

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1347 of 2020

With

**CRAN 1 of 2020, CRAN 2 of 2020, CRAN 3 of 2021, CRAN 4 of 2021, CRAN
5 of 2021**

Neha Kajaria

-Vs.-

The State of West Bengal &Anr.

For the petitioner	:	Mr. Ayan Bhattacharjee, Mr. Indrajit Adhikari, Mr. Sharequl Haque, Mr. Md. Zohaib Rauf, Mr. Aditya Ratan Tiwary, Mr. Amitabrata Hait, Mr. Suman Majumder.
For the State	:	Mr. Saswata Gopal Mukherjee, Ld. P.P., Mr. Madhusudan Sur, Mr. Dipankar Paramanick,
Heard on	:	02.07.2021, 06.07.2021, 12.07.2021, 19.07.2021, 26.07.2021, 28.07.2021, 30.07.2021, 02.08.2021, 06.08.2021, 13.08.2021, 27.08.2021, 14.09.2021, 29.11.2021, 24.12.2021, 17.01.2022, 19.01.2022, 17.01.2022, 09.02.2022, 17.02.2022, 18.02.2022, 28.02.2022, & 03.03.2022.
Judgment on	:	24.03.2022

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the proceedings arising out of Ballygunge Police Station Case No.27 dated 01.03.2019 under Section 420/406/467/468/471/477A/120B of the Indian Penal Code (C.G.R. Case no. 725/2019) as also all the orders passed in connection with the said proceedings.

The instant Police case was registered pursuant to a letter of complaint addressed to the Officer-in-charge, Ballygunge Police Station by one Pawan Jain on 28.02.2019. The allegations made in the letter of complaint which has been treated to be the First Information Report are as follows:

The informant/complainant claimed to be a victim of forgery and cheating at the hands of one Ashok Kumar Agarwal and others. According to him Ashok Kumar Agarwal was the owner and controlling the management of M/s. Shishir Exports Pvt. Ltd. (previously known as M/s. Shishir Holding Pvt. Ltd.) and approached the complainant on or about March, 2015 representing that M/s. Shishir Exports Pvt. Ltd. had ownership of shares of M/s. Intimate Fashions India Limited and he was the Chairman/Director of M/s. Intimate Fashions India Limited which has tremendous growth opportunity and expansion plan. It was further represented that M/s. Intimate Fashions India Limited gives a high rate of dividend and is an Associate of a US based company. Being allured by the representation of the said Ashok Kumar Agarwal the informant became Director on the Board of M/s. Shishir Exports Pvt. Ltd. on or about 01.07.2015, on further representations the informant

bought shares of M/s. Shishir Exports Pvt. Ltd. which was represented to be having the control and ownership of the shares of M/s. Intimate Fashions India Limited which was valued at Rs.16 Crores (for five lakhs shares) and the market value of which was represented to be Rs.20 Crores. Being induced of promising future of M/s. Intimate Fashions India Limited and for the purpose of owning shares of M/s. Intimate Fashions India Limited through M/s. Shishir Exports Pvt. Ltd. the complainant through its Group Company, namely Ashika Credit Capital Ltd. invested Rs.18,78,300/- in M/s. Shishir Exports Pvt. Ltd. in March, 2016 by purchase of shares. Further, on assurance of the informant his acquaintance bought shares of M/s. Shishir Exports Pvt. Ltd. worth Rs.15 Crores in March 2016. The said Ashok Kumar Agarwal produced Audited Financial Statement of M/s. Shishir Exports Pvt. Ltd. for financial year 2015-2016 which was signed by Ashok Kumar Agarwal and his son, Shishir Agarwal in which it was shown that there was investment of Rs. 16,00,00,000/- in M/s. Intimate Fashions India Limited in financial year 2014-2015. It thereafter, came to the knowledge of the informant that M/s. Intimate Fashions India Limited was a non-existent company and it had no existence. Being curious the informant checked the Audited Financial Statements of M/s. Shishir Exports Pvt. Ltd. and found that the accused had forged Audited Financial Statements of financial year 2015-2016 to insert the investment of M/s. Shishir Exports Pvt. Ltd. in previous years figures i.e. FY 2014-2015 while no investment was originally shown in the Audited Financial Statement of FY 2014-2015. Ashok Kumar Agarwal had also given forged share certificates of the non-existent

Intimate Fashions Indian Limited under his signature along with others which were allotted to M/s. Shishir Exports Pvt. Ltd. showing it as if original ones. The said Ashok Kumar Agarwal and Shishir Agarwal had forged signature of the Statutory Auditor and manufactured the financial statement and the money received by M/s. Shishir Exports Pvt. Ltd. towards shares allotment amounting to Rs.16 Crores which was siphoned off by Ashok Kumar Agarwal and his son Shishir Agarwal. The complainant alleged that Ashoke Kumar Agarwal in connivance with his son Shishir Agarwal and daughter Neha Kajaria committed the offence of Sections 420/406/120B/467/468/471 of the Indian Penal Code and requested the Officer-in-charge to register FIR for investigating into the allegations.

