IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2886 of 2022
With
CRAN 1 of 2022

Arunava Adhikary
Vs.
The State of West Bengal and Ors.

With
CRR 3629 of 2022
With
CRAN 3 of 2022
With
CRAN 5 of 2023

Bhumika Jitendra Navlani and Others
Vs.
The State of West Bengal and Ors.

With
CRR 464 of 2023

Jitendra Chandralal Navlani
Vs.
The State of West Bengal

Mr. Y. J. Dastoor, Sr. Adv.
Dr. Sujay Kantawala
Mr. S. Yadav
Mr. Aloke Nath Chandra
Ms. S. Grewal

..for the petitioner in CRR 3629 of 2022
and Opposite parties in CRR 2886 of 2022

Mr. R. B. Mokashi

Mr. Phiroze Edulji
Mr. Samrat Goswami
..for the petitioner in CRR 2886 of 2022

Mr. Phiroze Edulji
Mr. Samrat Goswami
..for the O.P. in CRR 2886 of 2022, CRR 3629 of 2022 and CRR 464 of 2023.

Mr. Sandipan Ganguly, Sr. Adv. Ld. P.P.
Mr. Rudradipta Nandy, Ld. APP
Mr. Anand Keshari
..for the State

Hearing concluded on: 21 September, 2023.
Judgment on: 29 September, 2023.

BIBEK CHAUDHURI, J. : –

1. These three criminal revisions were heard together because of the fact that these proceedings emanated from the same facts and this Court delivers the common judgment on conclusion of hearing.

2. It is on record that one Bhumika Jitendra Navlani and Jitendra Chandralal Navlani are the Directors of Bonanza Fashion Merchants Private Limited. They have been arrayed as accused persons in connection with Narendrapur P.S Case No.573 of 2022 dated 8th May, 2022 under Sections 417/419/420/120B/465/467/468/471 of the Indian Penal Code read with Sections 66C and 66D of the Information Technology Act corresponding to G.R Case No.3467/2022 pending before the learned Additional Chief Judicial Magistrate, Baruipur in the District of South 24 Parganas. It is pertinent to mention here that the above mentioned criminal case has been instituted on the basis of a written complaint

submitted by one Arunava Adhikary, petitioner of CRR 2886 of 2022 before the Officer-in-Charge of Narendrapur Police Station.

3. It is the case of the petitioners in CRR 3629 of 2022 that on 1st October, 2013 the petitioners No.1 and 2 purchased 100% share of Bonanza Fashion Merchants Private Limited, petitioner No.3 herein having its registered office at 16 Bonfield Lane, 5th Floor, Kol-700001. The petitioners No.1 and 2 thus became the Directors of the said company. Sometime in the year 2016 when the process of change of registered office address of the petitioner No.3 company was pending and the process was going on to change the office address of petitioner No.3 company from Kolkata to Mumbai, the petitioners No.1 and 2 sought help of their childhood friend, namely, Gaurav Sehgal who had business in Kolkata to arrange for a temporary office in Kolkata. On 1st August, 2016 the said Gaurav Sehgal had forwarded a NOC of the landlord, an electricity bill dated 27th July, 2016 for premises at Sunny Valley, Flat No.1A, Block-5, 484, Uttar Purba, Fartabad, Sahapada, near Tirtha Club, Kolkata-84. Subsequently, on 12th August, 2016 the petitioners No.1 and 2 filed an application before the registered office (ROC) for change of address from 16 Bonefield Lane, to Flat No.1A, Sunny Valley, Block 484, Uttarpurba, Fartabad, Sahapada near Tirtha Club, Kolkata. Subsequently, since 2017 the petitioners have taken steps to change the address of the registered office of Bonanza Fashion Merchants Private Limited Company to 45 Mittal Chambers, Nariman Point, Mumbai-400021. It is sufficient to mention here that several unsuccessful attempts were made to implicate

the petitioners No.1 and 2 in various criminal cases but the prosecuting agencies were not successful in their investigation and in respect of some of the cases it was established that the petitioners were falsely implicated by the police and other Investigating Agencies.

