IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1843 OF 2022

Federal Bank Ltd. Through Shalini
Nimish Somaiya and Ors. … Petitioners

Versus

The State of Maharashtra and Anr. … Respondents

….

Mr. Harshad Bhadbhade a/w Ms. Nidhi Singh, Zoheb Khatri i/by Indian Law LLP, Advocate for Petitioner.

Mr. Ankur Pahade, Advocate for Respondent No.2.

Mr. Arfan Sait, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 1st AUGUST, 2022

PC :

1. Heard both sides. The petitioners are aggrieved by order dated 23.02.2022 issuing process passed by Learned Metropolitan Magistrate 71st Court, Bandra Mumbai for offences punishable under Section 417 read with 34 of the Indian Penal Code (for short "IPC") and impugned proceedings in CC No. 04/Misc/2020.

2. In nutshell the allegations in the complaint are as follows:

(i) The complainant is Chartered Accountant by profession. The accused No.1 is the bank incorporated

Corrected version of order dated 01.08.2022 pursuant to Speaking to the minutes of order dated 11.10.2022.

under the Banking Companies Act. Accused Nos.2 and 3 are Executive Director/CFO and Director of accused nos.1. Accused No.4 and 5 were Executive Director/Director in large credit Department BKC Bandra Mumbai.

(ii) Mr. Francis Xavier, Deputy General Manager (for short “DGM”), Fort Corporate Banking Branch, Mumbai requested the complainant in June 2011 for referring loan proposal of his clients for lending big loan moneys to earn substantial incremental interest income and other charges and promised him payment of professional fees on sanction of loan proposal. It is common prevalent practice of the Banks in general to offer incentive for referring loan proposals. No specific terms in writing are required between the bank and the professionals.

(iii) It was agreed specifically that the complainant’s professional fees shall be paid on sanction of loan. There was no relation with disbursement if the accused/borrowers concerned fail to maintain full transparency of true position and comply required terms and conditions of the sanctions without any concealment deliberately. There was implied contract between the complainant and the accused.

(iv) The complainant submitted Rs.300 crore Term Loan Application dated 27.06.2011 of Company/borrowers in Corporate Banking Branch Fort Mumbai as requested by Mr. Francis Xavier then DGM who assured him to maintain full transparency in process of loan application/sanction.

(v) The complainant relied upon accused No.1 in true professional spirits and relations as Chartered Accountant and Banker as prevalent generally in Financial Field without any doubt of collusion/conspiracy with his clients in due course of processing of loan proposal.

(vi) The accused No.1 acknowledged the loan application dated 27.06.2011 under seal and signature of Fort Branch official Mr. P.P. George, Assistant General Manager under instructions of Mr. Francis Xavier.

(vii) Mr. Francis Xavier sent in principal approval for taking up to Rs.200 crore Term Loan out of Rs.300 crore to Pipavav Defence Offshore and Engineering Co. Ltd.

(viii) Rs.100 crore Term Loan and Rs.100 crore Bank Guarantee/letter of credit was sanctioned on 29.07.2011. Mr. Francis Xavier DGM, Fort Branch with malafide intentions wrote wrongly in reference column that “the

Company office is near to branch approached directly”. This is misrepresentation clearly on the part of the accused/Federal Bank in loan proposal since beginning contrary to commitments given to the complainant. Thus, the accused had malafide intentions since beginning for cheating the complainant and gave dishonest inducements for deceiving him.

(ix) The complainant sent e-mail dated 22.07.2011 and 03.08.2011 to accused No.1/DGM. after submission of Rs.300 crore Term Loan application asking status of in-principal sanction. DGM avoided true position of sanction of Rs.200 crore out of Rs.300 crore and fraudulently concealed and committed cheating. The complainant relied on inducement and false representations of the accused causing huge wrongful loss for obtaining huge wrongful gain by unfair practices from the inception of transaction.