On completion of investigation the Investigating Officer of the case submitted charge-sheet under Sections 420/406/467/468/471/477A/120B of the Indian Penal Code against the present petitioner, namely, Neha Kajaria and four others and against another accused under Sections 420/120B of the Indian Penal Code.

Mr. Ayan Bhattacharjee, learned Advocate appearing for the petitioner submitted that the FIR or the charge-sheet do not allege any specific role attributed to the petitioner and as such by no stretch of imagination she can be presumed/assumed to be a party to the conspiracy allegedly hatched up by Ashok Kumar Agarwal and Shishir Agarwal. In order to rebut the allegations of the prosecution charges of conspiracy learned advocate has relied upon the

relevant part of Sardar Sardul Singh Caveeshar –Vs.- State of Maharashtra, [1964] 2 SCR 378 which is as follows:

“The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence : it can be established by direct evidence or by circumstantial evidence. But s. 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the acts done by one are admissible against the co-conspirators. The said section reads :

"Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was

entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law ; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only "as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy ; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them ; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it ; and (5) it can only be used against a co-conspirator and not in his favour."

Learned advocate has also relied upon the celebrated judgment of Hon'ble Supreme Court in Gurbaksh Singh Sibbia –Vs. – State of Punjab, (1980) 2 SCC 565 to emphasise the expression of 'reason to suspect', 'reason to believe' and drew the attention of this Court to section 10 of the Evidence Act. For the said purpose the following paragraphs of the journal relied upon are set out as follows:

“(1) The use of the expression ‘reason to believe’ in Section 438(1) shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere ‘fear’ is not ‘belief’. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant’s apprehension that he may be arrested is genuine. Such belief must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief. (Paras 35, 40 and 41)

35. *Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has “reason to believe” that he may be arrested for a non-bailable offence. The use of the expression “reason to believe” shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere ‘fear’ is not ‘belief’, for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable*

offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individuals liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely

40. We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever". That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be

disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

41. *Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a direction under Section 438(1) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided. A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum.”*

Learned Advocate appearing for the petitioner relied upon para 44 of Halsbury’s Laws of England Fourth Edition Volume 11 and submitted that presumption of conspiracy is not *ipso facto* and there must be certain materials available during the evidence collection process by the Investigating Agency. The aforesaid paragraph referred to and relied upon by the Learned Advocate for the petitioner is set out as follows:

“44. Secondary parties: the actus reus.Some encouragement or assistance must have been given to the principal either before or at the time of the commission of the crime with the intention of furthering its commission. Presence without more may, however, afford some evidence of aid and encouragement.

Knowledge that a crime is to be committed does not of itself make a person a secondary party. He must by his conduct have aided, abetted, counselled or procured the crime. Thus it is enough if a person supplies materials in order that the crime may be perpetrated, or supplies information to enable the crime to be carried out. Any assistance which enables the crime to be committed, given with knowledge of the relevant circumstances, will suffice, unless the person was not in law entitled to withhold that assistance, or the assistance did not contribute to the commission of the crime.

A person who conspires to commit, or who incites the commission of, a crime, is, without more, a secondary party to that crime if and when it is committed, unless before its commission he has effectively withdrawn from the conspiracy or has effectively countermanded or nullified the incitement. Where assistance or encouragement is given, however, a person may be a secondary party, although it cannot be shown that he conspired with the principal, or that he had been in direct communication with him.

A person who renders assistance after the commission of the crime does not thereby become a party to it.”

