

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-27780-2022 (O&M)

Reserved on: 08/07/2022

Pronounced on: 31/08/2022

NARESH KUMAR ARORA AND ANOTHER

....Petitioners

Versus

UT, CHANDIGARH AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Argued by : Mr. R.S. Rai, Sr. Advocate with
Ms. Rubina Vermani, Advocate
for the petitioners.

Mr. J.S. Toor, Additional P.P. For U.T. Chandigarh.

Mr. Rajiv Kataria, Advocate and
Mr. Aman Joon, Advocate
for respondent No.2.

VINOD S. BHARDWAJ. J.

The question that arises for consideration in the present petition is as to whether registration of the FIR under Section 420 of the Indian Penal Code alongwith ancillary Sections, after earlier proceedings instituted consciously for offence under Section 138 of the Negotiable Instruments Act, 1881 had been quashed by the High Court and the judgment having been upheld by the Hon'ble Supreme Court, after certain cosmetic changes would amount to an abuse of the process of law.

2. The present case is one such case where the respondent No.2-

complainant, who was also a Director & shareholder of the Company to which payment had been advanced, had chosen to institute proceedings against the other Directors of the Company-without impleading the Company, and after having been unsuccessful in the proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881. So much so, a specific finding was recorded by the High Court, while quashing the complaint as well as the summoning order that no amount was due by the Director. The cheque in question was issued in the year 2015, proceeding instituted under Section 138 & summoning order was passed on 11.06.2016 and order of quashing was passed on 25.09.2019. Order of quashing was passed on 25.07.2019. The SLP was dismissed on 25.11.2019. The FIR has thereafter been registered on 11.06.2022-nearly after a decade when the amount was purportedly invested and 07 years after the cheque was dishonoured. The limitation for recovery as per the limitation Act, 1963 also came to an end in 2018. Yet, the Police promptly registered the FIR without even a preliminary inquiry.

3. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') seeking quashing of case bearing FIR No. 100 dated 11.06.2022 under Section 406, 419, 420, 477 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') registered at Police Station South Sector 34, Chandigarh (Annexure P-1) and all subsequent proceedings arising therefrom.

4. Briefly summarized the facts of the instant case are that the petitioners claim themselves to be the partners in a partnership firm namely M/s Design Boxed Creatives having its due registration with the Registrar of Firms Surat. The aforesaid partnership firm is claimed to have commenced business operations from 08.12.2011 and its activities included web solution, web designing, web software etc. After sometime, the partners of the firm decided to expand business operations

and established a Private Limited company under the name and style of Design Boxed Creative's (India) Private Limited which was duly registered with the Registrar of Companies and incorporated on 17.01.2013. A total of three Directors were appointed, which included the 2 petitioners as well as the respondent No.2 – the complainant herein. Respondent No.2 is stated to have remained as a Director in the aforesaid company for the period commencing from 24.11.2013 to 08.12.2015.

5. The dispute in the present case owes its origin to the aforesaid relationship amongst the petitioners as well as the respondent No.2– complainant and in relation to the amount payable to the respondent No.2. The instant case has had a slightly chequered past and there has been an earlier round of litigation. The same is hereinafter referred to as the 1st round and the details in respect whereof are summarized hereinafter below: –

1st ROUND OF LITIGATION

6. The respondent No.2–complainant instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 in the year 2016 alleging therein that she had come in contact with the petitioners in the year 2012 when the petitioners gave an offer to the respondent No.2– complainant to join as a Project Director and Resident Editor at the office to be operationalized at Chandigarh, wherein petitioner No. 2 who was friend of the respondent No.2 – complainant was already a partner. An alluring proposal about the business expansion and the future prospects were conveyed to the respondent No.2 – complainant and it was alleged that the respondent No.2 – complainant was also informed that the petitioners had a prime location on Noida highway that will fetch them good price in future for expansion of the business.

7. The respondent No.2 – complainant, believing the petitioners agreed

to arrange for her resources and was also promised due return on the capital so invested by her by the petitioners and in the said process, the respondent No.2–complainant was also appointed as Director of the Private Limited company that had been so incorporated. On account of the allurements of the petitioners, the respondent No. 2 – complainant invested an amount of Rs. 1.70 crores on various occasions by arranging the same from friends and family under an assurance and the belief that the same shall be returned with proper interest as and when so required.

8. The details of the accounts in which the payment had been credited had also been set out in the complaint that had been instituted before the Judicial Magistrate First Class, Chandigarh. It was alleged that the petitioners-accused herein did not fulfil the assurances made to the respondent No. 2 – complainant resulting in serious prejudice to the matrimonial life of the respondent No. 2 – complainant herself. It was on account of the aforesaid circumstances and the failure to return the money or the interest accrued thereupon which fell due to the respondent No.2–complainant, that she resigned from being a Director of the company. The dues were settled and cheque No.00382 was issued by petitioner No.1 towards discharge of the liability. Upon presentation of the said cheque for a sum of Rs. 1.70 crores, the same was dishonoured. Resultantly, a legal notice was served upon petitioner No. 1 for payment of the money and upon failure on the part of the petitioner No. 1 in paying the amount despite notice, proceedings under Section 138 of the Negotiable Instruments Act, 1881 were instituted against petitioner No.1 Naresh Kumar Arora who was signatory to the cheque. The complaint filed by the respondent No.2 is annexed as Annexure P-2 with the present petition.

9. The petitioner No. 1 was summoned to face proceedings in the

aforesaid complaint that was instituted at the behest of respondent No.2 – complainant by the Judicial Magistrate 1st Class, Chandigarh vide order dated 11.01.2016 (Annexure P–3). The aforesaid proceedings instituted only under Section 138 of the Negotiable Instruments Act, 1881 including the order of summoning were challenged by the petitioner No. 1-Naresh Kumar Arora by filing CRM-M-28735 of 2016 before this Court. A response to the quashing petition was also filed by the respondent No.2– complainant giving the entire factual background already noticed above. The reply has also been appended along with the petition as Annexure P–4.

10. Upon consideration of the rival submissions advanced on behalf of the respective parties, the High Court of Punjab and Haryana, vide judgement dated 25.07.2019 passed in CRM-M-28735 of 2016, allowed the quashing petition and dismissed the complaint as well as the order of summoning dated 11.01.2016 passed by the Illaqa Magistrate. It was held that the cheque in question had been issued by M/s Design Boxed Creative's India Private Limited, however, the proceedings had been instituted only against the petitioner No. 1 and not against the company that was the debtor. It was also observed that there was no liability of the petitioner therein to pay the amount.

11. The aforesaid judgement of the High Court was a subject matter of challenge before the Hon'ble Supreme Court of India in Special Leave to Appeal (Criminal) No. 10519 of 2019, however, the same was also dismissed by the Hon'ble Supreme Court vide order dated 25.11.2019.

12. That during the pendency of the aforesaid proceedings, a complaint was also got registered against the respondent No.2-complainant resulting into registration of FIR No. 0037 dated 10.04.2018, at the instance of the company of the petitioners against threatening and extortion calls attracting Sections 385, 387,

389, 506 and 509 IPC. A detailed reference to the same is however not required for adjudication of the present petition.

2nd ROUND OF PROCEEDINGS : NOW IMPUGNED

13. After the dismissal of the Special Leave to Appeal by the Hon'ble Supreme Court of India against the judgement passed by the High Court quashing the proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881 by the respondent No.2– complainant, a complaint for commission of offences under Section 406, 420 and 506 IPC was submitted by the respondent No.2– complainant to the Senior Superintendent of Police, Chandigarh on 11.06.2022 and the present FIR was lodged on the same day. The allegations levelled in the complaint now furnished are claimed to be identical to the allegations that had been pleaded and levelled in the proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881. A detailed reference to the same and the similarity as well as differences so pointed out by the respective counsel are being separately tabulated for facility of reference.

14. The petitioners filed their response to the allegations levelled against them, in the office of the Senior Superintendent of Police, Chandigarh giving the entire history of institution of previous litigation by the respondent No. 2 – complainant as well as dismissal of the complaint and all consequential proceedings instituted by the respondent No. 2 – complainant against the petitioners and also that no proceedings thereafter had been instituted by the respondent No.2 against the company in question and as such, having failed to prove any legally enforceable liability against the petitioners, submission of the present complaint was an abuse of the process of law. However, the said documents and submissions have not found favour at all and proceedings have been continued. The present petition seeks quashing of the said FIR as well as the

proceedings that have arisen thereunder.

15. Upon notice being issued, the parties filed their respective response and have advanced arguments. The factual aspect pointed above is however neither disputed nor denied.

Arguments on behalf of the petitioners

16. Learned Senior counsel appearing on behalf of the petitioners has vehemently argued that the registration of the present FIR is an abuse of the process of law and as a matter of fact the proceedings that had been instituted under Section 138 of the Negotiable Instruments Act, 1881 carried same allegations and the same backdrop. The petitioners were never summoned or sought to be summoned for commission of offences punishable under Sections 406, 419, 420, 477 and 120-B IPC. Once the allegations levelled in the complaint instituted in the year 2016 were same and a competent Court had taken cognizance thereof, the fact that the petitioners were not summoned for the said offences would invariably mean that no *prima facie* case existed for summoning the petitioners for commission of the offences as alleged. In case the respondent No. 2 – complainant had any grievance against the order of summoning, there was no reason as to why she did not raise any challenge to the petitioners not being summoned for commission of offences punishable under other sections of the Indian Penal Code, 1860 especially when such ingredients were allegedly claimed to be *prima-facie* satisfied. The respondent No.2-complainant having not raised any challenge to the order of summoning would be deemed to have acquiesced to the order of summoning and would also lead to a necessary inference that upon being seized of the facts, no cognizable offence punishable for the said offences was *prima facie* made out even on a judicial appreciation & appraisal of the facts of the case as well as to the evidence adduced by the respondent No. 2 –

complainant.

