IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 107 of 2021

with

CRAN 4 of 2021

with

CRAN 5 of 2021

Shampa Chakrabarty
-vs.-
Debashis Chakrabarti

Mr. Somopriyo Chowdhury,
Mr. Dipayan Dan.

...For the Petitioner

Mr. Sabyasachi Banerjee,
Mr. Anirban Dutta,
Mr. Debabrata Das,
Mr. Pradyot Kumar Das,
Ms. Priyanka Mukherjee,

...For the Opposite Party

Reserved on : 20.12.2022

Judgment on : 03.03.2023

Tirthankar Ghosh, J:-

The present revisional application has been preferred for quashing of the proceedings of Case No. C-753 of 2019 as also the orders passed therein which is presently pending before the Learned Judicial Magistrate, 8^{th} Court at Alipore, South 24 Parganas under Section 420/406/409/467/468/471/120B of the Indian Penal Code.

The allegations made in the petition of complaint were to the effect as follows:

The complainant and the accused/opposite party are related as husband and wife and also are promoters and directors of Elmax Projects and Services Pvt. Ltd. (hereinafter referred to as the 'said company'). The complainant is an Electronic Engineer and M.Tech from IIT, Kharagpur engaged in providing engineering design, simulation and measurement solutions to various leading Educational Institutes like IITs, NITs, Government R&D Institutes like Saha Institute of Nuclear Physics etc. and engaged in Design & Development of High Technology Electronics Products. The complainant in his professional career was associated with various companies of repute and has come in contact with various national clients who opt for engineering solutions. The complainant has also received many awards and accolades for his professional achievement and travelled widely internationally on professional reasons. The accused/petitioner is the wife of the complainant and is a Chemical Engineer. Both of them got married on or about March, 1988.

The complainant states that on or about June, 2018 after ascertaining various financial irregularities and fake accounting committed by and at the instance of the accused/petitioner who is the owner/proprietress of a concern namely, M/s. Elmax Projects & Services (which was subsequently taken over by Elmax Projects and Services Pvt. Ltd.) in order to generate more profit, evaded statutory taxes, thereby committing offences which would reflect in the complaint and obviously requires trial and enquiry. The Complainant and the Accused/Petitioner are both directors and equal shareholders of the said company having its office at A-77, Lake Gardens, Kolkata.

It has been contended that the accused/petitioner being a Chemical Engineer had no knowledge on electronic or any business of electronic trade and measurement instruments and/or any product or application of High Technology Electronics for carrying on such business. The complainant at the relevant time was in service which prevented him from carrying business in his own name and he had requisite knowledge, experience and capital to start a business in his own name. The accused/petitioner seeing such opportunity to utilise the expertise of the complainant and his contacts intended to set up/start and develop a business in her name in the form of a proprietorship concern and as such she requested the complainant to act as a consultant of the proprietorship concern. It was represented by the accused/petitioner that in the event the complainant provides complete services with regard to sales, marketing and technical support to the proprietorship firm of the accused, he would be receiving consultancy fees, however, she would be taking charge with regard to the banking transaction including payment to the creditors, statutory compliances and payment of taxes and charges within time including all financial decisions and control over financial health and banking operation of the said proprietorship firm. The accused had been in full control, dominion and supervision over the business including handling and supervising banking transaction, including payment to the creditors, statutory compliances, payment of taxes and charges and all matters relating to Bank Guarantee, loan and Income Tax and the complainant acted as a mere consultant for which his services were requisitioned from time to time.

It has been alleged that the accused/petitioner never paid consultancy fees regularly to the complainant although the same was agreed to be paid per month and relying on the relationship the complainant did not question regarding the non-payment and in good faith continued to provide his services over the period and till December, 2015 a sum of Rs.38.80/- lakhs accumulated and were unpaid to the complainant. The complainant alleged that on good faith he invested his time, hard work and efforts to develop the business of the proprietorship firm and by using the relationship the accused/petitioner apart from using the service of the complainant as consultant compelled him to become guarantor in the bank for availing cash credit benefits to her business. The complainant never tried to gain any financial benefit from the proprietorship firm. He used to invest his time and efforts into the business including selection and training of the manpower, application related issues, sales, customer support, engineering issues, order execution and payment collection. The same was only because of the relationship and the complainant being husband did not hesitate to mortgage his personal properties to be collateral security for the loan required for the proprietorship business.