Learned Advocate by referring to certain documents tried to impress upon the Court that the petitioner has subsequently resigned from the company and there is no scope of meeting of mind or her participation in the day to day activities in the company by which it can be demonstrated that she

had consented to any act of other accused persons. After advancing such submission learned Advocate relied upon State of W.B. –Vs. – Raj Kumar Agarwalla, (1976) 2 SCC 204 and referred to paragraph 5 which is as follows:

"5. We have heard Mr Kshatriya on behalf of the appellant State, and are of the view that there is no cogent ground for interference with the judgment of the High Court. The report which was lodged by Ram Avtar in the very nature of things made no mention of the name of Raj Kumar Agarwalla respondent because it is the case of the prosecution itself that Raj Kumar appeared on the scene only subsequent to the lodging of the report. The part which is attributed to Raj Kumar is that he was present along with Shankerlal, when the latter brought washer plates in a taxi and demanded the price of the washer plates from Ram Avtar. That circumstance, as pointed out by the High Court, would hardly warrant an inference that Raj Kumar respondent too was a party to any conspiracy to defraud or cheat Ram Avtar. We find no infirmity in the judgment of the High Court as might induce us to interfere."

By relying upon State –Vs. – Nalini & Ors., (1999) 5 SCC 253, learned Advocate submitted that Section 10 of the Indian Evidence Act is a special provision and deals with dangerous criminal combinations and once the object of conspiracy has been achieved any subsequent act which may be unlawful would not make the accused a party to the conspiracy. Learned Advocate submitted that the proceeds which were received for selling of the shares of Shishir Exports Private Limited are not to be taken as a sole consideration for holding the petitioner responsible for charges of conspiracy with the other accused persons. To this effect the learned Advocate has relied upon the following paragraphs of the aforesaid judgment:

“581. A conspirator is not, however, responsible for acts done by a conspirator after the termination of the conspiracy as aforesaid. The court is, however, to guard itself against readily accepting the statement of a conspirator against a co-conspirator. Section 10 is a special provision in order to deal with dangerous criminal combinations. Normal rule of evidence that prevents the statement of one co-accused being used against another under Section 30 of the Evidence Act does not apply in the trial of conspiracy in view of Section 10 of that Act. When we say that court has to guard itself against readily accepting the statement of a conspirator against a co-conspirator what we mean is that court looks for some corroboration to be on the safe side.

583. 2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

.....

4. Conspirators may for example, be enrolled in a chain – A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the

crime of conspiracy that all the conspirators need to agree to play the same or an active role.”

The learned lawyer appearing for the petitioner has also relied upon paragraph 25 of Sheila Sebastian –Vs. – R. Jawaharaj, (2018) 7 SCC 581 and submitted that from the statements under Section 161 of the Code of Criminal Procedure it would be evident that the offence of forgery is not attracted as there has been a categorical statement to that effect by the complainant himself regarding the manipulation of the financial statement. The relevant paragraph of the aforesaid judgment referred is as follows:

“25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.”

The petitioner has also relied on Archana Rana –Vs.- State of Uttar Pradesh & Anr., 2021 (3) SCALE 317 and referred to paragraph 2, 3, 5 and 6 which is as follows:

“2. That respondent no.2 – complainant lodged an FIR against the appellant herein and her husband for the offences under Sections 419, 420, 323, 504 and 506 IPC alleging, inter alia, that the appellant’s husband had taken a sum of Rs.5,00,000/- from him for getting his son

employed. However, his son did not get any employment and subsequently when they went to the house of the appellant to ask for the return of the money, the appellant assaulted the complainant and threatened to get them falsely implicated in criminal cases and the appellant pushed/thrown him and his son from her house. The same was registered as Case Crime No. 153/2016 with P.S. Kotwali, District Azamgarh. Thereafter, the investigating officer filed the chargesheet against the appellant herein and one another for the offences under Sections 419, 420, 323, 504 and 506 IPC.

3. *Learned counsel appearing on behalf of the appellant herein has vehemently submitted that on a bare reading of the FIR and even the chargesheet and the allegations taken on their face, no case is made out against the appellant herein. It is submitted that at least no case is made out against the appellant for the offences under Sections 419 & 420 IPC. It is submitted that even if the averments in the complaint taken on their face do not constitute the ingredients necessary for the offence or do not disclose the commission of an offence under IPC. It is submitted that therefore the High Court ought to have quashed the criminal proceedings against the appellant herein for the offences under Sections 419, 420, 323, 504 and 506 IPC. Heavy reliance is placed on the decision of this Court in the case of Prof. R.K. Vijayasathya v. Sudha Seetharam (2019) 16 SCC 739 and Dr. Lakshman v. State of Karnataka (2019) 9 SCC 677.*

