IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 275 of 2019

Ram Niwas Gupta

Vs

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Sekhar Basu, Sr. Adv., Mr. Souvik Mitter.
For the State	:	Ms. Puspita Saha.
For the Opposite Party No. 2	:	Mr. Sabyasachi Banerjee, Ms. Sriparna Das, Mr. A.P. Gomes.
Heard on	:	23.02.2023
Judgment on	:	21.03.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being Case No. C/15926/11 under Section 409 of the Indian Penal Code, pending before the Court of the Learned Metropolitan Magistrate, 14th Court, Calcutta and Order dated 29.11.2018 passed by the Learned Metropolitan Magistrate, 14th Court, Calcutta, thereby framing charge for the commission of offence punishable under Section 409 of the Indian Penal Code against the petitioner in connection of with Case No. C/15926/11 corresponding to T.R. 376/11.
2. The petitioner's case is that the Proprietor of M/s HBRM Jute Traders having its principal place of business at 39/1532, 2nd Floor, Room No.1, S.P. Mukherjee Margh, Shiv Ashram, New Delhi 110006, is engaged in the trade of supply and sale of jute and jute goods in and around the region of Delhi, Uttar Pradesh and other states. The petitioner procures such jute and/or jute goods from various manufacturers, mostly in Eastern India and after sale of such goods, deducts his commission and remits the payments to the manufactures by bank draft. The petitioner has being carrying on business without any blemish on his part for more than 2 decades.
3. The petitioner has been procuring Jute and jute goods from the Opposite Party no. 2 for trading. Initially the petitioner used to interact

with one Mr. Suresh Kumar Ganeriwala (who used act on behalf of Opposite Party No. 2. However sometime in the year 2009 one Mr. Prakash Choraria took over the management of the Opposite Party No.2 and Mr. Choraria started interacting with the petitioner in place of Mr. Ganeriwala. The nature of delivery of goods and payments remained the same. However, after Mr. Choraria stepped into the picture, the petitioner started receiving various complaints from the buyers of jute and jute goods, which were sent by the Opposite Party No. 2, to the extent that the same were of inferior quality. The petitioner informed the Opposite Party No. 2 and requested him to improve the quality of the goods dispatched from Kolkata. Inspite of repeated requests, the quality of the goods so dispatched remained inferior and on every occasion, whenever the petitioner deliberated with Mr. Choraria, he came up with some excuse or the other and undertook to dispatch goods of better quality in future. However the situation did not improve, and since the petitioner was suffering loss in business, he requested the Opposite Party No. 2 to terminate all transactions in future.

4. At this Juncture Mr. Choraria stated that he would visit Delhi soon and would look into the matter personally and further requested the petitioner to accept the consignment, which had already been dispatched on 01-01-2009. Mr. Choraria also assured that there would be no complaint in future and requested the petitioner to remit a sum

of Rs. 10,00,000 (Rupees Ten lakhs) in favour of the Opposite Party No. 2 as the company was in dire need of funds. Keeping in mind the existing business relation for more than 2 decades the petitioner acceded to the request of accepting the consignment so dispatched on 01.01.2009 and on his part sent two cheques bearing no. 215784 and 215771 dated 5.1.2009 each of Rs. 5,00,000/- drawn on Centurian Bank of Punjab (presently HDFC Bank) in favour of the Opposite Party No. 2. The said cheques were duly accepted and encashed by the Opposite Party No. 2 on 10.1.2009 and 14.01.2009 respectively. It is pertinent to mention herein that the said 2 cheques were issued by the petitioner from the account of his other propriety concern M/s Ridhi Sidhi Jute Traders.

5. After a few days of such deliberation the petitioner received a consignment of 11 lorries of jute bags dispatched by the opposite party no. 2 on 01.01.2009 and in good faith the petitioner supplied the said jute bags to various Sugar Mills. However in spite of all the assurances of the Opposite party No. 2 it was found that the said jute bags were totally damaged (98% damaged and rotten) and were in unusable condition. As such the sugar mills (to which the petitioner supplied the jute bags manufactured by the Opposite Party No. 2) refused to accept such unusable goods and demanded replacement of the same.
6. The petitioner again contacted Mr. Choraria and demanded replacement of the goods to which Mr. Choraria assured the petitioner

of doing the needful. However Mr. Choraria kept on deferring the issue. Finally the Opposite Party No. 2 neither replaced the damaged consignment dated 01.01.2009 nor refunded the amount of Rs. 10,00,000/- paid in favour of the Opposite Party No. 2 by the petitioner.