4. That on 11th May, 2022 a sum of Rs.3,00,02,000/- (Rupees three crores and two thousand only) was allegedly seized by the police personnel in course of their duty of naka checking within the jurisdiction of Ballavpur under Raniganj Police Station in the State of West Bengal, from the possession of four persons, who were travelling by a car. A Police Officer attached to Raniganj Police Station registered a case against the said persons under Section 41 Cr.P.C read with Sections 379 and 411 of the IPC. The said arrested persons were produced before the Chief Judicial Magistrate at Asansol and they were granted bail. Subsequently, one Rajib Dey claimed the seized money before the learned Chief Judicial Magistrate at Asansol claiming that the said money was sent to purchase poultry feed for a chicken farm owned by the said Rajib Dey. After verification of the claim and on the basis of the police report, the learned Chief Judicial Magistrate released the said seized money in favour of the said Rajib Dey.

5. However, on 17th May, 2022, one Sudip Dasgupta, Inspector-in-Charge of Raniganj Police Station made an application before the learned Chief Judicial Magistrate praying for causing inquiry and issuance of search warrant stating, inter alia, that during inquiry of Raniganj Police Station G.D Entry No.681 dated 11th September, 2022 under Section 41

Cr.P.C read with Sections 379/411 of the IPC, it came to the notice of the concerned Police Officer that some financial institutions are involved in the case of money laundering. One of such institution is the petitioner No.3 herein having its registered office at Sunny Valley, Flat No.1A and in order to unearth the involvement of the petitioner No.3/company in money laundering, it was urgently required to verify their financial papers and records. Therefore, he has prayed for an order of the learned Magistrate to inquire into the office and financial records of Bonanza Fashion Merchants Private Limited at Kolkata. This is one side of the allegation made by the police authority against Bonanza.

6. On 28th May, 2022 one Arunava Adhikary being a resident of Flat No.3A, Sunny Valley, Block 5, 484, Uttarpurba Fartabad, Sahapada within P.S Narendrapur lodged a written complaint stating, inter alia, that on 21st May, 2022 he received two letters from “Indiabulls” sent in the name of Bonanza Fashion Merchant Private Limited, Arunava Adhikary, Sunny Valley, Flat No.1A intimating change of applicable rate of interest in respect of some loan taken by Bonanza. It was stated by Mr. Arunava Adhikary, the defacto complainant, that he was never associated with any such company. He inquired into the matter from the available website and came to know that the said company was incorporated sometime in July, 2009. It is registered with the Registrar of Companies, Kolkata having its address in the name of the defacto complainant at Sunny Valley, Flat No.1A. The said address was also noted in several websites. Thus, he anticipated that the petitioners No.1 and 2 being the Directors of the

company entered into a criminal conspiracy with other unknown persons by stealing and using the identity and credentials of the defacto complainant in fraudulent manner from his computer system by hacking email ID, phone number etc and have also formed a fake company for the purpose of cheating for their wrongful gain.

7. On the basis of the said complaint, police registered Narendrapur P.S Case No.573 of 2022 dated 28th May, 2022 under Sections 417/419/420/120B/465/467/468/471 of the IPC and Sections 66C and 66D of the I.T Act. Subsequently, the investigation of the case was taken up by the CID and one Rajarshi Banerjee took up the investigation of the case.

8. In CRR 2886 of 2022, it is alleged by Mr. Adhikary that he is having business relationship since many years with one Mr. Gourav Sehgal. The said Gourav Sehgal requested the petitioner for providing address for one of his closed childhood friend's company in Kolkata. The petitioner had agreed to provide his residential address at Sunny Valley, Flat No.1A, Block 484 Uttar Purba Fartabad, Kolkata. The residential address of the petitioner was used as the registered business address of Bonanza Fashion Merchants Private Limited at Kolkata. The petitioner came to know that on 11th May, 2022 some cash money was recovered from the possession of four persons. On 17th May, 2022, one Sudip Dasgupta, Inspector-in-Charge of Raniganj Police Station obtained a search warrant issued by the learned Chief Judicial Magistrate, Asansol for conducting search in the official business address of Bonanza Fashion Merchants