5. *Having heard learned counsel appearing on behalf of the appellant and learned counsel appearing on behalf of the respondent-State and having gone through the averments in the complaint and the chargesheet, even if the averments made in the complaint are taken on their face, they do not constitute the ingredients necessary for the offence under Sections 419 & 420 IPC. As observed and held by this Court in the case of Prof. R.K. Vijayasathya (supra), the ingredients to constitute an offence under Section 420 are as follows:*

i) a person must commit the offence of cheating under Section 415;
and

ii) the person cheated must be dishonestly induced to

a) deliver property to any person; or

b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC. Cheating is defined under Section 415 of the IPC. The ingredients to constitute an offence of cheating are as follows:

i) there should be fraudulent or dishonest inducement of a person by deceiving him:

The person who was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

the person who was induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived.

Thus, a fraudulent or dishonest inducement is an essential ingredient of the offence under Section 415 IPC. A person who dishonestly induced any person to deliver any property is liable for the offence of cheating.

6. Now, keeping in mind the relevant ingredients for the offences under Sections 419 & 420 IPC, as noted hereinabove, it is required to be considered whether the averments in the complaint taken on their face do

constitute the ingredients necessary for the offences under Sections 419 & 420 IPC, as alleged.

Having gone through the complaint/FIR and even the chargesheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Section 419 & 420 IPC. Whatever allegations are made for the offence with respect to inducement and/or even giving Rs.5,00,000/- for obtaining the job, are made against the 5 appellant's husband, co-accused. There are no allegations at all that the appellant herein induced the complainant to get the job and the amount of Rs.5,00,000/- was given to the appellant herein. Therefore, even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of cheating are missing. Therefore, this was a fit case for the High Court to exercise the jurisdiction under Section 482 Cr.P.C. and to quash the criminal proceedings against the appellant herein for the offences under Section 419 & 420 IPC. The High Court has failed to exercise the jurisdiction vested in it by not quashing the criminal proceedings against the appellant herein for the offences under Sections 419 & 420 IPC."

Reference has also been drawn to paragraph 8.2 of Sushil Sethi –Vs. – State of Arunachal Pradesh, (2020) 3 SCC 240 which is as follows:

“8.2. *It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] , it is observed and held by this*

Court 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 the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed 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. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside.”

Learned Advocate has also referred to paragraphs 8, 13, 20 to 23 of Samir Sahay –Vs. – State of Uttar Pradesh & Anr., (2018) 14 SCC 233 which are as follows:

“8. *The learned Senior Counsel for the State submits that both in the first information report as well as in the statement made by the complainant under Section 161 CrPC, it was alleged that false assurance was given to the complainant to deposit money. He submits that it is not necessary that accused should be an employee of Aneja Consultancy. There the loss was caused to the complainant due to the false assurance given by Major P.C. Sahay (Retd.) and the appellant, who was his son.*

13. *In the statement made before the police under Section 161 CrPC both Respondent 2 and his wife have repeated the same allegations which were made in the first information report. In the statement which*

has been brought on record under Section 161 CrPC, Respondent 2 and his wife had alleged that Major P.C. Sahay (Retd.) who was known to Respondent 2 contacted Respondent 2 and assured him that if any amount was deposited with the Company, he would take the entire responsibility. It was further stated that the appellant accompanied his father Major P.C. Sahay (Retd.) who was known to Respondent 2.

20. *Applying the ratio laid down by this Court as noted above, it is clear that ingredients of Section 420 IPC are not made out in the present case, either from the first information report or from any other material. From the first information report as extracted above only allegation made against the appellant was that he accompanied his father Major P.C. Sahay (Retd.) when he assured that the money of the applicants will not be lost and it shall be the responsibility of his father (late P.C. Sahay). The following allegations made in the first information report need to be specially noticed:*

“Along with him his son Samir Sahay, Advocate who was already acquainted with the applicant also accompanied his father. Major P.C. Sahay gave the abovesaid assurance, and the applicant and his wife Smt Uma Devi deposited rupees one lakh with Major P.C. Sahay in this regard and he gave the receipt of the same to the applicant of which the applicant is enclosing the photocopy. Like this Major P.C. Sahay(retired) has got deposited total amount of Rs 86,000 from me and my wife. But after some days it came to be known that the said Company has run away along with the lakhs of rupees of the depositors after closing its office.”