7. It is submitted that in order to hide his own misdeeds the Opposite Party No. 2 filed a petition of complaint before the Court of the Learned Chief Metropolitan Magistrate at Calcutta on 16.06.2011 (being C/15926/11) corresponding to T. R. 376/11, being represented by its director, Mr. Dan Mal Kothari against the petitioner herein. The allegations made against the petitioner in the complaint are as follows:-

> *"M/s North Brook Jute Co. Ltd. (i.e. the complainant company) manufactures jute products. The company has its registered office at 1, G.T. Road, Champdany, Baidyabati, Hooghly – 712222. Its office in Kolkata is situated at 16A, Brabourne Road, 5th Floor, Kolkata – 700001. That Dan Mal Kothari was authorized vide a Board Resolution dated 27.04.2011 to file the complaint.*
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> *Ram Niwas Gupta the accused/petitioner herein has been working as an agent of the complainant company for more than a decade in New Delhi. Ram Niwas Gupta has a company called HBRM jute Traders, which has its office in New Delhi.*
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> *The complainant company used to send jute products to Ram Niwas Gupta at New Delhi; Ram Niwas Gupta, working in the capacity of a broker for and on behalf of the complainant company, used to receive the jute products and sell them to various parties. Upon*

> *selling the jute products to various parties, Ram Niwas Gupta used to collect the sale amount and after deducting the necessary charges incurred for selling the products, he used to dispatch the remaining sale amount to the complainant company's Kolkata office by Account Payee cheques.*
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> *On 01.01.2009, the complainant company sent a consignment of goods which had 11 consignment invoices (each of Rs. 5,12,624/-) to Ram Niwas Gupta. The total value of the consignment was Rs. 56,38,864/-. Ram Niwas Gupta confirmed receipt of such goods vide Sale Note No. C/075/08-09 dated 31.03.2009.*
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> *After making the necessary deductions incurred for selling the products, Ram Niwas Gupta was supposed to pay back Rs. 54,38,864/- to the complainant company. Thereafter, the complainant company made several requests to Ram Niwas Gupta to make the payment of Rs. 54,38,864/- however, he refused to pay for the same and, therefore, dishonestly misappropriated the money to his wrongful gain."*

8. On the basis of the said complaint the Learned Chief Metropolitan Magistrate was pleased to take cognizance of the same and transferred the proceedings to the Court of the learned Metropolitan Magistrate, 14^{th} Court (hereinafter referred to as the 'Learned Magistrate') for trial and disposal where the same was registered as T.R. No. 376/11.

9. Thereafter on 20.09.2018 the petitioner filed an application under Section 239 of the Code of Criminal Procedure praying for discharge on the grounds that the dispute is civil in nature and that the

consignment invoice indicated that the goods were sent to HBRM Jute Traders (there was no mention of Ram Niwas Gupta) and HBRM Jute Traders had not been made an accused.

10. It was also contended on behalf of the petitioner that part payments had been received by the complainant company and the same had been adjusted against previous dues and that original Sale Note was not produced before the Court. The photocopy of the Sale Note also did not bear the signature.

11. The application under Section 239 of the Code of Criminal Procedure was heard and by an order dated 27.08.2018 the Learned Magistrate was pleased to reject the application inter alia observing that Section 239 Cr.P.C. would not apply in the instant case as the same was a warrant case and was not instituted on a police report. The Court decided the said application on its merits and observed that at the stage of framing of charge, the court is only required to infer whether or not a prima facie case has been made out and at that stage, the court is not required to examine if the evidence adduced is sufficient to convict the accused.

12. The Learned Magistrate in his order further observed that considering the evidence of the witnesses, the documentary evidence, including copy of the Board Resolution, 11 consignment invoices, receipt given by Ram Niwas Gupta, Ledger Account of HBRM Jute Traders from 01.04.2008 to 31.03.2009, and signature

of the complainant on the written complaint, the court was convinced that a prima facie case under Section 409 of IPC had made out and, therefore, the petitioner was not entitled to the benefit of discharge from the case.

13. **Mr. Sekhar Basu, learned senior counsel for the petitioner** has submitted that it is evident that mercantile transaction between the petitioner and the Opposite party no. 2 had been going on for several years (about 22-23 years) and the facts indicated hereinabove clearly demonstrate that the petitioner has/had no intention to breach any trust and /or deceive nor cause wrongful gain to himself thereby leading to wrongful loss to the Opposite Party No. 2 in any manner.

14. **Mr. Basu** has further submitted that the allegations as leveled in the complaint do not disclose anything to prima-facie indicate that there had been any misrepresentation on behalf of the petitioner to the opposite party no. 2 at any point of time and/or that the petitioner had made any wrongful gain for themselves. The instant case is a classic example of business transactions falling foul. Such commercial transactions which finally turn sour after a lengthy period of time cannot be coloured with criminality and no allegation of Criminal Breach of Trust can be made out on this score. In absence of such vital facts which only can constitute the offence as

alleged, the charge framed against the petitioner is wholly without jurisdiction and is liable to be set aside.