17. He further contends that institution of the present proceedings is malicious and is an afterthought since the proceedings instituted by the respondent No.2-complainant under Section 138 of the Negotiable Instruments Act, 1881 have been scuttled vide order passed by the High Court. Such power is exercised when no criminal offence is made out at all or to secure the ends of justice or when there is abuse of process of law.

18. Learned Senior counsel has also drawn attention of this Court to the similarity of the allegations that were levelled in the complaint instituted earlier in point of time by the respondent No.2-complainant to contend that they have been reiterated in the FIR. The same are tabulated for the facility of reference:-

S. No	FIR dt. 100 dt. 11.06.2022(Ann. P-1)	Complaint under Section 138 of N.I. Act 1881(Ann. P-2)
1.	⇒ That in the year 2012, I came into the contact with Naresh Arora through my good friend as well as then neighbour Ms. Gunjeet Kaur W/o Manpreet Singh Dhingra and then residing in House No. 1532, Sector-36-D, Chandigarh.(Para 1, Pg. 46) ⇒ That the accused persons then developed cordial and friendly relation with me through Gunjeet and I started believing that person to be a good man also as projected by Gunjeet.(Para 2, Pg. 46)	⇒ That complainant came in contact with the accused Naresh Arora through her good friend and then neighbour Ms. Gunjeet Kaur W/o Manpreet Singh Dhingra, resident of House No. 1532, Sector 36-D and hence accused developed cordial friendly relations with the complainant. (Para 2, Pg. 63)
2.	⇒ That in the month of August 2012, Gunjeet Kaur told me that they have opened the branch of their business in Chandigarh and I was told in detail about their business of Web solution, Web designing, Web content writing, software development, etc. under partnership firm M/s Design Boxed registered on 08.12.2011 in Surat and they are doing a large scale business and earning high profits because of having links with high profile corporate and big business houses of Surat Gujarat as well as other cities in India. I was also told about Naresh Arora handling various other firms	⇒ In the month of September 2012, accused with malafide intention trapped the complainant and gave an offer to her to join as Project Director and Resident Editor at their Chandigarh office at SCO 371-373 Cain No. 7-8, Sector 34-A Chandigarh-160034 in which her friend namely Ms. Gunjeet Kaur was already a partner with the accused. At that point of time the accused had also conveyed to the complainant that he is having a large scale business and earning high profits out of the said business and he is having links with big corporate and business houses in Surat as well as in other big cities in

	mainly Witty Values Infoline Private India Limited registered in Surat only which he had opened with various other high profile partners and worked on and MLM module through affiliate marketing.(Para 3, Pg. 47) ⇒ That both Naresh Arora and Gunjeet Kaur partners in M/s Design Boxed purposely trapped me in a pre-planned manner by giving an offer to join them as Project Director and Resident Editor in Chandigarh office situated at SCO-371-373, cabin No. 7-8, Sector-34 A, Chandigarh. In addition, they further enticed me by conveying that Naresh Arora and his family members are having good political connections in the State of Punjab and up to national level, his uncle was an ex MLA from Amritsar and father is involved in active politics of Congress Party. Naresh Arora further tempted me by saying that he is planning to expand this business and when asked about investment he revealed that he is owner of some property situated in the prime location of Noida Express Highway and will sell it any day if need be. Both of them projected that soon they will be shifting to bigger office at EDC, IT Park, Chandigarh and start in a bigger office.(Para 4, Pg. 47)	the country. Accused further conveyed to the complainant of the political connections of his family in Punjab and on National Level, accused's uncle being an Ex MLA from Amritsar and his father actively involved in Politics. The accused also informed the complainant of his property at a prime location on Noida highway that will fetch him a very good price in future and basis that his planning expansion of his business and soon they will be shifting to a bigger office at Chandigarh at EDC, IT Park Chandigarh. (Para 3, Pg. 63)
3.	⇒ That in the above manner-accused persons won my trust and asked me to make investment in the business by providing friendly loan and by doing this they promised me that I could get good timely returns and stable myself financially as I was going through a tough phase in my marriage which Gunjeet Kaur was completely aware of and also that I was not having a job in hand, hence, I was looking for a good opportunity that time.(Para 5, Pg. 48) ⇒ That the accused persons further lured me that they will appoint me as partner in their firm so that we all can work together and my expertise can be utilized for the growth of Design Boxed (firm).(Para 6, Pg. 48) ⇒ That with premeditated mind to win my trust, they along with themselves appointed me as one of director of a new company M/S Design Boxed	⇒ The accused having won the trust of the complainant, asked the complainant to provide friendly loan for business with a promise to return the loan with handsome and timely returns to the complainant. It is also pertinent to mention that accused assured complainant that he will appoint complainant as a Director in a new firm and accused very clearly and and dishonestly to build the trust of the complainant upon the accused appointed her as a Director of the firm M/s Design Boxed Creative's India Pvt. Ltd. in which Gurjeet Kaur and accused were also Directors. It was assured that there will be no investment made by the complainant in the said firm and only her expertise will suffice. Accused and Gunjeet Kaur joined hands in consent and connivance with each other to hatch a conspiracy just to cheat the complainant that was evident later

	Creatives (India) Pvt. Ltd, incorporated on 24.01.2013 with Registrar of Companies by giving the same address as of their partnership firm Design Boxed. At that point of time they told me that they need my expertise to run the business as I possess good speaking skills, I was known in Chandigarh region as an established Media person and also educationally I was highly qualified (Gunjeet was only a graduate and Naresh has not even completed his graduation as per their communication with me in 2012) since I was a postgraduate in English and Gandhian and Peace Keeping Studies from the prestigious Punjab University two PG Diploma Holder one in Mass Communication (IGNOU) and one in English to Hindi Translation (Punjab University) and also NET clear. These accused persons were expert in defrauding people and they very cleverly won my trust and I with utmost faith started believing the words of them as their way was to console that I have a great potential and this phase of turmoil in my personal life shall pass and they will stand with me always and since Gunjeet was involved, I did not distrust both of them. By taking benefit of that, they persuaded me to invest the amount to establish the work so that I can get good returns.(Para 7, Pg. 48)	from their actions. Subsequently, the complainant resigned from the post as there was no transparency on finances, company's standing, projects and other important issues pertaining to the functions of the company. (Para 4, Pg. 64)
4.	⇒ However, while opening the new Company i.e. Design Boxed Creatives (India) Pvt. Ltd., Naresh Arora and Gunjeet Kaur did not dissolve the firm i.e. Design Boxed and continued to do work under the firm where only both of them were the partners. It is important to mention here that this was not a part of the arrangement with me when I was asked to join the business. When asked later about the same, Naresh conveniently told me that I do not have knowledge about business and also there are fewer checks on the firm and more on the Private Limited Company by the government hence they both have continued the firm. (Para 8, Pg. 49)	⇒ No corresponding paragraph
5.	⇒ That thereafter in a fraudulent manner, these accused persons in the name of investment in the business started	⇒ That the complainant with utmost faith and belief in the accused had handed over in total a huge amount

	creating emergencies for sustaining the business repeatedly and asked for arranging money for keeping the business and our lives running and hence took more than Rs. 1,70,00,000/- (Rs. One crore seventy lakh only), on different occasions from me, which I managed by taking loans from my friends, family members as well as financial institutions. I even mortgaged my jewellery-the only streedhan I had, as each time the demand to invest money was so aggravated projecting our business will no longer be able to sustain, or salaries will not go in time (which I often knew the teams were complaining about) and people will leave or if we do not buy this software our whole effort will get ruined and one situation or the other was created to push me to get more money now even talking about personal repercussions which will lead to business loss. (Para 9, Pg. 49) ⇒ That these accused have taken the above amount from me in the shape of deposits in different accounts maintained by them in their name as well as in the name of their friends, relatives and different companies. I also arranged the money through my various friends residing in Chandigarh, Panchkula, Mohali, Ambala, Patiala, Ludhiana, Nasik, Srinagar etc. through the mode of cash, online transactions or via self-credit card. (Para 10, Pg. 50)	of Rs. 1,70,00,000/- (Rupees One Crore Seventy Lacs Only) on various occasions by taking loans from friends and family, as demanded by the accused on regular intervals in hope of timely return as promised but in vain. The accused lured the complainant with his false promises and created emotional urgencies and to fulfill his demands of money on regular intervals, complainant took amount from her relatives/friends and family members/family friends associates and financial institutions and even mortgaged her jewellery upon believing in him and his promises blindly. Part of the above-mentioned amount as per instructions of the accused was deposited by the complainant in various accounts of the accused and his friends, relatives and his companies. The amount was credited via cash deposited by the complainant and her friends at various places including Chandigarh, Panchkula, Mohali, Ambala, Patiala, Delhi, Ludhiana, Nasik, Srinagar Etc. online transactions by the complainant and her friends, payment through credit card and cash handed over to the accused in person when he was in Chandigarh and other places on regular basis for work. (Para 5, Pg. 64)
6.	⇒ That thereafter day by day the pressure started coming upon me to return the money that I took from my well-wishers and at this juncture I kept on requesting through mails, Chats, SMS, Audios, Media files, Calls and all other possible means of communications to Naresh and Gunjeet but they did nothing except giving the false assurances that the money is safe and will be paid back very soon.(Para 11, Pg. 51) ⇒ That by this time the doubts and frustrations started coming out but my brain was completely washed by these persons with their sugar-coated words/assurances. Under such circumstances on their suggestion also having blind trust over them I was persuaded to sell my immovable property	⇒ That the pressure to return the money that the complainant took from her well-wishers was rising day by day and the complainant kept on informing via mails, chats, SMS, audios, media files, calls and other possible means of communication to the accused and his partner who kept on assuring that the money is safe and will be paid. The accused and his friend lured and convinced the complainant to that extent that when her jewellery was already sold, they suggested her to sell off her cottage at Dharampur even at a loss so that she can pay back to people from whom she borrowed for the time being to end her tensions and the accused will pay her back later. The accused even brainwashed the