The complainant alleges that the accused/petitioner at all material times were in complete control and had supervision over banking transaction including payment to the creditors, statutory compliances and payment of taxes and charges and all matters relating to bank guarantee, loan and income tax which included all financial decisions and control over financial, health and banking operation of the said firm and the same would appear from an e-mail dated 19th May, 2016.

It has been contended that on or about December, 2006, a new company in the name of Synergy Measurement Technologies Pvt. Ltd. having its registered office in Secunderabad was formed and incorporated on PAN India basis wherein the complainant was a founder/promoter, director and shareholder along with others. This company was a distributor of a very well reputed multinational company and the complainant being a director started routing the regional business in the said field in the eastern part of the country through the proprietorship concern of the accused as a matter of policy of Synergy Measurement Technologies Pvt. Ltd.. Consequently the business turnover of Elmax Projects & Services grew up during the period of 2007 to 2013 and in the meantime the said proprietorship firm was incorporated as Elmax Projects & Services Private Limited. At the relevant point of time the accused/petitioner approached the complainant with a proposal of merging the business of the proprietorship and/or take over by the complainant wherein complainant and the accused would be directors and equal shareholder which the complainant on good faith agreed to the terms and conditions, such takeover was recorded in an agreement dated 31.12.2015. It was decided that the same arrangement shall continue as the complainant would look after the company with regard to products and sales and the finance would be supervised by the accused/petitioner.

It has been contended that the complainant did not interfere with the preparation and finalization of the agreement for taking over, which was executed on 31.12.2015 as he relied upon the accused being his wife. The complainant believed the accused and on the basis of terms and conditions of the agreement the takeover was effected. It has been alleged that the accused used to withdraw lion's share of business profit leaving the complainant at her mercy with a meagre sum of consultancy charges which were not paid regularly. The complainant in good faith and relying on the accused being his wife accepted the same as he was assured that the financial anomaly will be sorted out in the long run. The consultancy fees with passage of time become due to the tune of Rs.38.80/- lakhs which were never paid to the complainant and the same was decided to be shown as invested on behalf of the complainant at the time of its incorporation. Apart from the aforesaid the complainant generated his income and earnings from other sources including the profits and remuneration received from Synergy Measurement Technologies Pvt. Ltd. In the meantime the petitioner resigned from Synergy Measurement

Technologies Pvt. Ltd. in the year 2012-2013 in order to invest his full time and efforts in the company, relying upon the representation of the accused who happens to be his wife. The complainant never accepted any financial facilities from the business which would appear from the Income Tax return of the relevant years and the accused was never concerned with the day to day affairs of the company save and except the banking and financial transactions, having full control and dominion over the books and account and IT related issue and had earned huge financial benefits which would reflect from her Income Tax return of the relevant year since 1991. It has been alleged that at all material times the accused/petitioner has enjoyed all the financial benefits and undue privileges being the head of the business. The complainant having entrusted his wife with the accounts, concentrated in the development of the business from July, 2013 and after which the complainant started noticing various discrepancies and also fictitious creditors of the company being created by the petitioner. In July, 2016 the complainant noticed some fabricated and manipulated entries in the books and accounts of the said proprietorship concern which were audited in violation of statutory rules and regulations and it was noticed that by such act of fabrication and manipulation the accused/petitioner in her capacity as the proprietress of the said concern increased her net asset value by evading payment of taxes with the object of gaining undue financial benefits. On such illegalities and frivolity in the books and account being brought to the notice of the accused, she was stopped from participating in the day to day affairs and the accused/petitioner agreed to ratify the complainant from all actions who also agreed to resign from the company. The accused/petitioner requested the complainant not to take steps on the basis of the undertaking dated 17th July, 2016 and committed to regularize all the accounts of the company ensuring to return back the money which she wrongfully gained from the complainant which amounts to the tune of Rs. 1 Crore. Subsequently, matrimonial discord arose because of the complainant discovering fabricated, manipulated account books of the proprietorship concern which was at the instance of the accused/petitioner in her capacity as the proprietress of the said business. The accused/petitioner stopped participating in the regular affairs of the company and refused to comply with the undertaking, as a result of which the company and the complainant continued to face irreparable loss and damages regularly.