(x) Rs.100 crore Term Loan and Rs.100 crore Bank Guarantee/letter of credit was finally sanctioned on 03.09.2011 by higher authorities and conveyed by sanction letter dated 06.09.2011 to the DGM Fort Branch.

(xi) The accused failed to inform the complainant about sanction letters dated 29.07.2011 and 06.09.2011 and concealed it fraudulently for avoiding his payments as agreed by the accused/DGM Fort Branch.

(xii) The accused played foul by splitting up Rs.200 crore sanctions into two parts of Rs.100 crore Term Loan and Rs.100 crore Bank Guarantee/letter of credit which was finally sanctioned on 03.09.2011 board meeting by higher authorities and conveyed by sanction letter dated 08.09.2011 to the DGM, For Branch.

(xiii) The accused had indulged in unfair practices in loan proposal submitted by complainant and concealed actual sanction letters of Rs.200 crore split into two parts in false regret letter dated 04.07.2012. This letter was issued fraudulently in collusion with the borrower/clients of complainant. Complaint lost his professional fees.

(xiv) Accused Nos.1 to 3 issued contradictory letter dated 25.02.2014 stating that the bank gave sanctioned loan to the company provisionally which is misleading and fraudulent concealment. The accused conspired and acted in common intention and committed offence under Section 120-B read with Section 34 of the IPC.

(xv) The accused took U turn from first letter dated 04.07.2012 in its second letter dated 25.02.2014 by stating that loan was sanctioned by accused provisionally. Thereby committed offence of cheating under Section 417, 420 of the IPC.

(xvi) In the second letter, accused had stated that no documents have been preserved as loan was disbursed to the borrower which is incorrect as the complainant got all RTI documents from MRA Marg Police Station.

(xvii) The accused Nos.1 to 3 misrepresented the professional association of the complainant for avoiding his legitimate payment of professional fees by stating that complainant is not related to loan proposal and that the said proposal was not sourced by him. It was fraudulent concealment of facts by accused. Therefore accused committed offence under Section 468 of IPC. The accused had falsely stated in letter dated 25.02.2014 that they are unable to produce loan documents as loan was not disbursed which is contrary to RTI documents received from MRA Marg Police Station.

(xviii) Accused No.2 checked RTI documents in meeting dated 08.07.2016. Accused No.2 accepted fraudulent activities of DGM For Branch and tendered apology. The complainant sent several reminders and objected unfair practices to Managing Director Mr. Shyam Srinivasan, Chairman, Mr. Nilesh Vikamsey. Accused indulged into fraudulent activities and caused huge losses to the complainant.

(xix) Accused No.2 had called the complainant for meeting on 08.07.2016 for resolving disputes by compensation of genuine losses of professional fees of complainant and acknowledged his professional bill dated 08.07.2016 for Rs.86.25 Lac. He was requested to collect payment from Fort Branch Mumbai where transaction was initiated by him. However, the Fort Branch Mumbai officials acted dishonestly and failed to pay his dues. The accused sent misleading reply dated 19.07.2016 and denied the payment by giving false excuses.

(xx) There exists valid implied contract between accused No.1, complainant and complainant with borrowers and as mentioned in agreement dated 10.08.2011. The accused had acted with malafide intentions.

(xxi) Accused Abraham Chacko then Executive Director LCD had called complainant in BKC office on 03.01.2012. He questioned low professional fees charged by complainant for loan proposal. Accused No.2

acknowledged his professional bill dated 08.07.2016. Accused No.2 made false promise for clearance of bill. Complainant went to For Branch. He met AGM Mr. Joy Thomas, Shashidharan, Padmanabhan Iyer and Ms. Shalini Somaiya. Bill was acknowledged. E-mail sent to accused No.3. No payment received. Accused collectively cheated complainant. Complaint was sent to ICAI disciplinary for professional misconduct under Section 21 of Chartered Accountants Act, 1949 against accused No.3. False reply was sent by accused No.3. Accused had cheated complainant.