	i.e. cottage at Dharampur at a loss so that I can pay back to people from whom I borrowed the amount for time being. Even at that time, these accused persons assured me that they would pay me back the amount later and urged me to go ahead with selling the only property I had under my name. Naresh himself went along with me for various deals with various brokers and also sent mails on my behalf giving details of the property to various brokers. But somehow, good sense prevailed and I did not succumb to the pressure of selling the property that being my only security left after my jewellery was sold since I could not pay back the mortgaged amount.(Para 12, Pg. 51)	complainant to upgrade her existing home loan on property so that some money can be fetched and paid back to people and some more can be given to him for his urgencies. But good sense prevailed and the complainant refused to go to ICICI Bank Sector 9 for the loan on the day the cheque was to be released. It is pertinent to mention that during the entire time, the accused and his partner projected to the complainant as her well-wishers and friends whom she can trust blindly but it was much later that the complainant came to know about their true conniving intentions. (Para 6, Pg. 66)
7.	⇒ That since the demands of lenders were intensifying to return the loan amount so I took a job in December 2013 with Reliance Broadcast Network Limited and then in early 2014 my husband pressurized me to take a personal loan of Rs.20,00,000/- along with him so that I can return some amount to the people from whom I took the loan as few persons had my cheques as guarantee or they started threatening me with a police complaint. The loan came in my Yes Bank account No. 001591900004762. I started paying an amount of Rs. 45,496/- as EMI to the bank on regular basis till June 2015, till the time I had a job in hand post that my husband had to pay as I had no money at all with me and nor Naresh or Gunjeet were showing any empathy to pay back. The 20,00,000 lakh were utilized to pay back to the people I had taken money from and also given to Naresh and Gunjeet and the firm Design Boxed and the company Design Boxed Creatives (India) Pvt. Ltd. and various other accounts.(Para 13, Pg. 52)	⇒ That to meet the rising demands of returning the money and rising tension between her and her family of being asked for return of the loan amount. The complaint took up a job in December 2013 and requested her husband to take a personal loan of 20 Lakhs along with her so that some amount be returned to people whom the complainant took loans from. Since then, the complainant and her husband are paying an amount of Rs. 45,496/- EMI on regular basis as a repayment of the personal loan out of which money was utilized only to pay back the liability that was of the accused. (Para 7, Pg. 66-67)
8.	⇒ That despite my request to the accused persons, they did not come forward to pay back the money rather now started keeping away from me and putting the matter pending on one pretext or another. Now I did not even have a job as I had to resign and realizing that I am becoming a liability on them they indirectly tried to malign my character	⇒ No corresponding paragraph

	or demotivating me since they knew now I could not go anywhere except for being with them as my whole reputation on personal and professional front was at stake with no one believing or supporting me. Gradually, I also started realizing that in spite of being married and having children they both are having an affair with each other and it is not just friends or business partner relation which is not going on from now but since 2011 when Gunjeet's husband was posted in Shimla and Gunjeet and Naresh came in contact with each other on a social media platform. I also realized that I am just being used as a shield to protect them from the suspicion that may be arising in their respective families and my entry since the beginning was a planned one by both of them to hide their relation as Gunjeet's in laws and her family had a good opinion about me as a person and professional when I joined them. Naresh planned to win my trust and affection and Gunjeet I already trusted then. My doubt on both of them being in a relationship was later proven correct since I came to know that they had started staying together posing as husband and wife in sector-34 in Chandigarh in the year 2016 once I had left them. Even Gunjeet's in- laws and husband had suspected the same earlier but that time I was not ready to believe as I was blindfolded with the sugar-coated words and affection of both the accused.(Para 14, Pg. 52)	
9.	⇒ It is also important to mention here that I had to resign from my job 15th June 2015 as the people from whom I had borrowed had Started approaching my office and writing complaints to my HR. Also, since people had started reaching my home in Chandigarh and calling my husband repeatedly, he also filed a divorce petition against me in the Hon'ble Court in Chandigarh on the grounds of me not paying back to people from whom I had taken money suspecting me being involved with fraud people and investing in a fraud company.(Para 15, Pg. 53)	⇒ No corresponding paragraph
10.	⇒ That exhausting from the act and conduct of accused persons, on	⇒ That complainant approached the accused so many times

	06.08.2015 I went to Surat in a hope that the accused person mainly Naresh will settle the issues and return the amount as Gunjeet now started avoiding me completely and asking me to talk to Naresh only. There I came to know about lots of cases going against him in Surat as he had taken lots of loans from people, also I came to know that he was a bookie and had lost a massive amount of money while betting. Again, in a clever manner he sent me back with false assurances that he will be coming to Chandigarh and will settle the financial matter with me for which they both are liable.(Para 16, Pg. 54) ⇒ That in September 2015, accused Naresh Arora came and again bait. me that he wants to sell his property at Noida and for that he need financial help for the time being to give Diwali gifts to officials in Delhi/ Noida so the property can easily be sold and then my money can be returned and left money can be utilized for a big project. Under the hope as given by accused that after selling his property, I can get the money back, yet again borrowed the amount from my friends and also took gold coins from Ambala by using my credit card and gave to accused Naresh Arora and Gunjeet who had accompanied me till Ambala in my car. Thereafter, Naresh went back to Surat showing some urgency without giving any constructive plan of settlement and Gunjeet went back to Amritsar where she had started residing with her parents now as she had left her matrimonial home after issues with her husband and some matrimonial cases going on between them apart from a recovery case her husband had filed against Design Boxed. (Para 17, Pg. 54)	telephonically via chat, media files, mails as well as personally for complainant's money that she borrowed from others and had to return timely, but the accused always avoided complainant by putting the matter on one pretext and another and always assured complainant that the accused will return the complete amount very soon. The complainant was unable to digest the ignorant behaviour of accused and finally got her tickets booked for Surat on 6th August 2015 and had visited accused's office M/s Design Boxed 624, ITC Building Majura Gate Surat with a hope to get back her money. But she was sent back with an assurance that the accused will be coming to Chandigarh and will settle the financial matters for which he is liable. The accused came in September 2015 and instead of paying back took more money which complainant had borrowed from a friend and took gold coins using the credit card of the complainant which the accused took on pretext of Diwali Gifts to be given to various officials at Noida so that the pace to sell his property becomes faster to which the complainant agreed with a hope of getting her money back. (Para 8, Pg. 67)
11.	⇒ That in mid of October 2015 I asked the accused persons to provide me copy of accounts and in this regard, various mails were written as earlier. Nevertheless the accused persons bluntly told me that for full and final settlement I have to give resignation from the directorship of company M/s Design Boxed Creative's India Pvt Ltd. Accordingly, on 08.12.2015, I	⇒ No corresponding paragraph

	resigned from the directorship. I also understood the behavior as now because of me single handedly writing product description for an ecommerce company had enabled the company to get a project with a confirmed monthly income between 10-15 lakh online portals-odesk and celance (now upwork) for them so they did not require me now neither seemed to be in a mood to pay me back. (Para 18, Pg. 55)	
12.	⇒ That on 10.10.2015, I reached Surat Gujarat and met accused Naresh Arora to straighten out the matter as Gunjeet had told me not to talk to her and only to Naresh though being fully aware of my situation. At this time to discharge the legal liability standing towards me, he issued a cheque bearing No. 00382 dated 10.12.2015 for an amount of Rs.1,70,00,000/- drawn at Kotak Mahindra Bank, Surat Gujarat from the account maintained in the name of M/s Design Boxed (firm) as a final settlement amount. The accused Naresh Arora affirmed that his deal of Noida property has been materialized and he will get the money in his account within a week.(Para 19, Pg. 55) ⇒ That on assurances as given that the cheque would be honored on its presentation, and since I had travelled that far and had no option, I accepted the cheque by giving a thought that the good sense might have prevailed in the mind of accused and this time he will pay me the amount that I had given to them as investment.(Para 20, Pg. 56)	⇒ That the accused went back to Surat without settling even a single matter of the complainant. Finally fed up with the behaviour of the accused and fully understanding his schematic intentions after a telephonic conversation in mid October 2015, the complainant booked her tickets to Surat again and reached Surat on 10th December 2015 determined to settle the matter. The Complainant reached the accused's office situated at M/s Design Boxed having its office at 624 I.T.C Building Majura Gate Surat 395002 to take her money. That the accused, a person of criminal mind dishonestly and with a malafide intention in order to discharge the legally enforceable liability issued a cheque bearing number 000382 to complainant at his office at M/s Design Boxed at 624 I.T.C Building Majura Gate, Surat 395002 for an amount of Rs. 1,70,00,000/- drawn on Kotak Mahindra Bank, K.G. Point GhodDod Road, Near Ganga Palace, Surat 395007 Gujarat against debt of loan to pay to the complainant with the assurances and understanding that the same shall be honored on presentation keeping in view the assurance by the accused Complainant accepted the said cheque. Further, accused assured the complainant that his deal of Noida property has materialized and he will be getting the money in his account within a week, hence the cheque shall be honored on presentation. (Para 9, Pg. 68)
13.	⇒ That as per assurance and understanding I presented the cheque bearing No. 00382 dated 10.12.2015 with my banker that is Yes Bank,	⇒ That the complainant maintains an account in YES Bank Sector 9-C, Chandigarh. The complainant deposited the said cheque no.