It is stated that on or about June, 2018 upon complete verification of the books and accounts and list of creditors it was ascertained that the accused/petitioner created fictitious creditors to the tune of more than Rs.143/- lakhs during the financial year 2008-2009 and 2015-2016, which was forwarded since the incorporation of the firm and after being taken over by the company on the basis of the audited balance-sheet and the financial statement which was fabricated and manipulated by the accused/petitioner in her capacity as the proprietress of the concern wherein the petitioner had full control, dominion and supervision all over the business including handling and supervising banking transaction, payment to the creditors, statutory compliances and payment of taxes and charges and all matters relating to bank guarantee, loan and income tax for a wrongful gain by way of fabrication and manipulation of books and accounts in violation of statutory compliances and tax related issues. The accused being a qualified person to handle the books of accounts and having full control, dominion and supervision over the business of the concern including handling and supervision of the concern created fictitious liability and false sundry creditors as well as debtors to evade taxes thereby duping the government exchequer from its legitimate recoverable taxes. The complainant was shocked to learn that the accused falsely created charges on the assets/machineries of the proprietorship firm to induce the complainant for paying/investing more than Rs.38.80/- lakhs for machineries from the purported and/or false created encumbrances. The complainant having come to know immediately directed due diligence and internal audit of the annual return including balance-sheet and financial accounts with effect from 2006-2007 and in furtherance thereof wrote letters to the various creditors for confirming the balances as per their account of the said years and replies were received by him. On the basis of the reply and scrutiny of the audit accounts, invoices and other papers and in furtherance of due diligence it appears that financial irregularities and false creditor and debtors were created by the accused to evade taxes. The particulars of the financial irregularities and creation of false creditors and debtors were created by the accused by manipulating the figures and amounts of sundry creditors and debtors to evade taxes and to enrich herself for wrongful gains, thereby cheating the company as well as the complainant. As such she committed offences which included forgery and cheating.

The complainant states that in order to establish the offence committed by the accused/petitioner he would tender all the relevant documents including ledger/AR statement of the vendor; periodic outstanding statement of the vendor; bank statement and party ledger; VAT return and purchase bills and other documents at the time of trial. Company being liable to correct the balance-sheet for the relevant financial years and re-audit the accounts it would be liable to pay the government tax, and the estimated tax with penalty will be more than Rs.80/- lakhs. The said liability arose because of the petitioner who acted in a deliberate and fraudulent manner and as such the complainant is liable to pay the sum without no fault of his own. The complainant alleges that there has been deep rooted conspiracy and the same has been perpetrated by the accused/petitioner with the aid and assistance of other unknown persons.