21. *In the first information report even allegation of making assurance was not made against the appellant but was made against Major P.C. Sahay (Retd.), father of the appellant. There was no allegation that the appellant fraudulently or dishonestly induced the complainant to deposit money. This Court in Arun Bhandari v. State of U.P. [Arun*

Bhandari v. State of U.P., (2013) 2 SCC 801 : (2013) 2 SCC (Cri) 21] , has held that it is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating. An earlier two-Judge Bench judgment of this Court in *State of Kerala v. A. Pareed Pillai* [*State of Kerala v. A. Pareed Pillai*, (1972) 3 SCC 661 : 1972 SCC (Cri) 705] , was quoted with approval in para 21. Paras 21, 22, 23 and 24 which are relevant are to the following effect : (*Arun Bhandari case* [*Arun Bhandari v. State of U.P.*, (2013) 2 SCC 801 : (2013) 2 SCC (Cri) 21] , SCC pp. 811-12)

“21. Before we proceed to scan and analyse the material brought on record in the case at hand, it is seemly to refer to certain authorities wherein the ingredients of cheating have been highlighted. In *State of Kerala v. A. Pareed Pillai* [*State of Kerala v. A. Pareed Pillai*, (1972) 3 SCC 661 : 1972 SCC (Cri) 705] a two-Judge Bench ruled that : (SCC p. 667, para 16)

‘16. ... To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise [and] such a dishonest intention cannot be inferred from [a] mere fact that he could not subsequently fulfil the promise.’

22. In *G.V. Rao v. L.H.V. Prasad* [*G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] , this Court has held thus : (SCC pp. 696-97, para 7)

‘7. As mentioned above, Section 415 has two parts. While in the first part, the person must “dishonestly” or “fraudulently” induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrai Manilal Akhaney v. State of*

Bombay [Jaswantrao Manilal Akhaney v. State of Bombay, AIR 1956 SC 575 : 1956 Cri LJ 1116] , a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, “mens rea” on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State of W.B. [Mahadeo Prasad v. State of W.B., AIR 1954 SC 724 : 1954 Cri LJ 1806] , that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.’

23. In *S.W. Palanitkar v. State of Bihar* [*S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] it has been laid down that : (SCC p. 250, para 21)

‘21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.’

24. In the said case while dealing with the ingredients of criminal breach of trust and cheating, the Bench observed thus : (*S.W. Palanitkar case* [*S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] , SCC p. 246, paras 9-10)

‘9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by, (ii)(b) the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

22. *The Chief Judicial Magistrate while rejecting the application of the appellant for seeking discharge has not even referred to any allegation or evidence on the basis of which it can be said that ingredients of Section 420 IPC were made out in the facts of the present case.*

23. *We are, thus, of the considered opinion that in the present case ingredients of Section 420 IPC were not made out so as to frame any charge under Section 420 IPC against the appellant.”*

Learned advocate for the petitioner lastly concluded that the present proceeding display a sinister effort to implicate the petitioner without any piece of evidence and as such continuance of the proceedings so far as the present petitioner is concerned should be quashed.

Mr. Saswata Gopal Mukherjee, the learned Public Prosecutor appearing on behalf of the State has drawn the attention of the Court to the relevant document available in the Case Diary which reflects that from the year 2005 the present petitioner was Director of M/s. Shishir Holding Private Limited which was subsequently renamed as M/s. Shishir Exports Pvt. Ltd. The petitioner was a share holder also of M/s. Shishir Exports Pvt. Ltd. and said

M/s. Shishir Exports Pvt. Ltd. was shown to hold five lakh shares of Intimate Fashion India Limited (a non-existent company) by producing shares certificates. The audited balance-sheet of M/s. Shishir Exports Pvt. Ltd. reflected that five lakh shares of Intimate Fashion India Limited were held by M/s. Shishir Exports Pvt. Ltd.. The complainant was allured to part with Rs.15.50 Crores for purchasing shares of M/s. Shishir Exports Pvt. Ltd. which held over five lakh shares of Intimate Fashion India Limited which was a non-existent company. Additionally he submitted by way of documentary evidence the Investigating Agency has been able to establish that Neha Kajaria sold 27,610 shares of M/s. Shishir Exports Private Limited to the complainant or his associates for which a sum of Rs. 8,28,300/- was transmitted to the joint account of Ashok Kumar Agarwal and Neha Kajaria at Kolkata and the said amount within a day or two was transmitted to the sole holding account of Neha Kajaria at Bombay. Learned Public Prosecutor emphasised that the shares of non-existent company was handed over to the informant and such shares were shown in the audited balance-sheet of the company during the relevant period when the petitioner happened not only to be a major shareholder but also a Director of the Company. The proceeds received can by no stretch of imagination exonerate her from the charges of conspiracy and her claim of innocence at this stage would be a premature conclusion.