15. It is further submitted that framing of charge and subsequent continuation of the proceedings are judicial acts whereby a Learned Court is required to apply its mind to the materials as placed before it and thereafter being satisfied with regard to the complicity of the person so sought to be arraigned as accused, frame charge of the offences on the basis of materials on record. A mechanical approach in framing charge does not satisfy the judicial need and mere signature on the dotted lines indicating that charge has been framed is a travesty of justice. Such order of framing charge is non-est in the eye of law and is liable to be set aside.

16. Thus the continuation of the instant proceeding any further will be a gross abuse of the process of court as from the facts narrated hereinabove it is crystal clear that the present proceeding is vexatious and harassive in nature and has been instituted at the behest of a malicious complaint. The allegations when taken in their entirety do not disclose the commission of any offence or an offence under Section 409 IPC by the petitioner at all.

17. It is also submitted that the facts and circumstances narrated hereinbefore clearly indicate that the allegations are wholly false and as such the entire proceeding is liable to be quashed as Mercantile transactions when disputed between the parties inter-se is the

subject matter of civil claim or counter claim which should be a subject matter of adjudication before a civil forum. Posting a civil liability as a case of criminal breach of trust in order to unjustifiably exercise the arms of law of a criminal court cannot justify the initiation of a criminal proceeding.

18. **Mr. Sabyasachi Banerjee, learned counsel for the opposite party No. 2** on filing a written notes of argument along with the judgments relied upon has submitted that the opposite party no. 2 who used to work in the capacity of an agent used to receive raw jute materials and sell them to various parties. Upon receiving the sale amount and deducting his charges he used to send the sale proceed to the opposite party no. 2. In the instant case the accused petitioner was entrusted with the raw materials in the way of his business as an agent and subsequently misappropriated the same **(AIR 1962 SC 1821- R.K. Dalmia & Ors. Vs. the Delhi Administration, para 96).**

19. **Mr. Banerjee** has further submitted that in a case of "criminal breach of trust", the accused comes into possession of the property or acquires dominion over the property honestly and bona fide, but develops dishonest intention subsequent to the taking possession of, or subsequent to having acquired the dominion over, the property and, having developed such dishonest intention, he dishonestly misappropriates or converts to his own use the property or

dishonestly uses or disposes of the property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do. Thus, in "criminal breach of trust", the intention of the accused cannot be dishonest or mala fide at the time when he comes into possession of the property or comes to acquire dominion over the property but having come into possession of, or having acquired dominion over, the property, the accused develops dishonest intention and actuated by such mens rea, he converts to his own use the property or dishonestly uses or disposes of the property in violation of any direction of law prescribing in which manner such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do.

20. It is further submitted that contrary to what happens in "criminal breach of trust", the intention of the accused, in a case of "cheating", is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not

do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. **(2012 SCC Online Gau 270- Samsung India Electronics Pvt. Ltd & Anr. Vs The State of Assam & Ors.) (para 6,7,8,9,10).**

21. Regarding framing of charge by the Ld. Trial Court, it is submitted that it is well settled that the Ld. Judge while considering the question of framing of charge under Section 227/239 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out – the court is not supposed to hold a mini trial by marshalling the evidence on record. {(2019) 7 SCC 148} (para 15, 18) Asim Shariff Vs NIA. It is submitted regarding burden of proving fact specially within the knowledge of any person in the instant case (Section 106 of the Indian Evidence Act, 1872) it is an admitted position that the accused petitioner received the raw jute material but what they have done with the same after receiving the same is a fact specially within the knowledge of the accused petitioner and the burden is upon him to prove the same.

22. It is thus submitted that the offence under Section 409 IPC is well established and the order of the Ld. Judge dismissing the discharge application and framing charge under Section 409 IPC against the petitioner requires no interference.

23. The following judgments have been relied upon on behalf of the petitioner:-

a) Century Spinning & Manufacturing Co. Ltd. & Ors. Vs. The State of Maharashtra, AIR 1972 SC 545.

> *"**16.** Coming now to the facts of this case, in our view, the question principally depends on the scope and effect of the notification dated September 22, 1949, the circular dated November 2, 1964 and the Deviation Order dated June 25, 1965. If, on this material, the Court comes to the conclusion that there is no ground for presuming that the accused has committed an offence, then it can appropriately consider the charge to be groundless and discharge the accused. The argument that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused is not supportable either on the plain language of the section or on its judicial interpretation or on any other recognised principle of law. The order framing the charges does substantially affect the person's liberty and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it, has to judicially consider the question of doing so. Without fully adverting to the material on the record it must not blindly adopt the decision of the prosecution."*

b) Satish Mehra vs State (NCT of Delhi) And Anr., (2012) 13 SCC 614.