	Sector-9 C, Chandigarh on 16.12.2015 for encashment conversely the banker of accused Naresh Arora dishonored it by giving Remarks "payment stopped by drawer."(Para 21, Pg. 56)	000382 dt. 10.12.2015 drawn on Kotak Mahindra Bank to accused's banker through her banker namely YES Bank, Sector 9-C Chandigarh on 16.12.2015. The banker of the complainant presented the said cheque for collection but accused's banker returned the cheque bearing no. 000382 back to the complainant vide memo dt. 17.12.2015 with the remarks 'Payment Stop by Drawer'. The Complainant received back the original cheque with the aforesaid memo dt. 17.12.2015. (Para 10, Pg. 68)
14.	⇒ That after coming to know about the fate of the cheque, I tried to approach the accused persons but they avoided to meet me. Not only this, threats started coming from their side that they will implicate me in false criminal cases, in case I tried to initiate any legal action against them. As such by seeing the conduct, it was understood by me that the intention of the accused persons were not clear from very beginning and they have embezzled the amount and are not concerned to discharge their legal liability.(Para 22, Pg. 56)	⇒ No corresponding paragraph
15.	⇒ That the criminal demeanor of accused comes on surface when it was easy for me to realize that they have fooled me and their intention from the very beginning was to cause wrongful gains to themselves and to cause wrongful losses to me. In series, firstly by making conspiracy with each other, they build faith upon me and won my trust then started extracting money from me under the allurements that I will get good returns and settle myself financially. Lastly, they had taken my resignation from the company and malafidely issued the cheque knowing that the same would not be encashed on its presentation as they had already given the instructions to their bank to stop making payment against the cheque in question. As such the accused are guilty of committing the offence of criminal breach of trust, cheating, criminal intimidation i.e. Punishable under U/s 400, 420 & 506 of Indian Penal Code. (Para 23, Pg. 56)	⇒ No corresponding paragraph
16.	⇒ That finding the illegal act and	⇒ The complainant had sent a legal

	behavior of the accused, I through my counsel served a legal notice bearing dated 26.12.2015 sent through Regd. Post on 30.12.2015 upon the accused Naresh Arora and called upon him to make the payment of said cheque within a period of 15 days from the date of receipt of the notice. Despite receiving of legal notice, the accused did not make the payment within the statutory period of 15 days which compelled me to file Criminal Complaint No. 1211 dated 09.02.2016 in which the summoning order dated 11.02.2016 was passed by the Hon'ble Court of Sh. Manav, JMJC Chandigarh against accused Naresh Arora. Against the summoning order 11.02.2016 accused Naresh Arora filed the quashing petition CRM-M-28735 dated 16.08.2016 before Punjab And Haryana High Court at Chandigarh by taking the technical ground that since M/s Design Boxed partnership firm has not been made as a party so complaint under Section 138 of N.I Act is not maintainable. The said petition was allowed by the Hon'ble High court vide its order dated 25.07.2019 and consequently on the technical ground as referred above the accused Naresh Arora was discharged. Against the order dated 25.07.2019, I filed the SLP (Criminal No.10519 of 2019) however the Hon'ble Supreme Court by its order dated 25.11.2019 again affirmed the order passed by Hon'ble Punjab and Haryana High Court since the partnership firm was not made a party.(Para 24, Pg. 57)	notice through her counsel on dt. 26.12.2015 which was posted on i.e 30.12.2015. (Para 15, Pg. 70) ⇒ That more than 15 days had elapsed since the receipt of the notice by the accused but the accused had not replied to the legal notice and also failed to make the payment of the dishonored cheque to the complainant so far. That out of three registered posts one has been received by the accused, copy of acknowledgement of that post is returned back and two of the registered posts of the legal notice were returned back on dt. 07.01.2016 with the report "Refused" and on dated 09.01.2016 with the report "The door is locked and sent back to the sender" (Para 16, Pg. 71)
	⇒ That from the very beginning Naresh Arora and Gunjeet Kaur had the fraudulent intentions to defraud me. These persons in connivance with each other spoiled my life as they fraudulently extracted huge amount from me. Because of their illegitimate acts, my husband had filed the divorce case and further people close relatives from whom I had borrowed the amount, are still harassing me for their money. My professional life had also been ruined badly and I had to give the resignation from very senior position at a prestigious organization because	⇒ That because of non-payment of money as promised by accused complainant also had to resign from a very senior position at a prestigious organization as people started approaching her employers though she kept on informing the accused time and again how non payment of money was adversely affecting her career and reputation but no action was taken by the accused to return the money rather on one pretext or the other she was emotionally blackmailed to deposit more money or meet new urgencies of finances created by the accused

	the people started approaching my employer for their money. I lost my reputation because these people fraudulently blackmailed me and as such, they intentionally and deliberately cheated on me keeping me in dark about the financial transaction of the company, oppressed me for decisions related to Company which I did mention in my resignation from being the director in the company. (Para 25, Pg. 58)	in order to save the earlier loan that she had given to the accused. The accused time and again kept on insisting that if the money was not arranged by the complainant the previous money that the complainant had given will be delayed further which had made the complainant helpless except to meet the accused's rising demands in hope to get the money back and meet the financial pressures from all corners. (Para 13, Pg. 70)
17.	⇒ That these people are now having links with influential people and they are bent upon to involve me in false cases, I am receiving continuous threat from these persons earlier it was to take back my cases and now not to take any action against them as they are known in political circle in Punjab and other States handling Political campaigns of renowned politicians and State Governments. I humbly mention here that the money they have to pay me is huge and there is apparent threat to my life, me being a single woman who has to travel for work and stay alone at times. (Para 26, Pg. 58)	⇒ No corresponding paragraph
18.	⇒ That these people have not only defrauded me but cheated different persons including Gunjeet Kaur's husband who has been cheated for the amount of Rs. 19,00,000/- and he has also filed complaint and the matter is pending with the District Court, Chandigarh Case No. 598/2015. Different complaints/suits and litigation were filed by persons who have been cheated during that time some I am aware of some I am not aware and many cases are still pending across the country against these people. These accused persons by making conspiracy with each other with motive to dig up money trapped me as well as various others too. Now they are well settled and have a lavish lifestyle but still not ready to pay off their liabilities is a proof enough of their wrong intent. It is therefore humbly submitted that these people are habitual of defrauding people and trapping innocent people like me by showcasing their affiliations with political parties and other organizations/ individuals. I am a	⇒ No corresponding paragraph

	victim of their fraud and because of that my whole life turned upside down. I request your goodself that the matter needs to be investigated thoroughly and an FIR may kindly be lodged against these culprits under the relevant provisions of Indian Penal Code immediately. Evidences and documents to support the investigation in detail shall be provided in the due course.(Para 27, Pg. 59)	
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19. Learned Senior counsel appearing on behalf of the petitioners has also argued that the details of the accounts mentioned in the petition, to which the amount had been transferred by the respondent No.2 –complainant, are all situated in Surat and as such, no part of transaction had taken place within the territorial jurisdiction of Chandigarh and that registration of the FIR itself is without jurisdiction. He further contends that the payments claimed by the respondent No.2 –complainant are against the private company of which she was a Director as well as a shareholder herself and that having failed in instituting any proceedings for recovery of the said amount from the Private Limited Company, the instant FIR against the other Directors of the company in their independent capacity is a gross abuse of the process of law. He also submits that even though the respondent No.2–complainant alleges to have advanced an amount of Rs.1.70 crores approximately, however, as per the response filed by her in the quashing petition instituted earlier by the petitioner No. 1 and also the details of the alleged amount transferred by her, show that the same was only to the tune of Rs.30–35 lakhs and not Rs.1.70 crores as alleged. Apart therefrom, despite a specific averment that the aforesaid huge amount had been arranged by the respondent No.2– complainant from various resources such as borrowing from family, friends as well as availing term loan and mortgaging her jewelry etc., however, no such details or proof has been furnished either in the previous proceedings or at the time of registration of instant FIR. It was also argued that conceding for the sake of argument that the

liability in question did arise and that the amount in question was actually due to the respondent No. 2 – complainant, she had resigned from the company in the year 2015 and that the payments in question are for a period prior thereto. Hence, by any stretch, her entitlement to seek refund of the amount by institution of civil proceedings was for a period of 3 years from the date of issuance of the said cheque. The cheque having been dishonoured in the month of December 2015, hence, the limitation to seek recovery/repayment of the aforesaid amount was up to December 2018 and that now even the civil remedy of the respondent No.2 – complainant to claim the money, if any, has ceased to exist. Once the remedy for recovery of the said amount has come to an end, institution of criminal proceedings as a substitute for the expired civil right to claim recovery ought not to be permitted and that it would amount to abuse of process of law and undue incarceration of the petitioners. Further, even the criminal proceeding decided by the High Court vide its judgement dated 25.07.2019 passed in CRM-M-28735 of 2016 has clearly held that there was no liability against the petitioners and that the amount, if any, due to the respondent No. 2 – complainant is against the company.

20. Reference was also made to the judgement of *Sarguru Vs. A. Vanitha* *2019 SCC Online Mad 9842* to contend that a second complaint on the same set of allegations without any fresh material is not sustainable. Once there was no new occurrence or development that necessitated fresh complaint on the issue already decided, in the absence of sufficient cause being shown, repeated complaint in respect of the very same occurrence ought not to be entertained.

21. A reference was also made to the judgement passed by this Court in CRM-M-10627 of 2015 decided on 11.09.2018 in the matter of *Manoj Kumar versus M/s Singh Finance Corporation* wherein it was held that a second complaint on the same facts was not sustainable especially when a specific finding

had already been recorded in the proceedings under Section 138 of the Negotiable Instruments Act, 1881 and that the petitioner was not under any legally enforceable debt liability.

22. Reference was also made to the judgement in the matter of *Sri Jagadip Chandar and others versus The State of Karnataka* reported as 2018 SCC Online Kar 769 wherein the FIR registered against the petitioners for commission of offences punishable under Sections 406, 415, 418 and 420 IPC was quashed as the petitioners therein had been acquitted in the proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881.

23. A further reliance was also placed on the judgement of *Prince Kumar versus State of Punjab and another* reported as 2013 (2) RCR (Criminal) 874 wherein under the similar circumstances when the proceedings under Section 138 of Negotiable Instruments Act, 1881 had already been instituted, the registration of the FIR for offences punishable under Section 406 and 420 IPC had been quashed.