(xxii) The complainant sent complaint of unfair practices of accused to Secretory, Ministry of Corporate Officers, New Delhi on 31.08.2018. Complainant sent two reminders/demand notices dated 25.06.2019 and 28.06.2019 for payment of bill. No payment received.

(xxiii) Complaint was made to BKC Police Station on 29.01.2018 and 06.07.2018, but police did not initiate action. The same facts were repeated to DCP Zone VIII and Additional Commissioner of Police West region by e-mails. FIR was registered. Accused No.1 to 5 in connivance had conspired colluded and committed offences.

3. Complaint was filed by respondent No.2 seeking directions under Section 156(3) of Cr.P.C. for offences under Sections 120-B, 417, 420, 468, 471, 504, 506 read with 34 of the IPC. Learned Magistrate directed inquiry under Section 202 of Cr.P.C. Report dated 02.08.2021 was submitted to the Court stating that the dispute appears to be of civil nature.

4. Learned Magistrate issued process against the accused vide order dated 23.02.2022 by observing that *prima facie* it appears that ingredients of Section 415 are attracted. Therefore, issue process against the accused under Section 417 read with Section 34 of IPC.

5. Learned advocate for the petitioners submitted that the entire complaint is false. There was no contract between petitioners and complainant. No offence of cheating is made out in the complaint. There is no document relating to the contract between accused and complainant. The report under Section 202 of Cr.P.C. opined that dispute is of civil nature. The Court of learned Magistrate had not granted prayers under Section 156(3) of Cr.P.C. and instead directed inquiry under Section 202 of Cr.P.C. The inquiry report does not support the complaint.

The complaint has been filed to pressurise the accused to submit to demand of the complainant. Loan application/proposal of company M/s. Pipavav defense and Offshore Engineering Company was received and considered by Board of Petitioner No.1 in 2011. The borrowers had applied by application dated 27th June, 2011 to the petitioner No.1 Bank through its Corporate Banking Branch, Mumbai for sanction of Term Loan of Rs.300 crore. Vide letter dated 06.09.2011, the petitioner No.1 had intimated to its own branch about provisionally sanctioned loan for an amount of Rs.200 crore subject to compliance of terms and conditions mentioned in the letter therein. Since, sanctioned loan amount was lesser than the applied loan amount of Rs.300 crore, the company did not accept the proposed sanction terms and conditions, hence, the purported loan was never disbursed. The company then enquired about the status of loan vide letter dated 04.07.2012 from Petitioner No.1. Vide letter dated 04.07.2012 issued by petitioner No.1 the company was informed that no loan facility was availed by the said company. The earlier sanction was merely provisional and not final. There was no final sanction and disbursement of loan to the company. All correspondence in respect of the said loan was exchanged directly between petitioner No.1 and officials of said company. Respondent No.2 had no role in sourcing the said application or otherwise. The petitioners had never dealt with the respondent No.2 for sourcing or processing the loan application. After lapse of several years, the respondent No.2 had been raising false claim stating that the company has sourced the loan through him and that he was entitled for commission in lieu on referral basis or professional fees of such transaction entered into between the petitioner No.1 Bank and the said company. The said company did not share any information about involvement of respondent No.2 in sourcing the loan with Petitioner No.1. The respondent No.2 is continuously forwarding correspondences claiming commission from petitioner No.1 Bank. On 25.01.2014, MRA Marg Police Station had issued letter to petitioner No.1 Bank regarding complaint of respondent No.2. The letter was in respect to enquiry under Section 202 of Cr.P.C. and loan facility. Petitioner No.1 issued letter to MRA Marg Police Station dated 25.02.2014 in response to enquiry into loan proposal submitted by company. The petitioner No.1 reiterated its stand that the company had directly approached the petitioner No.1 Bank for financial assistance and the respondent No.2 was in no way related to the loan proposal and the said proposal was not sourced through him. Police conducted enquiry. The official of Petitioner No.1 appeared for enquiry. Statements were recorded. Respondent No.2 never raised any bills/invoices on the petitioner No.1 Bank claiming till the year 2016. False bill dated 08.07.2016 was submitted claiming amount of Rs. 86,25,000/-. Respondent No.2 left the bogus bill with junior officials at counter of the petitioner No.1 Bank, it was never accepted by the Bank.