> *"**14.** The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the*

> *criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."*

c) **Anwarul Islam vs The State of West Bengal, 1996 SCC OnLine Cal 111.**

24. **On hearing all sides and considering the materials on record, the following facts are before this court:-**

a) The parties have a business relationship for more than two decades.

b) The petitioner procures jute/jute goods from various manufacturers (herein the opposite party) and after sale of such goods, deducts his commission and remits the payment to the manufacturer (here in opposite party) by bank draft.

c) Admittedly in this case goods were delivered to the petitioner by the opposite party.

d) In this transaction the goods supplied by the opposite party **was 98% damaged and in rotten condition**. (As informed through a letter by Modi Sugar Mill, a buyer).

e) These goods were dispatched on 01.01.2009.

f) **The complaint has been filed on 16.06.2011, after one and half year.**

g) That the goods were delivered by the opposite party is admitted.

h) That the goods were damaged and rotten is prima facie proved by (annexure P2) the letter sent by MODI SUGAR MILLS.

25. The Supreme Court in **N. Raghavender vs State of Andhra Pradesh, CBI, Criminal Appeal No. 5 of 2010, on 13.12.2021,** held:-

> *"**41.** Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is*

duly bound to account for and that he has committed criminal breach of trust. ***(See: Sadupati Nageswara Rao v. State of Andhra Pradesh, (2012) 8 SCC 547)****.*

42. *The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:*

(i) Entrusting any person with property or with any dominion over property;

(ii) That person has dishonestly mis-appropriated or converted that property to his own use;

(iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

43. *It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner.*

> ***44.*** *No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:*
> *(i) The accused must be a public servant or a banker, merchant or agent;*
> *(ii) He/She must have been entrusted, in such capacity, with property; and*
> *(iii) He/She must have committed breach of trust in respect of such property.*
> ***45.*** *Accordingly, unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof. Where the 'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner."*

26. The facts and circumstances in the present case are clear that:-

(i) There is no material to prove "dishonest intention" and thus the existence of 'mens rea'.

(ii) There has been no "mis appropriation" of the "property entrusted" as retention was because of 98% damaged and rotten goods returned by the Buyers and not taken back by the opposite party.

(iii) There has been no "use" of the disputed property by the petitioner in violation of law or contract (nothing in writing). Thus, no "mis appropriation" which means improperly setting apart for ones use and to the exclusion of the owner (opposite party), **(N. Raghavender vs State of Andhra Pradesh (Supra)).**

(iv) There has been no 'actual use' of the property by the petitioner and no dishonest intention and thus no mis-appropriation.

(v) As such the two fundamental ingredient of 'criminal breach of trust' within the meaning of Section 405 IPC has not been proved in the present case **(N. Raghavender vs State of Andhra Pradesh (Supra))**.

27. In the present case 'entrustment' has been admitted by the petitioner, and the materials on record as discussed prima facie proved that the petitioner retained the property as they were 98% damaged and rotten and returned by the Buyers and not taken back by the opposite party but there was no 'use' of the goods by the petitioner with dishonest intention and thus no mis appropriation. Thus the materials on record do not prima facie prove that the

petitioner dishonestly misappropriated or converted the property to his own use. He also did not dishonestly use or dispose of the goods.

28. **Thus the ingredients required to constitute the offence of criminal breach of trust are absent (no materials on record).**

29. **The goods were damaged and rotten, (letter of Modi Sugar Mills) so there is no 'misappropriation' for one's use.**

30. Accordingly there is no prima facie case against the petitioner for commission of offence under Section 409 IPC and allowing the proceedings to continue against the petitioner will be an abuse of the process of law/court.

31. The proceedings in Case No. C/15926/11, before the learned Metropolitan Magistrate, 14th Court, Calcutta and all orders therein is thus liable to be quashed for ends of justice.

32. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022),** the Supreme Court held:-

> *"**15.** This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another**, **(2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:-*
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> > *"22. Before we enter into the facts of the present case it is necessary to consider the ambit and*

scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if 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. In para 7 of the judgment, the following has been stated :

> *'7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if 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. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The*

> *compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'*

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

> *'102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.'*

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case,

> *materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."*

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in* ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** *as under :*

> *"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code 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 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though 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 of 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."

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in* ***Neeharika Infrastructure Pvt. Ltd.***

> ***v. State of Maharashtra and Others, 2021 SCC Online SC 315.***"

33. The present case is thus clearly covered by the guidelines in **State of Haryana vs Bhajanlal (Supra) (Para 102)**.
34. **CRR 275 of 2019 is allowed**.
35. The proceedings being Case no. C/15926/11 under Section 409 of the Indian Penal Code and all orders therein pending before the learned Metropolitan Magistrate, 14^{th} Court, Calcutta is hereby quashed.
36. There will be no order as to costs.
37. All connected Application stand disposed of.
38. Interim order if any stands vacated.
39. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
40. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)