Arguments on behalf of the respondent No.2 – complainant

24. Learned counsel appearing on behalf of respondent No.2– complainant has argued that there is no illegality in registration of the present case against the petitioners and that the allegations levelled cannot be said to be same or similar. There are various distinctive allegations and attribution and both the proceedings are distinct & distinguishable. For the purposes of the registration of the FIR, it is to be seen as to whether the necessary ingredients for commission of the offences are made out or not. It is contended that while the proceedings under Section 138 of the Negotiable Instruments Act, 1881 had been instituted only against petitioner No. 1, the present FIR has been registered against the other Director Gunjeet Kaur as well, hence, even the parties in the FIR are separate and

distinct. Besides, the allegations levelled in the FIR refer to a series of acts and offences that have been committed by the accused persons starting from the manner in which the petitioner No.2-Gunjeet Kaur convinced the respondent No.2– complainant with the business model and thus winning the faith and trust of the respondent No. 2 – complainant and persuaded her to join the business. The said inducement was later reiterated by petitioner No. 1 and that the complete amount had not been given at one time and was rather given over a period of time through different denominations. There were recurring and repeated acts of inducement and allurement of the respondent No.2 – complainant to convince her to part with her money and that had it not been for such inducement and allurement, the respondent No.2-complainant would not have parted with such huge sums of money. He has alleged that while the proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881 relate to the act of the petitioner No. 1 issuing a cheque, the present FIR relates to the series of acts committed by both the petitioners. The offences referred to and resulting in registration of the instant FIR are for a period prior to the issuance of the cheque.

25. He has also argued that the proceedings under Section 138 of the Negotiable Instruments Act, 1881 are more of a civil proceeding for recovery of the amount and a mere dismissal of the said complaint shall not stand in the way of respondent No.2–complainant seeking registration of the present FIR for institution of the criminal proceedings for the offences committed by the petitioners. He submits that even if the principles of *res judicata* are to be held applicable to the facts of the present case, the earlier complaint had been instituted under Section 138 of the Negotiable Instruments Act, 1881 and did not involve the incidence of cheating that were for a period prior to the issuance of the cheque.

Hence, both incidents are based upon a separate and distinct cause of action and

the petitioners cannot be permitted to draw any benefit of institution of proceedings under Section 138 of the Negotiable Instruments Act, 1881. The distinctive features of both proceedings culled out by the respondent No.2-complainant are extracted as under:-

- a) Gunjeet Kaur was never a party in the earlier complaint.
- b) The role of Gunjeet Kaur has now been included in the new complaint and inducement made by her has been stated in so many words in the FIR.
- c) It is Gunjit Kaur who explained the business model of the firm in detail and also mentioned about another company of Naresh namely Witty Values Infoline Pvt. Ltd. which worked on MLM model and he was the Managing Director of the same. The issue of personal life of the complainant was never mentioned in the earlier complaint under Section 138 of Negotiable Instruments Act, 1881 but in the FIR it is clearly stated that Gunjeet Kaur was aware of the same and took benefit of the situation.
- d) That in the FIR, to constitute the offence of Section 420 IPC i.e. cheating, complainant has explained in detail as to how she was induced by the petitioner-accused persons and to part with the money and how they had won her confidence, which clearly makes out an offence under Section 420 IPC, whereas in the earlier complaint the facts were not disclosed in so many words, that could warrant the Magistrate to take cognizance under Section 420 IPC. The complainant has in so many words stated in paragraph No. 8 of the FIR that the petitioner-accused, after having induced the complainant to be part of the business, made her the Director of the company M/s

Designs Boxed Creative's India Pvt. Ltd. but they continued to work under the partnership firm M/s Design Boxed in which both the accused were partners. On objections being raised by the respondent No.2-complainant, Naresh simply told her that she did not understand the business. This aspect of the cheating was never the part and parcel of the complaint which was made under Section 138 of Negotiable Instruments Act, 1881. Besides the issue of cheating, there were threats made by Naresh and Gunjeet Kaur for withdrawal of case under Section 138 of the Negotiable Instruments Act, 1881 and this fact is also stated in the present FIR.

- e) That in complaint under Section 138 of the Negotiable Instruments Act, 1881 the respondent No.2-complainant has nowhere mentioned about the facts prior to issuance of the cheque. Petitioner No.1-Naresh Arora had asked the respondent No.2-complainant to submit her resignation from the Directorship of the company. However, in the complaint this fact has been clearly disclosed. The issuance of cheque in favour of the respondent No.2-complainant was subject to her submission of resignation, which she duly submitted and it was thereafter that the cheque was issued. The said cheque was issued knowing that it would not get encashed. Therefore, the offence of cheating is clearly established when the respondent No.2-complainant has been made to resign from the Directorship on the basis of a false promise that her money shall be refunded which was actually never refunded.

26. He further submits that the present FIR is still at the initial stage as the same has merely been registered and the investigation in the same is still to be

conducted. Thus, it will not be appropriate to quash the FIR at such an initial stage without affording adequate opportunity to the investigating agency to exhume the entire evidence that would establish commission of the cognizable offences.

27. Reference in support of the argument was made to the following judgment titled as **Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and another** reported as **2012 (2) RCR (CrI.) 757**, wherein it was held that prosecution can be launched against accused both under Section 138 of the Negotiable Instruments Act, 1881 as well as under Section 420 of the IPC and the same does not amount to double jeopardy. The fact in the said case was that the plea of accused in paragraph no. 2(D) was that he was already acquitted in offence under Section 138 of Negotiable Instruments Act, 1881 therefore, he could not be tried again for the same offence and the case attracted the doctrine of double jeopardy. The test applied by the Hon'ble Supreme Court of India for application of Section 300 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C") was that, if the same offence could have been tried earlier, it makes no difference if the facts were the same in respect whereof the earlier trial was held and subsequent trial was sought to be undertaken in respect of a different offence. The petitioner had taken a plea that under Section 300 Cr.P.C. there is a bar against the present FIR. The said bar shall not stand in the way of the FIR of the complainant for the simple reason that the foremost thing which is required for Section 300 Cr.P.C. to be attracted is that a person must have been tried for the same offence, whereas in the earlier complaint under Section 138 of the Negotiable Instruments Act, 1881 it is the admitted case that the same was dismissed on a technical reason and there was never a trial of the said case. Therefore, the provision of Section 300 Cr.P.C. is not attracted as there was no trial.

28. Further reference was also made to the following judgments :-

In Ranveer Singh vs. NCT of Delhi (Delhi High Court) reported as 2017 (5) RCR (Crl.) 483, the case under Section 138 of the Negotiable Instruments Act, 1881 was dismissed for non-prosecution and the accused pleaded the benefit of acquittal under Section 256 Cr.P.C. and pleaded that the second case under Section 420/406/34 IPC could not proceed against him. The Delhi High Court following the Sangeetaben judgment (supra) and other cases clearly held that the bar of Section 300 Cr.P.C. could not stand as there was no trial in the earlier case and it was necessary that to attract Section 300 Cr.P.C., offence should have been tried earlier.

In Abhay Singh @ Abhay Kumar Singh vs. The State of Jharkhand (Jharkhand High Court) reported as 2018 (3) DCR 9, the accused was acquitted earlier under Section 138 of the Negotiable Instruments Act, 1881 but later on the FIR under Section 420 IPC was held to be maintainable.

In MCRC No. 1415 of 2015 decided on 20.02.2017, titled as Kailash Chandra Jain vs. Jai Kumar Jain and anr. the Hon'ble High Court of Madhya Pradesh has followed the Hon'ble Supreme Court of India judgment in Sangeetaben case (supra) and has again held that acquittal in a Negotiable Instruments Act case shall not stand in the way of the complainant in FIR under Section 420 IPC.

It was held in Subodh Mishra vs. Vaheed Ali (Madhya Pradesh High Court) reported as 2019 (3) DCR 199 that where the accused was convicted in offence under Section 138 of Negotiable Instruments Act, 1881 but still FIR under Section 406/420 IPC was maintainable because in the

prosecution under Section 138 of the Negotiable Instruments Act, 1881 the court does not go into *mens rea* i.e. the fraudulent and dishonest intention at the time of issuance of cheque and the same was not proved. Therefore, the said offence could be tried under Section 420 IPC.

Furthermore, in **Criminal Petition No. 6638 of 2021, Rashmi Tandon and another vs. State of Karnataka and another** (*Karnataka High Court*), decided on 10.05.2022 both prosecutions under Section 138 of N.I. Act, 1881 and Section 420 IPC were simultaneously launched separately and it was held that the same could proceed.

Arguments on behalf of respondent-State

29. The learned Additional Public Prosecutor while appearing on behalf of the Union Territory of Chandigarh reiterated the submissions advanced by the counsel for the respondent No.2-complainant and has contended that the investigation is still at the initial stage and as such, invocation of the jurisdiction under Section 482 of the Code of Criminal Procedure would not be warranted at this juncture. There is no reason or presumption as to why the relevant statutory provisions or the factual aspects would not be taken into consideration by the investigating agency. He also contends that the complainant is a resident of the territorial jurisdiction of Chandigarh and that the office in question had been operational within the territorial jurisdiction of U.T. Chandigarh. The allegation regarding the respondent No.2-complainant having been induced to deliver the money had also arisen in Chandigarh. Merely because the accounts to which the amount was credited are to a branch in Surat would not by itself take away territorial jurisdiction. A partial cause of action in the form of inducement of the respondent No.2-complainant and delivery of property by her at Chandigarh having arisen, there is no illegality in registration of the FIR in Chandigarh. He

further submits that the claim of the complainant regarding the amount actually advanced is yet to be inquired into and that a mere discrepancy in the amount claimed by the respondent No. 2 – complainant to have been advanced *vis-à-vis* her ability to establish the amount to have been handed over to the petitioners are two different aspects that would have no bearing insofar as the ingredients of the criminal offence are concerned. The offence in question is not determined on the basis of the quantum of the amount involved. Thus, even if there is any discrepancy in the amount of the fraud being claimed, the same would yet be sufficient to hold that the offence has been committed.

