed.

 In view of disposal of Writ Petition Nos.127 to 130 of 2020 filed by the complainant, Interim Application Nos.220 to 223 of 2020 filed therein, do not survive and are accordingly disposed off.

22) The present complaint filed in the month of February, 2011 by the complainant, is pending on the file of learned Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai for last more than 10 years. In view thereof, learned Magistrate seized of the said complaint is directed to expedite hearing of the said complaint and to make an endeavour to dispose off the same within a period of one year from the date of receipt of present Order. It is needless to mention that, the period during which the smooth functioning of the concerned Court is paralyzed or affected due to the present pandemic situation, will be excluded from computation of the said period of one year.

(A.S. GADKARI, J.)