Private Limited at Flat No.1A, Sunny Valley, Kolkata. On the strength of the said search warrant police conducted search on 27th May, 2022 at Flat No.3A Sunny Valley and petitioner's laptop, external hard disk and mobile phone were seized. At the time of search and seizure, the police personnel informed the petitioner that they were searching in connection with a suspected case of money laundering allegedly committed by Bonanza. Since the petitioner was not attached to Bonanza in any business transaction, he lodged a complaint in the Narendrapur Police Station against Bonanza and it Directors, on the basis of which a case under Section 417/419/420/120B/465/467/468/471 of IPC read with Section 66(c) & 66(d) of the Information Technology Act was registered. After filing the said FIR on the basis of the advice and instruction of the police officers, his friend Gourav Sehgal contacted him and reminded him of his consent for issuing the address of his flat as the business address of Bonanza Fashion Merchants Private Limited in Kolkata. Immediately thereafter on 2nd June, 2022 and on 8th June, 2022 his statement was recorded and videographed before the Additional Officer-in-Charge, Anti Cheating and Fraud Section, CID. In his statement he expressed the true version of the incident that he had given consent to Bonanza to use the address of his flat as the business address of the said company in Kolkata. He also made an application on 2nd June, 2022 to the Additional Officer-in-Charge, Anti C.F Section, CID, Bhabanibhawan declaring his consent given to Bonanza for using the address of his residential flat as the business address of Bonanza. On 2nd August, 2022 he also affirmed an affidavit stating the aforesaid facts and also declared that the statement made in the FIR in connection with Narendrapur P.S Case No.573 of 2022 is not correct and it was made under the instruction and pressure exerted upon him by the police authority. Therefore the petitioner has prayed for quashing of the FIR, further investigation and proceeding being Narendrapur P.S Case No. 573 of 2022.

9. The petitioner No.2 of CRR 3629 of 2022 has also filed another revision being CRR 464 of 2023 with a prayer to pass appropriate direction upon the trial court allowing him to attend a business conference in Dubai from 10.02.2023 to 14.02.2023.

10. At the outset I would like to record that CRR 464 of 2023 has become infractuous in view of the fact that period for which the petitioner wanted to travel Dubai has expired and at the stage no order is required to be passed in CRR 464 of 2023.

11. It is the case of the petitioners of CRR 3629 of 2022 that after purchase of 100% share of Bonanza by petitioners No.1 and 2, administration of the said company was transferred in favour of the petitioners No.1 and 2 and they became the Directors of the said company. After purchasing 100% share of the company, registered address of the said company was required to be changed so the petitioners No.1 and 2 requested his friend Gaurav Sehgal to provide an address in Kolkata and he provided the address of Flat No.1A, Sunny Valley. The said address was incorporated as the address of the company at Kolkata. However, the business of the company was conducted from

the very beginning, from Mumbai. Since 2016, the petitioners had been taking steps to change the address from Kolkata to Mumbai.

12. At this stage it will not be out of place to mention that the defacto complainant of Narendrapur Police Station Case No.573 of 2022 dated 28th May, 2022 has filed a revision which has been registered as CRR 2886 of 2022 for quashing the FIR on the basis of which Narendrapur Police Station Case No.573 of 2022 dated 28th May, 2022 was registered, on the ground that he was forced to lodge the complaint against the petitioners of CRR No.3629 of 2022 and on the request of Gaurav Sehgal he permitted Bonanza to temporarily use his address as the registered office at Kolkata.

13. Dr. Sanjay Kaulthawal, learned Advocate on behalf of the petitioners first refers to page 137 of the writ petition which is an application under Section 451 of the Cr.P.C filed by one Rajib Dey claiming the seized amount of Rs.3,00,02,000/- stating, inter alia, that the said money belonged to him and he was sending the said money for purchasing poultry feed for his poultry farm under the name of Suryajyoti Poultry Farm. Therefore, there was no connection of Bonanza or its Directors with the said seized money. Thus, the allegation of money laundering by Bonanza falls flat. When the police found that the petitioners and their company could not be tagged with the money seized by the police attached to Raniganj Police Station, CID West Bengal was involved in the act of roping the petitioners and the company in a false

case of cheating and forgery putting pressure upon Arunava Adhikary to lodge a false complaint against the petitioners.