30. No other point has been argued and no other judgment has been cited or relied upon by the learned counsel representing the respective parties.

31. I have heard learned counsel appearing on behalf of the respective parties and have gone through the pleadings as well the judgments relied upon by the respective parties.

32. There is no dispute with the respect to the proposition of law laid down by the Hon'ble Supreme Court in the matter of **Sangeetaben (supra)**. The question which arises in the present case however pertains to the power of quashing under Section 482 Cr.P.C. when a case of "abuse of the process of law" is made out. The factual aspect of the present case are different from the facts in the case of **Sangeetaben (supra)** where the proceedings under the Indian Penal Code had been set in motion in close proximity to the institution of the proceedings under Section 138 of the Negotiable Instruments Act, 1881. The complainant therein had not awaited for the final outcome of the proceedings instituted under Section 138 of the Negotiable Instruments Act, 1881 and expiry of the entire period of limitation and had instead invoked the process of the criminal law in quick succession reflecting her intent to pursue both the remedies. Per

contra, the said prudence has not been displayed by the respondent No.2-complainant and she awaited the proceedings to culminate against her up to the Hon'ble Supreme Court. It was only as an afterthought and after having lost her claim up to the Hon'ble Supreme Court that the present proceedings have been instituted. The cheque in question is statedly issued in the year 2015, the FIR has been got registered on 11.06.2022. Significantly the complaint in question had been submitted in the Police Station on 11.06.2022, the FIR was also registered on the same day notwithstanding the direction issued by the Hon'ble Supreme Court in the matter of **'Lalita Kumari versus State of Uttar Pradesh and others** reported as **(2014) 2 SCC 1** to the effect that where the monetary dispute pertains to a period which is more than 04 months prior to the submission of the complaint, a preliminary enquiry into the same should be conducted before registration of the FIR.

33. Even otherwise, the issue in the said case related to interpretation of Section 300 Cr.P.C. The said issue does not arise for consideration or interpretation. What essentially is required to be seen is whether there is an abuse of the process of law or not and what concern arises is the extent to which a rope needs to be handed to a complainant. The test always has been to secure the ends of justice. The aim of law enforcement agencies and Courts is to identify the mischief and segregate the cases involving a real grievance from a spiteful act of vengeance where the legal machinery seems to act as a tool of oppression. Court of law has to remain alive to the said issue and cannot lay back to an activation for the entire agony to be suffered through protracted criminal trial. The facts in the present case are not a subject matter of dispute in the present case and it is not the case of the respondent No.2-complainant that there is some renewed cause of action. The High Court would not be prohibited to look into all undisputed

contemporary acts & omission of the respective parties and is not to be restricted in considering the same by being alive to the situation. It is a matter of individual liberties and technical procedural submissions do not stand in the way of justice. The High Court would not be prohibited to assess the case in its entirety and to determine real purpose.

34. It cannot be the object of law to give a rope so long to a complainant that he can undo the entire judicial exercise by a minor or superficial face lift or touch up. A mere addition or deletion of some names cannot be permitted to roll-back a decision that has already been upheld by the Hon'ble Supreme Court in reference to the same subject. A complainant cannot be allowed deployment of such selective accusation as a means of forum shopping and to restart the entire case with slight face lift.

35. The Code of Criminal Procedure intends to reduce multiplicity of litigation and prescribes clubbing of trial as well as offences that are part of the same transaction. In the event criminal law would have been set in motion at the same time, the same would have been tried together and an accused would not be vexed multiple times for the same cause or series of acts. Section 219 & 220 of the Cr. P.C. is reproduced hereinbelow:-

Section 219 in The Code Of Criminal Procedure, 1973

219. Three offences of same kind within year may be charged together.

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law: Provided

that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Section 220 in The Code Of Criminal Procedure, 1973

220. Trial for more than one offence.

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

36. Court of law cannot be seen helpless or non-responsive where an

accused is being victimized and is being called upon to establish his innocence again & again despite it having been held that there was no liability of petitioner No.1 to pay any money to respondent No.2-complainant

37. It is thus essential to look into as to what would amount to 'abuse of the process of law' or 'the process of any Court'. Ordinarily, an abuse of process is unjustified or unreasonable use of legal proceedings or process to further the cause of action by an applicant. The same is defended and segregated from malicious prosecution. The Hon'ble Supreme Court had in the matter of '**Preeti Gupta versus State of Jharkhand**' reported as **2010 (7) SCC 667** quashed the proceedings against the petitioner that were nothing but an abuse of the process of the Court and continuance of the same would amount to the failure of ends of justice. Invariably, an abuse of the process would be inferred where something is so unfair and wrong that the Court should not allowed a prosecutor to proceed with what is in all other aspects a regular proceeding.

38. The Hon'ble Supreme Court in the matter of **K.K. Modi versus K.N. Modi and others** reported as **(1998) 3 SCC 573** had held as under:-

“43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

44. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and

contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.”

(Emphasis supplied)

39. It is undisputed position in law that the power vested in a High Court under Section 482 Cr.P.C. is to be exercised to do real and substantial justice (*Ex debito justitiae*) and to prevent abuse of process of law. It has been held that each case has to be considered on its own merits. In the case of '**Central Bureau of Investigation versus A. Ravi Shankar Prasad and others**' reported as **2009 (6) SCC 351**, the Hon'ble Supreme Court dealt with the scope of powers of the High Court under Section 482 Cr.P.C. and also as to what would amount to abuse of the process of the Court. The relevant extract of the said judgment is reproduced hereinafter below:

17. Undoubtedly, the High Court possesses inherent powers under section 482 of the Code of Criminal Procedure. These inherent powers of the High Court are meant to act ex debito justitiae to do real and substantial justice, for the administration of which alone it

exists, or to prevent abuse of the process of the court.

18. *Inherent power under Section 482 Cr.P.C. can be exercised in following category of cases:*

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

19. *This court time and again has observed that the extraordinary power under section 482, Cr.P.C. should be exercised sparingly and with great care and caution. The court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice. In order to understand the nature and scope of power under section 482 Cr.P.C. it has become necessary to recapitulate the ratio of the decided cases.*

20. *Reference to the following cases would reveal that the courts have consistently taken the view that they must use the court's extraordinary power only to prevent injustice and secure the ends of justice. We have largely inherited the provisions of inherent powers from the English jurisprudence, therefore the principles decided by the English courts would be of relevance for us. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.*

21. *In Connelly v. DPP [1964] AC 1254, Lord Devlin while dealing with similar provisions under the English law stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in DPP v. Humphrys [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further stated that the court's power to prevent such abuse is of great constitutional importance and should be jealously preserved.*

22. *In R.P. Kapur v. State of Punjab (1960) 3 SCR 388, this Court summarized some categories of cases where inherent power can and*

should be exercised to quash the proceedings:

- (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;*
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;*
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

23. *The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to ensure that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down with regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.*

24. *This Court had an occasion to deal with the concept of inherent powers in State of Karnataka v. L. Muniswamy & Others (1977) 2 SCC 699. The court again reiterated that the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed.*

25. *The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case*

that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this Court and other courts.

26. *In another leading case State of Haryana & Others v. Bhajan Lal & Others 1992 Supp. (1) SCC 335, this Court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

27. This Court again in *Janata Dal v. H. S. Chowdhary & Others* (1992) 4 SCC 305 observed that in what circumstances the inherent powers should be exercised:-

“132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.”

xx xx xx xx xx xx xx

32. In *B.S. Joshi & Others v. State of Haryana & Another* (2003) 4 SCC 675 the court reiterated the legal position that the court's inherent powers have no limit but should be exercised with utmost care and caution. *Inherent powers must be utilized with the sole purpose to prevent the abuse of the process of the court or to otherwise secure the ends of justice. In exercise of inherent powers,*

proper scrutiny of facts and circumstances of concerned case are absolutely imperative.

33. In *Nikhil Merchant v. Central Bureau of Investigation & Another* (2008) 9 SCC 677, this court while relying on the aforesaid judgment in *B.S. Joshi's case (supra)* observed that on overall view of the facts the court was satisfied that technicality should not be allowed to stand in the way of quashing of the criminal proceedings.

Xx xx xx xx xx xx xx

39. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of the each case. The object incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.

40. Both English and the Indian courts have consistently taken the view that the inherent powers can be exercised in those exceptional cases where the allegations made in the first information report or the complaint, even if are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. When we apply the settled legal position to the facts of this case it is not possible to conclude that the complaint and charge-sheet prima facie do not constitute any offence against the respondents.

(Emphasis supplied)

40. In a recent judgment passed by the Hon'ble Supreme Court in Criminal Appeal No. 283 of 2021 titled **'Krishan Lal Chawla and Others versus State of U.P. & Another'** arising out of SLP No. 6432 of 2020 decided on 08.03.2021, the Hon'ble Supreme Court examined the issue of the abuse of process of law and the responsibility of the subordinate Courts. The genesis of the dispute in the aforesaid case lay in a physical altercation that had taken place amongst the parties resulting in filing of a non-cognizable report on 05.08.2012 alleging offences under Section 323, 504 and 506 of the Indian Penal Code, 1860. A counter non-cognizable offence was also registered against the respondent therein NCR No. 160/2012 .