The irregular financial transaction and violation of statutory rules were committed by the accused/petitioner who is responsible for the same, as she was having full control and dominion over the books and accounts and taxation. The company has received notices from various statutory authorities including Sales Tax and litigations being case No. SA/2011-2012/02/62/C/329. To shield such mistakes the accused/petitioner has cleverly issued various frivolous legal notices to the complainant alleging noncompliance of Sales Tax and litigations relating to the period upto 31st March, 2016 and the complainant replied to the same. It has been further alleged that due to the grudge and personal/matrimonial dispute with the complainant the accused made representation to the bank of the company praying for freezing of debit operation of the bank account on the ground of dispute between the directors of the company. It has been purposely done by the accused with the intention of implicating the company and the complainant into cases of non-payment of taxes and or statutory non-compliances. The complainant stated that the accused in collusion with others deliberately fabricated accounts of the concern and wilfully with a knowledge to deceive the complainant portrayed a rosy picture for the purpose of creation of the company which took over the proprietorship firm and in turn made complainant a party to the conspiracy and mala fide act of cheating, criminal breach of trust and misappropriation committed by the accused in the course of her business operations as a proprietress of the firm and subsequently merged with the company. The accused has committed such offence for the purpose of enriching herself by way of wrongful gain and causing wrongful loss to the complainant which is punishable under Section 406/420 of the Indian Penal Code. The accused deceived the complainant of his rightful consultancy services of Rs.38.80/- lakhs during the period of take over and arrangement of false pretext which also amounted to cheating and criminal breach of trust under Section 406/420 of the Indian Penal Code. It has further been alleged that on verification of the documents and accounts of the company it revealed that during the period when the accused was in the capacity of a proprietress, she created fictitious creditors and debtors and increased the amount of creditors by manipulating the balance-sheet and other related documents for her wrongful gains which is not only punishable under the appropriate statutory laws but her acts of creation of false documents and portraying the said documents to be genuine to deceive and cheat other individuals are punishable for commission of offences under Section 467/468/471 of the Indian Penal Code. The accused deceived the complainant by converting the business of the company to meet her own unlawful and wrongful benefits by making false representation thereby causing wrongful loss to the complainant which amounted to offences under Section 406/409 of the Indian Penal Code. The matrimonial dispute cropped up between the complainant and the petitioner mainly because of the complainant having discovered fabricated and manipulated entries in the books of accounts. The accused is presently an estranged wife of the petitioner and a Matrimonial Suit is pending before the learned Additional District Judge, 14^{th} Court, Alipore, the said suit being filed by the complaint as husband for decree of divorce on the ground of cruelty inflicted upon by the accused on him and fraud which was perpetrated upon him. The accused/petitioner on being confronted of her illegal acts, activities falsely lodged a complaint which has been culminated into an FIR vide Lake P.S. Case No. 12 of 2018.

The complainant therefore requested the learned Court to take cognizance of the offence under Section 420/406/409/467/468/471/120B of the Indian Penal Code and for issuing summons/process against the petitioner and others for commission of the aforesaid offences.

The order dated 11.02.2019 passed by the learned Chief Judicial Magistrate, Alipore, South 24 Parganas reflected that the learned Magistrate on perusal of the petition of complaint and consideration of the same took cognizance of the offence and transferred the case to the learned Judicial Magistrate, 8th Court, Alipore for disposal in accordance with law. The learned Judicial Magistrate received the record on or about 13.02.2019 and fixed 28.02.2019 for S/A. On 28.03.2019 the records reflect that an enquiry under Section 202 of Cr.P.C. was directed. The learned Judicial Magistrate, 8th Court, Alipore by order dated 10.07.2019 was pleased to issue process against the petitioner.