6. It is submitted that, in 2018 Respondent No.2 filed complaint against Petitioner No.1 Bank and directors on application through RTI, reply was received on 30th January, 2019 stating that said complaint was closed. Criminal Complaint No. 4783/SW/2013 was filed by respondent No.2 against the company. The said Company filed Writ Petition No. 2093 of 2016 before this Court, challenging order of Sessions Court dated 20.04.2016. This Court by order dated 18.03.2019 allowed Criminal Writ Petition No. 2093 of 2016 and held that no document regarding actual disbursement of loan is produced for claiming commission and hence no case for cheating is made out. The petitioner No.1 has filed private complaint against respondent No.2

seeking directions under Section 156(3) of Cr.P.C. The Court issued such directions on 8th January, 2020 and MECR No.61 of 2020 is registered against respondent No.2 under Sections 420, 384, 500 & 506 of IPC. The petitioner No.1 filed suit for damages against respondent No.2. The respondent No.2 is habitual litigant.

7. Learned advocate for respondent No.2 submits that the writ petition is not maintainable since the petitioner has alternate remedy to challenge the order of process by preferring revision application. The petitioners have directly approached this Court under Section 482 of Cr.P.C. Article 226 and 227 of the Constitution of India. Remedy of writ jurisdiction can be exercised in the event there is violation of Fundamentals Rights. In these proceedings fundamental rights of petitioners are not affected in any manner. There is sufficient material to issue process against the accused. The complaint *prima facie* makes out the case for issuing process. At this stage, the court is required to examine the complaint and documents on record. Learned Magistrate has applied its mind to the averment in the complaint and documents on record. The documents relied by complainant supports the claim of complainant. The accused had

dishonest intention to cheat the complainant. The earlier complaint has against company. It relates to different Bank and different transaction. The letter of bank stated that that loan is sanctioned. This fact was not known to the complainant earlier. The Bank had informed the police that the loan was sanctioned but not disbursed. The accused are involved in misappropriation and cheating. They acted in hand in glow with company. The order passed by this Court in the other petition was relating to Dena Bank. The respondent No.2 is relying upon the document obtained from RTI. Report under Section 202 does not absolve, the petitioner from crime. There is no reason to set aside the order of process. The learned Counsel for complainant adverted to several documents annexed to the petition. In the affidavit in reply filed by complainant (respondent No.2) it is stated that the petition is premature and devoid of merits. It is not maintainable. It is in violation of doctrine of Exhaustion of remedies as time and again explained by Hon’ble Supreme Court in various decisions. Reference is made to decision in the case of M/s. Radha Krishan Industries V/s. State of Himachal Pradesh and others (Civil Appeal No.1155 of 2021) decided on 20.04.2021. The petitioners had on alternate and equally efficacious remedy available before the Sessions Court by way of filing Revision under Section 397. The petitioners had failed to exhaust the alternative remedy under Section 397 whereby the Sessions Court had the power to revise or review the impugned order challenged in the petition. The general rule suggests that, where a statute creates a right or a liability and at the same time prescribes the remedy or procedure for the enforcement of such right or liability, then the relief provided by that remedy must be resorted before invoking the extraordinary and prerogative writ jurisdiction under Article 226. Thus, if aggrieved person has right to file appeal, review, reference or revision, under the enactment, the High Court may refuse to entertain a petition under Section 482 of Cr.P.C. or Article 226 of Constitution of India. The facts in the complaint are reproduced in the affidavit. The respondent No.2 filed complaint to MRA Marg Police Station for cheating and Criminal intimidation. Police did not take cognizance. Hence he filed complaint bearing C.C. No.4783/SW/2013 before Additional Chief Metropolitan Magistrate, 38th Court Ballard Pier, under Sections 406, 420, 323, 504, 506(ii) r/w 34 of IPC. The learned Magistrate directed enquiry under Section 202 Cr.P.C. The petitioners sent misleading letter dated 4.7.2012 to Mr. Jigar Shah, CFO. The learned Magistrate in order dated 31.3.2014 confirmed that loan was sanctioned due to efforts of respondent No.2. The report mentioned that accused had applied for loan through complainant and Rs.300 Crores loand and Rs.200 Crores loan was sanctioned by Federal Bank. The petitioners have suppressed true facts in this petition. The Federal Bank approved the term loan on 2.7.2011. The petitioners splitted the sanctioned loan of Rs.200 Crores into Rs.100 Crores term loan and Rs.100 Crores bank Guarntee. Several others facts alleging that accused had cheated complainant are mentioned in the affidavit in reply. Reference is made to decision of Hon’ble Supreme Court in the case of Kurukshetra Univesity V/s. State of Haryana (1977) 4 SCC 451, State of Bihar V/s. Raj Narain Singh AIR 1991 SC 1308, CBI V/s. Duncans Agro Industries Ltd. AIR 1996 SC 2452, State of A.P. V/s. Gollonda Linga Swamy (2004) 6 SCC 522, Kamaladevi Agarwal V/s. State of West Bengal and Ors. 2001 Supp (4) SCR 284, R.P. Kapur V.s State of Pujnab, M/s. Necharika Infrastructure Pvt. Ltd. V/s. State of Maharashtra and Others (Cri. Appeal No.330 of 2021), Medchl Chemical and Pharma Ltd. V/s. Biological E. Ltd. and Others, Lalmuni Devi A/s. State of Bihar and Others, Bhushan Kumar V/s. State (NCT of Delhi) (2012) 2 SCC (Cri) 872, Smt. Nagawwa V/s. Veeranna Konjalagi and Ors. (1976) 3 SCC 736.