There was some prior dispute and litigation amongst the parties earlier to the incident in question. The appellant therein moved an application under Section 155 (2) Cr.P.C. on 27.04.2017 i.e. 05 years of the alleged incident in which the Magistrate directed NCR 160 of 2012 to be registered as FIR. The same was registered and a final report was filed. The respondent No.2-complainant therein instituted a fresh complaint against the appellant under Section 200 Cr.P.C. in respect of the same very incident that had taken place on 05.08.2012. The aforesaid private complaint was filed on 11.05.2018 i.e. about 06 years from the date of the said incident. In the private complaint, not only new allegations were added but all allegations are wilder and different from the averment made in NCR 158 of 2012. Even though the incident is the same as on 05.08.2012 between the same parties. Apart from improvements, there were additional eye-witnesses inducted in the private complaint and allegations of fraud, injury to bull, forging of affidavit etc. that were found in the 2012 complaint were also narrated in the private complaint and thus mentioning of offence under Section 429 IPC and Sections 10 and 11 of the Prevention of Cruelty to Animals Act, 1960 for the first time. The appellant was summoned in the aforesaid complaint and order of summoning was affirmed by Sessions Judge. Thus, the extra interest taken by the complainant in making material improvements was duly recognized and acknowledged by the said Courts. The Hon'ble Supreme Court took note of the decisions in the matter of 'Upkar Singh versus Ved Prakash & Others' reported as (2004) 13 SCC 292 as well as 'T.T. Antony versus State of Kerala' reported as (2001) 6 SCC 181 to the effect that the second complaint with respect to the same incident would not be barred. The Hon'ble Supreme Court held that the question of material improvements in a version needs to be examined in light of the concerns expressed by the Hon'ble Supreme Court in the matter of Upkar Singh

(supra) about the misuse of the successive complaints by the same party where the second complaint is clearly cropped up to materially improve on the earlier one.

The findings recorded by the Hon'ble Supreme Court in the aforesaid case of 'Krishan Lal Chawla and others (supra) are extracted as under:

6. *The grave implications of allowing such misuse may be understood better in light of the following exposition by this Court in Amitbhai Anilchandra Shah v. CBI & anr., (2013) 6 SCC 348:*

“37. This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , this Court has categorically held that registration of second FIR (which is not a cross case) is violative of Article 21 of the Constitution...” (emphasis supplied)

*Article 21 of the Constitution guarantees that the right to life and liberty shall not be taken away except by due process of law. Permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such, he would be forced to keep surrendering his liberty and precious time before the police and the Courts, as and when required in each case. As this Court has held in **Amitbhai Anilchandra Shah** (supra), such an absurd and mischievous interpretation of the provisions of the CrPC will not stand the test of constitutional scrutiny, and therefore cannot be adopted by us.*

7. *The implications of such successive FIRs on an individual's rights under Article 21 of the Constitution has been elaborated further in **T.T. Antony** (supra):*

“27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that subsection (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, 12 consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC...”

(emphasis supplied)

Thus, it is incumbent upon this Court to preserve this delicate balance between the power to investigate offences under the CrPC, and the fundamental right of the individual to be free from frivolous and repetitive criminal prosecutions forced upon him by the might of the State. If the Respondent No. 2 was aggrieved by lack of speedy investigation in the earlier case filed by him, the appropriate remedy would have been to apply to the Magistrate under Section 155(2), CrPC for directions to the police in this regard. Filing a private complaint without any prelude, after a gap of six years from the date of giving information to the police, smacks of mala fide on the part of Respondent No. 2.

8. It is also crucial to note that, in the fresh complaint case instituted by him, Respondent No. 2 seems to have deliberately suppressed the material fact that a charge sheet was already filed in

*relation to the same incident, against him and his wife, pursuant to NCR No.160/2012 (Crime No. 283/2017) filed by Appellant No.1's son. No reference to this charge sheet is found in the private complaint, or in the statements under Section 200, Cr PC filed by Respondent No. 2 and his wife. In fact, both the private complaint and the statement filed on behalf of his wife, merely state that the police officials have informed them that investigation is ongoing pursuant to their NCR No.158/2012. The wife's statement additionally even states that no action has been taken so far by the police. It is the litigant's bounden duty to make a full and true disclosure of facts. It is a matter of trite law, and yet bears repetition, that suppression of material facts before a court amounts to abuse of the process of the court, and shall be dealt with a heavy hand (**Ram Dhan v. State of Uttar Pradesh & Anr.**, (2012) 5 SCC 536; **K.D. Sharma v. Steel Authority of India Ltd.**, (2008) 12 SCC 481).*

9. *It is also pertinent to note that as on 5.08.2012, Appellant No.1 was a 76 year old man; Appellant No.2 was suffering from epileptic seizures; and Appellant No. 4 was of unsound mind. There is no equity in allowing them to be dragged into criminal proceedings pertaining to a petty offence, instituted 6 years after the alleged incident. The sword of Damocles cannot be allowed to forever hang on their heads, falling unpredictably at the whims of a litigant seeking to harass and persecute at will. We gain strength in our conclusions from Article 21 of the Constitution, which encapsulates the right to a speedy trial. This right has been interpreted to include not only the actual trial before the Court, but also the preceding stages of inquiry and police investigation as well (**Vakil Prasad Singh v. State of Bihar**, (2009) 3 SCC 355; **Abdul Rehman Antulay & ors. v. R.S. Nayak & anr.**, (1992) 1 SCC 225).*

10. *The sum of the above circumstances and precedents leads us to what we see as an inevitable conclusion. That Respondent No. 2's institution of the fresh complaint case in 2018 under Section 200 CrPC was a concerted effort to mislead the Magistrate with*

the oblique motive of harassing the Appellants with a frivolous and vexatious case against them. That the same was a counter blast to the charge sheet dated 17.09.2017 filed against Respondent No. 2 and his wife in the case registered by the Appellant. The history of ill-will and malice between the parties leads further credence to Respondent No.2's motivations for tying up the Appellants in frivolous and harrowing criminal litigation, long years after the alleged incident. Respondent No.2's conduct in filing a delayed complaint case, suppressing material facts, and utilising fresh proceedings to materially improve on his earlier version, in totality, amounts to gross abuse of the process of court.

Role of the Lower Judiciary in Preventing Abuse of Court Process:

11. We find it imperative to observe that this is a case that should not have been allowed to reach as far as this Court. The justice dispensation machinery in India is plagued with backlogs, with 70% of the pendency before the subordinate courts being on the criminal side. A significant factor in this backlog is the vast mass of frivolous litigation instituted year after year by litigants with an intent to use the courts of justice for their own mischievous ends. Curtailing such vexatious litigation is, thus, a crucial step towards a more effective justice system – a step that cannot be taken without the active involvement of the lower judiciary, especially in criminal proceedings.

12. Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for

ensuring this stream does not carry forward in cases where it should not.

*13. The aforesaid powers bestowed on the Magistrate have grave repercussions on individual citizens' life and liberty. Thus, these powers also confer great responsibility on the shoulders of the Magistrate – and must be exercised with great caution, and after suitable judicial application of mind. Observations in a similar vein were made by this Court in **Pepsi Foods Ltd. v. Special Judicial Magistrate**, (1998) 5 SCC 749:*

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law 17 set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.” (emphasis supplied)

This Court, thus, clearly emphasised that the power to issue a summoning order is a matter of grave importance, and that the Magistrate must only allow criminal law to take its course after satisfying himself that there is a real case to be made.

14. Similarly, the power conferred on the Magistrate under Section 202, CrPC to postpone the issue of process pursuant to a private complaint also provides an important avenue for filtering out of frivolous complaints that must be fully exercised. A four Judge Bench of this Court has eloquently expounded on this in **Chandra Deo Singh v. Prokash Chandra Bose & Anr.**, AIR 1963 SC 1430:

“7. ...No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant...”

(emphasis supplied)

Thus, it is clear that, on receipt of a private complaint, the Magistrate must first, scrutinise it to examine if the allegations made in the private complaint, inter alia, smack of an instance of frivolous litigation; and second, examine and elicit the material that supports the case of the complainant.

15. It is said that every trial is a voyage of discovery in which the truth is the quest. In India, typically, the Judge is not actively involved in ‘fact finding’ owing to the adversarial nature of our justice system. However, Section 165 of the Indian Evidence Act, 1872 by providing the Judge with the power to order production of material and put forth questions of any form at any time, marks the

influence of inquisitorial processes in our legal system. This wide-ranging power further demonstrates the central role played by the Magistrate in the quest for justice and truth in criminal proceedings, and must be judiciously employed to stem the flow of frivolous litigation.

16. All of this leads to one inescapable conclusion that the Trial Judge has a duty under the Constitution and the CrPC, to identify and dispose of frivolous litigation at an early stage by exercising, substantially and to the fullest extent, the powers conferred on him. This Court has earlier emphasised on the high degree of responsibility shouldered by the trial Judges in **All India Judges' Association v. Union of India**, (1992) 1 SCC 119. Ranganath Misra CJ (as he was then) writing for himself and two others stated:

“42. The trial Judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the proceedings in Court. On him lies the responsibility of building up of the case appropriately and on his understanding of the matter the cause of justice is first answered. The personality, knowledge, judicial restraint, capacity to maintain dignity are the additional aspects which go into making the Court's functioning successful.”

17. Frivolous litigation should not become the order of the day in India. From misusing the Public Interest Litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in **Subrata Roy Sahara v. Union of India**, (2014) 8 SCC 470:

“191...One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness.

whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his...

While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.

18. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land.

19. As recorded by us above, the present controversy poses a typical example of frivolous litigants abusing court process to achieve their mischievous ends. In the case before us, the Magistrate was aware of the significant delay in the filing of private complaint by Respondent No. 2, and of the material improvements from the earlier NCR No. 158/2012 which

were made in the private complaint. It was incumbent on the Magistrate to examine any possibility of abuse of process of the court, make further enquiries, and dismiss the frivolous complaint at the outset after judicial application of mind.

20. However, this was not done – the Magistrate issued process against the Appellants by order dated 4.04.2019, and this controversy has now reached this Court for disposal.

21. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.

22. This Court's inherent powers under Article 142 of the Constitution to do 'complete justice' empowers us to give preference to equity and a justice oriented approach over the strict rigours of procedural law (**State of Punjab v. Rafiq Masih (Whitewasher)**, (2014) 8 SCC 883). This Court has used this inherent power to quash criminal proceedings where the proceedings are instituted with an oblique motive, or on manufactured evidence (**Monica Kumar (Dr.) & anr. v. State of Uttar Pradesh**, (2008) 8 SCC 781). Other decisions have held that inherent powers of High Courts provided in Section 482, CrPC may be utilised to quash criminal proceedings instituted after great delay, or with vengeful or malafide motives. (**Sirajul & ors. v. State of Uttar Pradesh**, (2015) 9 SCC 201; **State of Haryana v. Bhajan Lal**, AIR 1992 SCC 604). Thus, it is the constitutional duty of this Court to quash criminal proceedings that were instituted by misleading the court and abusing its processes of law, only with a view to harass the hapless litigants.