Mr. Somopriyo Chowdhury, learned advocate appearing for the petitioner submitted that both the accused/petitioner and the complainant/opposite party are engineers and were/are married to each other. The couple had a daughter and a son born in 1989 and 2001 respectively. Learned Advocate submitted that the proprietorship concern namely Elmax Projects and Services was established by the complainant using the petitioner's name as the proprietor since the complainant was in regular employment with a reputed multinational company and as such requested the petitioner to lend her name as proprietor. The complainant/opposite party controlled the entire paper work and funds of the business and with time the business expanded. As the complainant/opposite party continued to be employed in a public sector company he took out money from the proprietorship concern showing various heads including consultancy fees and also controlled the email ID and password of the proprietorship concern. On or about 2013 the opposite party represented to the petitioner that he intends to form a company namely, Elmax Projects and Services Pvt. Ltd. where he along with the petitioner should be the directors and the assets and the liabilities of the proprietorship concern shall be taken over by the said company, as such the company was incorporated on 17th July, 2013. On or about 31st December, 2015 an agreement was prepared by the complainant and the petitioner was asked to execute her signature in the said agreement wherein it was stated that the assets and liabilities of the proprietorship firm shall be taken over by the company and in the said company both the petitioner and the opposite party shall hold 50% shareholding each and would be Directors. In the year 2016 the complainant/opposite party involved himself in an extra marital affair with a lady employee of the company which was exposed and the relationship between the present petitioner and the complainant/opposite party deteriorated. Learned Advocate contended that the petitioner was even resisted from accessing the office of the company and was deprived of any maintenance. The petitioner as such was compelled to lodge complaint with the Registrar of Companies. On 10th July, 2017 the complainant/opposite party filed a suit for divorce being MAT Suit No. 1685 of 2017 against the petitioner before the learned Judicial Magistrate, Alipore. On 22nd September, 2017 the opposite party assaulted the petitioner and the petitioner was compelled to inform the police authorities pursuant to which a case under Section 341/323 of the Indian Penal Code was registered. On or about 11th February, 2019 the complainant/opposite party filed the present criminal case being complaint case no. C-753 of 2019 which is presently pending before the learned Judicial Magistrate, 8th Court, Alipore. It has been contended on behalf of the petitioner that the complainant has also bolstered up the allegations in the affidavit in opposition, however the same do not change the hollowness of his case and do not make out any offence to be triable in a Court of law. In order to rebut the contentions advanced by the complainant/opposite party the petitioner contended that the agreement referred to in the complaint dated 31st December, 2015 do not refer to any unpaid consultancy fees. The diligence report enclosed by the complainant /opposite party on the audit of Elmax Project and Services is a convenient document prepared by the complainant much after the matrimonial discord started and even after the complaint was filed before the learned Magistrate. The letters which have been relied upon by the complainant related to the Department of Commercial Taxes, Government of West Bengal and other taxation authorities associated with issues relating to taxation. According to the learned Advocate the complaint is nothing but an attempt made by an estranged husband to settle his personal score with his wife and it is clear that he is in full control of business of the company as well as that of the proprietorship concern from the very beginning. To that effect the learned Advocate drew the attention of this Court to the relevant paragraph of the plaint filed in the divorce suit (referred to above). Learned Advocate in order to strengthen his argument relied upon All Cargo Movers –Vs. – Danesh Badarmal Jain reported in (2009) 1 SCC (Cri) 947; Rajiv Thapar & Ors. –Vs. – Madan Lal Kapoor reported in (2013) 3 SCC 330; Rajeswar Tiwari & Ors. –Vs. – Nanda Kishore Roy reported in (2010) 8 SCC 442; Bank of Baroda –Vs. – Govind Ram Agarwal reported in (2007) 3 CHN 60; Md. Ibrahim & Ors. –Vs. – State of Bihar & Ors. reported in (2009) 8 SCC 751; Vinod Natesan –Vs. – State of Kerala & Ors. reported in (2019) 2 SCC 401.

Mr. Sabyasachi Banerjee, learned Advocate appearing for the complainant/opposite party denied the allegations advanced by the learned Advocate appearing for the accused/petitioner although he admitted that the petitioner and the opposite party are married since 1988 and presently the parties are estranged as marital discord has set in between them. In order to establish his case learned Advocate submitted that the discord between the parties rose due to fraud perpetrated by the petitioner upon the opposite party in course of business of the company namely Elmax Projects and Services Private Limited. Further he contended that the accused/petitioner in the year 1991 started a proprietorship business in the name and style of M/s Elmax Projects and Services for supply of electronic test and measuring instruments and services and activities relating to engineering consultancy and as importers, representatives, dealers, system integrators, selling agents, dealing with electrical and electronic technologies and test and measurement equipment. Learned Advocate contended that the petitioner being a Chemical