8. Learned advocate for respondent No.2 placed for consideration the following decisions.

(i) Bhushan Kumar and Anr. V/s. State (NCT of Delhi) and Anr.[1].

(ii) Smt. Nagawwa V/s. Veeranna Shivalingappa Konjalgi and others[2].

(iii) Whirlpool Corporation V/s. Registrar of Trade Marks, Mumbai and others[3].

(iv) Harbanslal Sahnia and another V/s. Indian Oil Corpn. Ltd. and others[4].

(v) M/s. Radha Krishan Industries V/s. State of Himachal Pradesh[5]

9. In rejoinder, learned advocate for petitioners submitted that this court under article 227 of the constitution of India and section 482 of Cr.P.C. has vide powers to entertain the petition/application challenging order of process. The inherent powers can be exercised., while the court notices abuse of process of law. This court

1 AIR 2012 SC 1747
2 AIR 1976 SC 1947
3 AIR 1999 SC 22
4 AIR 2003 SC 2120
5 AIR 2021 SC 2114

has supervisory jurisdiction under article 227 of the constitution of India.

10. Learned advocate for petitioner has relied upon the following decisions.

(i) Pepsi Food Ltd and another Vs. Special Judicial Magistrate and others[6].

(ii) Adalat Prasad V/s. Rooplal Jindal and others[7].

(iii) Dhariwal Tobacco Products Limited V/s. State of Maharashtra and another[8].

11. The preliminary objection about maintainability of the petition urged by learned counsel for the respondent is that the petitioner has alternate remedy of preferring the application under Section 397 of Code of Criminal Procedure before the Sessions Court. It is settled law that, whenever the High Court comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of Court and that the ends of justice require that the proceedings should be quashed, the Court can do so.