I have considered the submissions of the learned advocate appearing for the petitioner, as well as the learned Public Prosecutor representing the State including the documents collected by the Investigating Officer which were

relied upon in support of the case, as also the number of authorities which have been relied upon by the learned advocate appearing for the petitioner. The petitioner approached this Court at a stage when the charge-sheet was filed and subsequently the State was directed to hand over the documents under Section 207 of the Code of Criminal Procedure which the State intended to rely upon to prove its case. This Court today, is therefore, at a stage of consideration of an application under Section 239 of the Code of Criminal Procedure and as such the subject matter which calls for consideration is that whether it would be proper for the trial Court to frame charges under Section 240 of the Code of Criminal Procedure or discharge the accused/petitioner under Section 239 of the Code of Criminal Procedure.

The Hon'ble Supreme Court in State of Maharashtra –Vs. – Som Nath Thapa, (1996) 4 SCC 659 has been pleased to interpret the provisions of framing of charge and the expression used in Sections 240/228 of the Code of Criminal Procedure, particularly the phrase 'there is ground for presuming that the accused has committed an offence'. The relevant paragraphs are set out as follows:

“24. *The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to*

any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.

30. In *Antulay case* [(1986) 2 SCC 716 : 1986 SCC (Cri) 256] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of “prima facie” case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

31. Let us note the meaning of the word ‘presume’. In *Black's Law Dictionary* it has been defined to mean “to believe or accept upon probable evidence”. (emphasis ours). In *Shorter Oxford English Dictionary* it has been mentioned that in law ‘presume’ means “to take as proved until evidence to the contrary is forthcoming”, *Stroud's Legal Dictionary* has quoted in this context a certain judgment according to which “A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged.” (emphasis supplied). In *Law Lexicon* by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it

differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

Similar view was also contended in Amit Kapoor –Vs. – Ramesh Chander, (2012) 9 SCC 460 the relevant paragraphs are set out as follows:

“29. *In the light of the above principles, now if we examine the findings recorded by the High Court, then it is evident that what weighed with the High Court was that firstly it was an abuse of the process of court and, secondly, it was a case of civil nature and that the facts, as stated, would not constitute an offence under Section 306 read with Section 107 IPC. Interestingly and as is evident from the findings recorded by the High Court reproduced supra that “this aspect of the matter will get unravelled only after a full-fledged trial”, once the High Court itself was of the opinion that clear facts and correctness of the allegations made can be examined only upon full trial, where was the need for the Court to quash the charge under Section 306 at that stage. Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings.*

30. *We have already noticed that the legislature in its wisdom has used the expression “there is ground for presuming that the accused has committed an offence”. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659 :*

1996 SCC (Cri) 820] referred to the meaning of the word “presume” while relying upon Black's Law Dictionary. It was defined to mean “to believe or accept upon probable evidence”; “to take as proved until evidence to the contrary is forthcoming”. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.”

In the present factual matrix of the case the chain of evidence starting from the FIR to the amount of the proceeds of the shares sold of M/s. Shishir Exports Pvt. Ltd. having been transmitted to the account of the present petitioner, I am of the considered view that the stage at which the petitioner has approached this Court do not qualify the parameters of ‘some suspicion’ but do qualify the yardstick of ‘grave suspicion’ as such I am unable to satisfy my conscience for interfering at this early stage of the proceedings. Thus, no interference is called for.

Accordingly, CRR 1347 of 2020 is dismissed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

A plea was taken up by the learned Advocate appearing for the petitioner as she is in abroad presently staying with her family, that she may be allowed to be represented by her learned lawyer and her day to day physical appearance in Court may be dispensed with. In view of such submission being made and certain documents being enclosed along with the revisional application, I am of the opinion that in case such an application under Section 205/317 Cr.P.C. is filed with appropriate undertaking before the Learned Magistrate, the Learned Magistrate will consider the same in its true and proper perspective. Further, in case the learned Magistrate requires the physical presence of the petitioner for the first time appearance in Court after the present case goes back to the Trial Court, the Learned Magistrate would afford her time of 60 days for physical appearance.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)