Engineer did not have any knowledge or technical know-how of high technology electronic products and services and requested opposite party to provide consultancy services, which the complainant/opposite party agreed for consultancy fees. It has been alleged that the accused/petitioner failed to make regular payments of consultancy fees to the opposite party and the petitioner being the proprietor of the firm was in full control over the finances of the business including handling and supervision of bank transaction, bank guarantee, loan, payment to creditors, statutory compliances, payment of taxes and appropriated all income from the business. On or about December, 2006 the complainant/opposite party along with some of his associates incorporated a company namely, Synergy Measurement Technologies Private Limited, the complainant/opposite party was one of the promoter directors thereof. The said company was a distributor of a reputed multinational company in the field of electronic test and measurement instruments and software, substantial work was done between Synergy Measurement Technologies Private Limited and M/s Elmax Projects and Services. On or about 2013 the petitioner suggested to the complainant for the purpose of facilitating further growth in the business of her proprietorship concern, a company in the name and style of Elmax Projects and Services be incorporated which would take over the business of M/s Elmax Projects and Services. The complainant /opposite party for convenience of the opposite party left directorship in other companies and resigned from Synergy Measurement Technologies Private Limited. It has been alleged that the outstanding consultancy fees which was to be paid by the petitioner was evaded by her on one pretext or the other. At the relevant time the company was incorporated on 17th July, 2013, however, for various reasons the present petitioner delayed the transfer of business of the proprietorship concern to the said company and finally a draft agreement was provided by her to the complainant along with books of accounts of the proprietorship concern for the relevant years, it is alleged that the said agreement was drafted and prepared at her instruction by a Chartered Accountant of the proprietorship firm at that point of time. The complainant/opposite party believing upon the representation of the petitioner who was his wife accepted the representation made by the petitioner with regard to the valuation of M/s Elmax Projects and Services including the liabilities of the petitioner in the proprietorship concern, as it was audited and certified. An agreement dated 31.12.2015 was entered into between the parties and the complainant/opposite parties accepted the facts and figures mentioned in the purported agreement and consented to Elmax Projects and Services Private Limited entering into the said agreement with the petitioner. Learned Advocate emphasising on the different terms of the agreement dated 31.12.2015 submitted that the petitioner converted consultancy fees of the complainant/opposite party into a loan for the purpose of the paying off the liabilities of the proprietorship concern and the sum was shown in the books of accounts of the company as loan from the complainant/opposite party. The learned advocate submitted that in the year 2016 the marital relationship between the petitioner and the opposite party deteriorated and the petitioner in a clandestine manner started withdrawing money from her proprietorship company and from the business of Elmax Projects and Services Private Limited and from such drawings made several fixed deposits in her name which aggregated to a sum of Rs.1,47,63,389/- on or about 30.09.2015. In July, 2016 the complainant/opposite party noticed some fabricated and manipulated entries in the books of accounts of proprietorship firm and from a preliminary enquiry of the books of accounts it transpired that the auditor and chartered accountant had not audited the balance sheet in compliance with the laws of the land. The complainant/opposite party realised that the petitioner forged and manipulated all the accounts of M/s Elmax Projects and Services for the purpose of making illegal profits and when further discrepancies started surfacing, the opposite party confronted the petitioner for defrauding him and the company by falsifying the accounts and by misrepresenting the true and correct financial position of M/s Elmax Projects and Services. It has been alleged that petitioner requested the opposite party not to make any complaint against her and she would gift her 50% share in a joint premises with the opposite party situated at A-77, Lake Gardens, Kolkata 700045, which according to her would cover the liabilities of M/s Elmax Projects and Services but had not been accounted for when the agreement took place, as also she proposed for opting out from the directorship of Elmax Projects and Services and Private Limited. Such document was written by the petitioner on 17.07.2016 for the purpose of gaining his trust so that the complainant/opposite party did not proceed to carry out a scrutiny of the balance sheet of M/s Elmax Projects and Services and lodge any complaint. The complainant also stated regarding alleged usage of two cars of the company which she had taken away for her personal use and the same being without any board resolution. It has further been alleged that on June, 2018 upon further verification of the books of accounts and the list of creditors of M/s Elmax Projects and Services it was ascertained that the petitioner created fictitious sundry creditors to the tune of over Rs.1.43/- crore during financial year 2008-2009 and 2015-2016, when the petitioner had full dominion and control over the affairs of the business including handling and supervising of bank transactions and payment of creditors, statutory compliances and payment of taxes and charges. This according to the complainant was created for the purpose of fictitious liability and false sundry creditors to evade taxes for duping the government exchequer from legitimate recoverable dues. It has also been alleged that the petitioner falsely created charges on the assets/machineries of the proprietorship firm to induce the opposite party to invest Rs.38,80,000/- for realising the assets/machineries by falsely creating encumbrances. The petitioner deceived the complainant for the purpose of conversion of the proprietorship firm into a company which she knew was running on false and fabricated documents and accounts. When the complainant/opposite party confronted the petitioner he was threatened with dire consequences and she lodged a false complaint with Lake Police Station against the opposite party and the opposite party was compelled to lodge a complaint against the petitioner which culminated into a FIR being Lake Police Station case No. 12 of 2018. Learned Advocate appearing for the opposite party for fortifying his argument relied upon Rajesh Bajaj –Vs. – State of NCT of Delhi reported in (1999) 3 SCC 259; Kamaladevi Agarwal –Vs. – State of West Bengal reported in (2002) 1 SCC 555; State of Orissa –Vs. – Saroj Kumar Sahoo reported in (2005) 13 SCC 540; M/s Neeharika Infrastructure –Vs. – State of Maharashtra reported in (2021) SCC OnLine SC 315; Sangramsinh P Gaekwad –Vs. – Shantadevi P Gaekwad reported in n(2005) 11 SCC 314.