6 (1998) 5 SCC 749
7 (2004) 7 SCC 338
8 (2009) 2 SCC 370

12. In the case of **Whilrpool Corporation Vs. Registrar of trade Marks, Mumbai and others** (supra) relied upon by learned advocate for respondent No.2, the Apex Court has observed that the power to issue prerogative writs under article 226 of the constitution of India is plenary in nature and is not limited by any other provision of the constitution. This power can be exercised by High Court not only for issuing writs, for inforcement of fundamental rights but also for any other purpose. The High Court under Article 226 of the constitution, has discretion to entertain writ petition, but the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. Where there has been a violation of principle of nature justice or where the order or proceedings are wholly without jurisdiction or the vires of an act is challenged. Learned counsel for respondent urged that this is not the case where there is violation of fundamental right or violation of principle of natural justice and hence the petitioners should exercise alternate remedy. It is relevant to note that the apex Court in this decision was considering the powers of High Court under article 226 of constitution of India inspite of alternate

remedy. The decision is not applicable in the present case. Although the petitioners have made reference to Article 226 of the Constitution of India, in the title of petition, the petitioners have also invoked Article 227 and section 482 of Code of Criminal Procedure.

13. Learned counsel for the respondent No.2 on the same issue relied on two other decisions of Apex Court in the case of **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. and others** (supra) and **M/s. Radha Krishan Industries Vs. State of Himachal Pradesh** (supra). In Harbanslal, the apex Court held that inspite of alternate remedy, powers under article 226 of Constitution of India can be exercises in certain contigences. According to learned advocate for respondent No.2, there is no such situation in present case. In the decision of Radha Krishan Industries (supra) similar issue was dealt with and it was observed that the power under article 226 of the constitution of India to issue writs can be exercised in exception to general Rule of alternate remedy. Leaned advocate for respondents once again contended that the present case is not an exception to general Rule relating to exercise of powers under Article 226 of constitution of India.

In both these cases, the Apex Court was dealing with exercise of powers under Article 226 of constitution of India. Reliance is misplaced.

14. In the case of **Pepsi Food Ltd. and Another V/s. Special Judicial Magistrate and others** (supra) the question for consideration was, whether the appellants rightly approached the high Court under article 226 and 227 of the Constitution of India and if so, whether the High Court was justified in refusing to grant any relief to them, on the ground that they can apply for discharge under provisions of Cr.P.C. The Apex Court examined powers of High Court under Article 226 and 227 of the Constitution of India and section 482 of Cr.P.C. The Apex Court has observed that High Court can exercise its power of judicial review in criminal matters. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This Article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the constitution and under Section

482 of the Code have no limits but more due care and caution is to be exercised while invoking these powers. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court find that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Code. Provisions of article 226 and 227 of the Constitution of India and Section 482 of the Code are devised to advance justice and not to frustrate it.

15. In the case of **Dhariwal Tobacco Products Limited** (supra) the Apex Court has dealt with the issue whether an application under Section 482 of the Code of Criminal Procedure can be dismissed only on the premise that an alternative remedy of filing a revision application under Section 397 of the Code is available. The application preferred before High Court under Section 482 of Cr.P.C. was dismissed on the ground that jurisdiction of the High Court has to be exercised sparingly and only in exceptional cases.

Referring to decision in the case of **V.K. Jain and Ors. V. Pratap Padode and Anr.**, it was observed by High Court that the jurisdiction under Section 482 of Cr.P.C. will not be exercised if, recourse can be taken by the applicants to the remedy of filing a revision application under Section 397 of the Code. The Apex Court observed that issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. The Court in large number of decisions beginning from R.P. Kapur v. State of Punjab, AIR 1960 SC 866 to Som Mittal v. Govt. of Karnataka , (2008) 3 SCC 574 has laid down the criterion for entertaining an application under Section 482 of the Cr.P.C.. Only because a revision petition is maintainable, the same by itself would not constitute a bar for entertaining an application under Section 482 of the Code. The Apex Court referred to several decisions and observed that the large number of decisions opine that whenever the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so. The court overruled the decision in the case of **V. K. Jain Vs. Pratap V. Padode (2005) 30 Mah.L.J. 778** on the ground that it does not lay down good law. In Adalat Prasad Vs. Rooplal Jindal and others (supra), it was observed that, the Magistrate cannot recall the order of process and the remedy for accused is to invoke the powers under Section 482 of Cr.P.C. In the light of principles of law enunciated herein above, the preliminary objection urged by Advocate for respondent No.2 is overruled. This Court is empowered to exercise powers under Article 227 of Constitution and inherent powers under Section 482 of the Code.