23. In this Court's quest for complete justice, and to bring peace between the parties, who are fighting various litigations since 2006, we exercise our powers under Article 142 to quash all the litigations

between the parties arising out of this incident.

(Emphasis supplied)

41. The Hon'ble Supreme Court has thus not only issued a dictat that frivolous and vexatious complaints needs to be identified but has also cast a duty on the Court to identify such frivolous and vexatious complaints/proceedings at the initial stages and to nip them in the bud so as to not waste judicial time. It has thus become essential for this Court to examine the instant petition at the present stage and to invoke its jurisdiction under Section 482 Cr.P.C.

42. The parameters prescribed in the aforesaid judgments as well as in the judgment of '**State of Haryana versus Bhajan Lal and others**' reported as **AIR 1992 SCC 604** clearly show that vexatious proceedings are subject to the inherent jurisdiction of the High Court under Section 482 Cr.P.C. The said principles enunciated in the judgment of **Bhajan Lal (supra)** have now been elevated to the level that the Hon'ble Supreme Court has cast a duty on the Court to identify frivolous and vexatious proceedings in the judgment of **Krishan Lal Chawla and others versus State of Uttar Pradesh & Another in Criminal Appeal No. 283 of 2021 decided on 08.03.2021**. The duty having been cast, it would be an abdication of its responsibility by the High Court in case it chooses not to examine existence of the malice of vexatious/abusive prosecution and does not take effective steps at the initial stages and allowing a complainant to vex an accused, thus depriving him of his rights guaranteed under Article 21 of the Constitution of India, 1950.

43. Keeping in view the statutory framework and the responsibility cast on the Court, the following aspects have been noticed in the present case:

- (i) The incident in question relates to the same set of circumstances i.e. introduction of the respondent No.2-complainant to petitioner No.1, her appointment as a Director, her claim to have been induced and allured to make an investment as well as the failure on the part of the

petitioners-accused to refund her investment, despite her exit from the company.

- (ii) That the entire narrative including allegations against both the petitioners were duly evident in the initial complaint that was instituted under Section 138 of the Negotiable Instruments Act., 1881.
- (iii) That Section 190 Cr.P.C. contemplates cognizance of offence by the Magistrate upon receiving a complaint in this regard or upon his own knowledge that such offences has been committed. Thus, irrespective of the nomenclature under which the complaint was instituted, it was essential for the Magistrate to have taken into consideration the various offences that are made out upon consideration of the complaint as well as the evidence led before it.
- (iv) That it is presumed in law that once an order of summoning is passed, there is a due consideration of the entire evidence and that the Magistrate was satisfied about non-existence of prima facie evidence to summon an accused for any other offences for which there is no summoning. The said order was never challenged.
- (v) That the said order of summoning as well as the complaint was subject matter of challenge before the High Court. Even at the stage of exercising jurisdiction under Section 482 Cr.P.C. It is also incumbent upon the Court to consider as to whether any offence is made out at all or not. The respondent No.2-complainant had not raised any grievance against the High Court exercising its powers under Section 482 Cr.P.C. or to argue that such power cannot be exercised since other offences punishable under Indian Penal Code

are made out and/or ingredients thereof are duly satisfied. Hence, there was a reconsideration/re-appreciation of the entire case by the High Court at the stage of exercising its jurisdiction under Section 482 Cr.P.C.

(vi) The respondent No.2-complainant further approached the Hon'ble Supreme Court and has not impugned the judgment of the High Court by alleging that it was an improper exercise of power by the High Court considering that other offences punishable under the Indian Penal Code are made out. The Court thus has no other option but to assume that the respondent No.2-complainant was fully satisfied about the non-existence of the ingredients under Section 420 IPC and other allied offences now forming in FIR. It would also be presumed by necessary inference in law that the Courts duly considered the existence of any other offence and did not find the essential ingredients to subsist.

(vii) That it was further observed by the High Court in its aforesaid order that there was no liability of the petitioner No.1 to make the said payment. A finding which was not disturbed and was confirmed by the Hon'ble Supreme Court.

(viii) That the respondent No.2-complainant has substantively retained the same allegations except for an addition of an accused. Needles to mention that the earlier complaint had, although, specifically leveled allegations against the petitioner No.2, however, she was not arraigned as an accused in the said complaint. Thus, the factual matrix of the dispute remains the same in its intent and form.

(ix) That the FIR in question has been got registered after a period of

nearly 07 years of the date of issuance of the cheque and after a lapse of more than 03 years since the proceedings have been quashed by the High Court. It cannot thus be presumed that the respondent No.2-complainant had consciously chosen to restrict the proceedings to offence punishable under Section 138 of the Negotiable Instruments Act, 1881 to lodge separate proceedings for other criminal cognizable offences. The aforesaid prudence having not been displayed clearly reflect that the respondent No.2-complainant did not intend to lodge proceedings for the offences punishable under the Indian Penal Code and was conscious that the said criminal offences are not made out.

- (x) That the remedy of the respondent No.2-complainant under the civil law stands extinguished by operation of the law of limitation. No explanation has been put-forth as to why the respondent No.2-complainant waited for more than 07 years to institute the present FIR.
- (xi) That the Investigating Agency showed undue haste in registration of the instant FIR on the same day on which the complaint had been received notwithstanding the guidelines given by the Hon'ble Supreme Court in '*Lalita Kumari versus Union of India (supra)*' and ignoring that the allegations pertain to a money dispute which was more than 07 years old.
- (xii) That the respondent No.2-complainant had even though disclosed about the earlier criminal proceedings and the quashing of the complaint as well as dismissal of the Special Leave to Appeal, however, the Investigating Agency had not afforded any opportunity to the petitioners to respond to the said allegations. So much so, that no

effort was made to examine and consider the import of the said judgments as well as the pending civil proceedings amongst the parties.

(xii) That the respondent No.2-complainant had seemingly taken a conscious decision to make an investment in a project. The allegations leveled in the complaint do not reflect embezzlement of the funds, rather, they relate to failure on the part of the petitioners to dispose of their property and not making the requisite investment in the business of the company thus, resulting in failure of the operations of the company. The said aspect is primarily a business decision which is required to be taken by the parties and it could not lead to institution of criminal proceedings merely because of the said decision not having turned out the way that it was perceived to materialize. Every investor is expected to carry out a due diligence at his/her own level and a failure of the analytical ability of an investor cannot be a cause of criminal persecution of the persons who floated the project unless misappropriation, embezzlement or fraudulent business transaction is reflected from initiation of the relationship. It cannot be assumed that it had taken a period of nearly 07 years for the respondent No.2-complainant to realize the existence of the offence under Section 420 of the Indian Penal Code and to allege that she had been defrauded.

(xiii) That initiation of criminal proceedings cannot be panacea for appropriate procedure in law. Merely because the respondent No.2-complainant opted not to institute appropriate proceedings or was not diligent enough to ensure protection of her rights, if any, cannot make

a subsisting ground for the complainant to reinstate the entire proceeding in a new format and to set the criminal law in motion against an accused who has already being prosecuted for an offence so opted by the respondent No.2 -complainant and had successively defended his rights.

- (xiv) The complainant alleges that she resigned from the Directorship of Company under the pretext of return of her money. No complaint had however been submitted before the Company Court about the suppression or mismanagement or even oppression of minority shareholders.
- (xv) The provisions of the Code of Criminal Procedure create a right in an accused to be tried together for the offences that are part of the same transaction. The same is duly recognized as inherent in Article 21 of the Constitution of India by the precedent judgments of the Hon'ble Supreme Court. Vexatious & multiple complaints to wreak vengeance are not to be supported by the Court or seem to be protected.
- (xvi) There is nothing to suggest that the respondent No.2-complainant did not have access to legal advice or assistance. She was diligent to pursue her matter up to the Hon'ble Supreme Court of India as well. No satisfactory explanation has come forth as to why she waited for 07 years before registering the FIR and thus denying the right of the accused to seek benefit, if any, under Section 219 & 220 Cr.P.C.
- (xvii) Complainant cannot be given an unbridled option to launch litigation at her will and in a manner she likes. Courts cannot act as hapless spectators.
- (xviii) Court can duly take note of all undisputed facts and contemporary

acts and conduct of parties to arrive at its decision. It cannot be a spectator to breach of individual liberties and call an accused to prove his innocence successively at the whims of a complainant.

44. Taking into consideration, the circumstances noticed above as well as the precedent judgments of the Hon'ble Supreme Court, I am of the view that the institution of the present complaint and subsequent registration of the FIR notwithstanding the quashing of the complaint filed earlier and affirmed by the Hon'ble Supreme Court is an abuse of process of law. The judgment of *Sangeetaben (Supra)* relied upon by the counsel for the respondent No.2-complainant does not apply to the facts of the instant case and rather, the obligation expressed by the Hon'ble Supreme Court in the judgment “*Krishan Lal Chawla and others versus State of U.P. & Another (supra)*” would operate with its full force and would also fall within the parameters prescribed by the Hon'ble Supreme Court in the matter of *State of Haryana versus Bhajan Lal* which still holds the field.

45. The present petition is accordingly allowed and the FIR No. 100 dated 11.06.2022 under Sections 406, 419, 420, 477 and 120-B of the Indian Penal Code, 1860 registered at Police Station South Sector 34 Chandigarh and all subsequent proceedings arising therefrom is **hereby quashed**.

(VINOD S. BHARDWAJ)
JUDGE

AUGUST 31, 2022
S.Sharma(syr)/Vishal sharma

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>