I have considered the submissions advanced by the learned advocate appearing for the petitioners as well as the learned advocate appearing for the opposite party and on an appreciation of the same along with the documents which were enclosed with the revisional application, I am of the view that the plaint filed before the learned District Judge, Alipore in MAT No. 1685 of 2017 (which is a divorce proceedings filed at the instance of the complainant/opposite party under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955) requires to be taken into account. In the said matrimonial suit at inner page 10, it has been contended as follows:

> ***"(f)*** *That as the said business of the petitioner run-in the name of the respondent started growing immensely and the petitioner reposing all his trust on the respondent and depositing every penny earned by him either to the name of the said concern or its namesake Proprietress, he made his biggest investment in their flat South City as they bought a ready flat from an investor and moved in there in 2010.*
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> ***(g)*** *That in business the respondent had no idea about its customers their application requirement and nobody knew her from the end of*

the customers and the Principal Companies, whereas the petitioner got lot of awards from the U.S Company for their business performance of his concern that ran and existed in the name of the respondent. As such junctures when the petitioner used to get all the credit yet there used to be no official status about it the petitioner frequently used to request the respondent to make this a partnership concern accepting him as partner but it was not done as the respondent used to give solace to the petitioner saying that he was her better half.

Finally in 2013, when Synergy was shrinking in business, the petitioner requested the respondent to make her Proprietorship Concern a Pvt. Ltd. Company, where both of them would be the Directors. Trouble began there apprehending that the petitioner was trying to wipe her out and taking away her rights though her contribution was nil in business. She used to say that her trust on the petitioner remained till that time as the business would be in her name.

(h) *That with everything of the said business in the name of the respondent, she conveniently created FDRs in her name (mostly) and few in her company's name. Total FDRs amounting to around Rs.96.00 lakh today and most of these FDRs were done during 2007 to 2012 when the petitioner redirected this regional business through her company and his own remuneration were also adjusted mostly against her debts with Synergy. All the above facts can be supported with company balance sheet and P/L Account. One day the respondent said that she would not part with this money even if the petitioner needed it as it was from her business earning.*

(i) *That fights amongst the couple, tremendous family unrest and difference in opinion resulted information of a Pvt. Ltd. Company in*