16. The impugned complaint was filed seeking investigation under Section 156(3) of Cr.P.C. by registering FIR. The grievance of the complainant is that he was entitled for the professional fees towards the transactions enumerated under the complaint and the accused have fabricated document and cheated him. Apparently prayer for investigation was not granted and the police were directed to conduct enquiry under Section 202 of Cr.P.C. The report dated 12.08.2021 was submitted by police to the Court opining that the complaint of the complainant is with regard to returns to be paid to him for providing his services for sanctioning loan by Federal Bank to M/s. Pipavav Company. The complaint *prima facie* relates to civil

dispute. The report further mentioned that the complainant was called for recording the statements in relation to his complaint at BKC police Station on 10.03.2021. Letter was forwarded to him on 04.06.2021 informing him to attend the police station with documents. However, he did not appear and did not co-operate with the enquiry. Letters were sent to Federal Bank BKC Branch about enquiry in respect to the complaint lodged by respondent No.2. It was brought to the notice of the police that the complaint has been lodged against respondent No.2 complainant with MRA Marg police station in MCER NO. 90 of 2020 for the offences under Sections 384, 504, 506 of the IPC. In spite of letters addressed to the complainant for providing copy of the complaint filed by him before the Court along with order passed by Court directing enquiry under Section 202 of Cr.P.C., the complainant did not produce the documents. He did not remain present for enquiry and did not co-operate with the enquiry which indicate that the complainant is not interested in pursuing the enquiry. The dispute is of civil Nature.

17. The impugned complaint was filed on 23rd December, 2019 before learned Metropolitan Magistrate 71st Court,

Bandra, Mumbai. M/s. Pipvav Shipyard applied for sanction of a term loan of Rs.300 Crores on 27.6.2011. According to petitioners, the Federal Bank vide its letter dated 6.9.2011, addressed to its branch stated that, provisionally loan for Rs.200 Crores subject to compliance of terms is sanctioned. However, the sanctioned loan was lesser than amount applied, hence the company did not accept loan. The company enquired about status of loan by letter dated 4.7.2012 to petitioner No.1. The company was informed that no loan facility is availed by said company. The respondent No.2 filed complaint to MRA Marg Police Station. Letter dated 25.1.2014 was received from MRA Marg Police Station by petitioner No.1. From the said letter it was apparent that, respondent No.2 filed private complaint in the Court of learned Metropolitan Magistrate, 38th Court at Ballard Pier, Mumbai for offences under Sections 406, 420, 323, 504, 506(2), 34 of IPC. The Court directed enquiry under Section 202 of Cr.P.C. The letter also indicated that Pipavav Defence and offshore company had applied for loan in 2011 through respondent No.2. The petitioner No.2 was directed to remain present with the documents. Letter dated 25.2.2014 was addressed to Senior Inspector, MRA Marg Police Station by petitioner No.1, stating that, during

July, 2011, M/s. Pipavav Defence and offshore Co. Ltd had directly approached the Bank for financial assistance through the branch of Bank. Provisional sanction was granted. The terms were not acceptable to company, hence the loan was not disbursed. Since the loan had not been disbursed they did not preserve any documents related to same. MRA Police Station sent letter dated 6.12.2014 to Francis Xavier, Manager Federal Bank calling upon him to attend Police Station, in relation to complaint lodged by respondent No.2. Simon Devasi, Deputy General Manager of Petitioner No.1 attended MRA Marg Police Station. His statement was recorded on 19th December, 2014. According to petitioner the respondent No.2 did not pursue said complaint.