> *2013 with the said Proprietary concern merging into it but actually started operation from October 2015 after the merger of her concern into this Pvt. Ltd. Co. the new Company in March 2016 closed a record turnover figure of approx Rs.12.00 Crore.*
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> ***(j)*** *That the respondent is using her financial muscle which the petitioner gave her in a ready plate to appoint Lawyers against him, Detective Agency to spy on his movements and a Company Secretary to humiliate him in presence of outsiders like the CA, Accountant and C.S of the said Private Limited Company.***"**

The subject matter of the allegations made in the petition of complaint and the initial evidence under Section 200 of the Code of Criminal Procedure compared with the averments made in MAT Suit No. 1685 of 2017, do differ in spirit and tenor on the same issues. The allegations in the complaint are for non-payment of consultancy fees; falsification of accounts, siphoning of the funds; preparation of manipulated balance sheet and audit report. So far as the non-payment of consultancy fees are concerned the same has been dealt with by the Hon'ble Supreme Court in Vinod Natesan –Vs. – State of Kerala reported in (2019) 2 SCC 401, paragraph 2 and 10 are relevant for the purpose of the present case are set out as follows:

> ***"2.*** *That the appellant herein filed a complaint against the respondent-accused for the offences under Section 420, Section 406 read with Section 34 of the Penal Code, 1860 alleging, inter alia, that after entering into the agreement by the accused with the complainant with regard to availing of intellectual services for marketing the products of the complainant, the accused did not pay the amount due and payable under the agreement and paid a sum*

of Rs 1,50,000 only (Rupees one lakh fifty thousand only) and without paying the remaining amount backed out from the agreement and thereby the accused has committed the offence as alleged.

10. *Having heard the appellant as party in person and the learned advocates appearing on behalf of the original accused as well as the State of Kerala and considering the judgment [Tomy Mathew v. State of Kerala, 2016 SCC OnLine Ker 33330] and order passed by the High Court, we are of the opinion that the learned High Court has not committed any error in quashing the criminal proceedings initiated by the complainant. Even considering the allegations and averments made in the FIR and the case on behalf of the appellant, it cannot be said that the ingredients of Sections 406 and 420 are at all satisfied. The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into a criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month's notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 IPC as alleged. We are in complete agreement with the view taken by the High Court.*”

So far as the other allegations are concerned relating to falsification of accounts and siphoning of the funds and preparation of manipulated balance sheet/audit report are concern the same were in respect of the proprietorship concern, in respect of which at the time of merger of the said concern and/or converting the proprietorship concern into a Private Limited company the agreement was entered into by the parties as is revealed in the petition of complaint. The complainant in order to dilute the contents of the agreement and for the purpose of incorporating culpability has used the relationship with the petitioner and alleged that since the petitioner was his wife he had accepted the same which was prepared at the instance of the petitioner. Once the agreement has been entered into between the parties the contents of the agreement are to be adjudicated by the Court having authority of the same. The allegations relating to the period itself reflects that the same was during the period when it was a proprietorship firm and with the confirmation of the company the liabilities of the proprietorship firm has been transmitted to the company and the company has been saddled with such liability. If the contents in an agreement subsequently reflects that a liability has been created by which a party to the agreement has suffered the same do not create a criminal liability until and unless the whole agreement has been adjudicated upon by a Civil Court. Further in this case the complainant has already taken up similar plea in the divorce suit as to how his money which he invested in the proprietorship firm has been misused by his wife.

Having considered the nature of the narrations, the sprit and tenor of the contentions in the civil suit and the subject of allegations made in the petition of complaint filed before the learned Magistrate, I am of the opinion that the present criminal proceeding has been initiated only after the matrimonial relationship deteriorated. The business relationship which existed between the parties along with their matrimonial relationship has been used as a ploy to initiate criminal proceedings. The same is abuse of the process of the Court.

Accordingly all further proceedings of Complaint case no. C-753 of 2019 as also the orders passed therein by the learned Judicial Magistrate, 8th Court, Alipore is hereby quashed.

Thus, CRR 107 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

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

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

(Tirthankar Ghosh, J.)