18. Letter dated 19.07.2016 was addressed to respondent No.2 stating that all the allegations in his correspondence are false and vexatious. The petitioner No.1 filed complaint to police against respondent No.2 Vide letter dated 20.05.2017, MRA Marg Police Station informed the Chief Manager of Federal Bank that non cognizable complaint is registered. Complaint made to Reserve Bank of India, Ombudsman filed by respondent No.2 was rejected on

19.05.2017. Respondent No.2 filed complaint to BKC Police Station. The petitioner No.1 called information through RTI and received information about said complaint with statement of respondent No.2. Statement of respondent No.2 was recorded on 01.08.2018 which refers to same grievance. Thus, the respondent No.2 has filed repeated complaints. Criminal complaint No. 4783/SW/2013 was filed by respondent No.2 against the said company. The proceedings were challenged by company by preferring Writ Petition No. 2093 of 2016. The said petition was allowed by order dated 18.03.2019. It is observed that complainant could not show document about actual disbursement of loan by bank. The respondent No.2 has contended in this proceedings that the said transaction was different. The respondent No.2 approached Bombay City Civil Court, Dindoshi. Notice was received by petitioner No.1 Bank dated 11.09.2019 from mediation department. N. C. complaint was field on 10.01.2020 against the respondent No.2 by vice president of petitioner No.1 alleging that he visited the bank with his claim and threatened the bank administration and complainant. The petitioner No.1 filed complaint against the respondent No.2 in the Court of Metropolitan Magistrate Seeking directions under Section

156(3) of Cr.P.C. for offences under Section 420, 384, 506 of IPC. Vide order dated 08.01.2020 directions under Section 156(3) Cr.P.C. were issued by Court and MECR NO. 61/2020 was registered on 15.02.2020 for offences under Sections 420, 384, 500 and 506 of the IPC against respondent No.2. The petitioner No.1 filed suit against respondent No.2 seeking damages and injunctive reliefs.

19. On reading complaint and perusal of documents, it is apparent that no offence of cheating or any other offence is made out against petitioners. The learned Magistrate has mechanically issued process. The report submitted by police, mentions that dispute is *prima facie* is of civil nature. There is no document annexed to complaint to show privity of contract between respondent No.2 and petitioner No.1 bank. The claim of complainant is about alleged payment of referral. The application from is dated 27.06.2011. complaints were filed belatedly. Repeated complaints are filed. The impugned complaint was filed in 2019. The outcome of complaint to MRA Marg Police Station is not disclosed.

20. In the case of **Bhushan Kumar** (supra) relied upon by learned advocate for respondent No.2 it is observed that

Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued under Section 190 of the Code. It is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

21. In the case of Smt. **Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others** (supra) it was observed

that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. The Court has given illustrations of cases in which the order issuing process can be quashed or set aside, which are as follows:-

(a) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(b) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(c) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(d) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

22. In the affidavit in reply, reference is made to several decisions. The law relating to quashing the proceedings is well settled. Applying the principles laid down by apex Court in various decisions, I find that this is a fit case to invoke inherent powers of this Court under Sections 482 of Cr.P.C. and article 227 of Constitution of India to quash the impugned order of process and the proceedings. In the case of **Pepsi Foods Ltd.** (supra) the Supreme Court has observed 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. The order of Magistrate must reflect that he has applied mind to the facts of the case and the law. It is also settled law the order of process need not be elaborate. However, it should show application of mind.

23. In the light of the factual aspects as stated above this court can exercise its power under Section 482 of Cr.P.C.

and under article 227 of the constitution of India. The impugned order and proceedings initiated by respondent No.2 is abuse of process of law and required to be quashed and set aside.

ORDER

i. Criminal Writ Petition No. 1843 of 2022 is allowed.

ii. Order issuing process dated 23rd February, 2022 passed by Metropolitan Magistrate 71st Court, Bandra, Mumbai and proceedings in C.C. No.04/MISC/2020 (C.C. No.34 of 2022) pending before Metropolitan Magistrate 71st Court, Bandra Mumbai are quashed and set aside.

(PRAKASH D. NAIK, J.)