14. Dr. Kaulthawal, further submits before me that on the basis of an information made by the petitioner No.2 before the Officer-in-Charge of Worli P.S on 14th November, 2022 a case under Section 120B/384/386 of the IPC was registered against Rajarshi Banerjee and three others. The said Rajarshi Banerjee happens to be the Investigating Officer of Narendrapur Police Station Case No.537 of 2023 dated 28th May, 2022. In his complaint he stated that he carries on business as one of the Directors of Bonanza Fashion Merchant Private Limited and the customers of the said company include the big business houses like Shapoorji Pallonji, Bombay Dyeing, United Phosphorus, Indiabulls, Raheja Developers etc. On 24th July, 2022 his wife, petitioner No.1 herein, was returning from Dubai with their children. When she landed, she came to learn from the Airport Authority that CID Kolkata has issued a Look Out Circular against her and she was detained in the said night at Mumbai Airport. On the next morning, Rajarshi Banerjee of CID Kolkata came to Mumbai and arrested petitioner No.1 and brought her to Sahar Police Station Mumbai. At that time the petitioner No.2 contacted his relative, namely, Karim Dhanani to send help to her. He made Rajarshi Banerjee an offer upon which the petitioner No.2 also spoke with Rajarshi Banerjee and he told petitioner No.2 that he would arrest his wife and family members and take them to Kolkata. He also threatened to cause physical assault to them with dire consequence and demanded Rs.10

crores from petitioner No.2. He also shared his mobile phone number with the petitioner No.2. It was specifically demanded that a sum of Rs.10 crores would be paid to him at some place in Nepal. When the defacto complainant agreed to such extortion, the police officer released his wife upon bail. Subsequently, discussions were held many times with Rajarshi Banerjee and Karim Dhanani over payment of the said money at Mumbai and Kolkata. On 7th June, 2022, Rajarshi Banerjee told petitioner No.2 and his friend Gaurav Sehgal to meet him at Sea Lord Restaurant Worli Mumbai. Gaurav Sehgal met him at the said restaurant and they discussed about the exchange of money. At that time, the said Rajarshi Banerjee told that he was demanding the money under the instruction of Mr. Manoj Malavya, Director General of Police and Rajsekhar an Additional Director General, CID and some political big wigs. He also assured that if the said money is paid to him the petitioners will be relieved of all criminal matters. On that date a sum of Rs.1 crore was paid to Rajarshi Banerjee. On 8th June, 2022 Rajarshi Banerjee met Gaurav Sehgal in Taj Hotel Kolkata. At that time again a sum of Rs.1 lakh was paid to him. Rajarshi Banerjee on different dates and times extorted money from the petitioners through their relatives and associates. On 26th July, 2022 he received a sum of Rs.10 lakhs from Mr. Karim Dhanani at Nariman point. He also paid Rs.8 lakhs on 14th August, 2022. Under the instruction of Rajarshi Benerjee, another Police Officer, namely, Sumit Banerjee also demanded money from the petitioners. Rajarshi Banerjee also told Karim Dhanani and Gaurav Sehgal to transfer the said amount to Hawala and gave a mobile number to both of them for the Hawala transaction. It is also stated by the petitioner No.2 in his complaint that the registered office of Bonanza Fashion Merchant Private Limited is situated at Kolkata and he and his wife have purchased 100% share of the said company on 1st October, 2013. Since the petitioners had no address in Kolkata while taking up the process of changing his office from Kolkata to Mumbai, he temporarily used the address of Arunava Adhikary on the request of Gaurav Sehgal.

15. On the basis of the said complaint, the Government of Maharashtra directed transfer of investigation of CR No.1181/2022 at Worli P.S Mumbai City, Maharashtra to CBI because of the fact that the complaint submitted by Jitendra Chandralal Navlani reveals that the scope of investigation in respect of the said complaint has interstate ramification covering the State of West Bengal and Maharashtra and also beyond India that is Nepal. It has also been alleged by the complainant that there was illegal demand of money through Hawala network. Further role of High Ranking Police Officers and politicians from West Bengal has also been alleged in the present offence. So the said criminal investigation was directed to be conducted by CBI.

16. Under such factual conspectus, Dr. Kaulthawal invites this Court to consider as to whether the criminal case instituted against the petitioners vide Narendrapur P.S Case No.573 of 2022 dated 28th May, 2022 merits of further police investigation and criminal trial. The defacto complainant of the said case was forced to lodge a false complaint against the

petitioners. He subsequently, retracted from the complaint files, a criminal revision which is being heard analogously admitting, inter alia, that on the request of Gaurav Sehgal he permitted Bonanza to use the address of his residential flat temporarily as the registered office of the business. It is also mentioned that the registered office of Bonanza is recorded as Flat No.1A, Sunny Valley but the Investigating Officer conducted investigation in the residence of Arunava Adhikary at Flat No.3A, Sunny Valley where he resides as a tenant. The police seized one mobile phone, Sim Card, one Dell Laptop and three numbers of external hard disks from Flat No.3A, Sunny Valley. Thus, no search was conducted at Flat No.1A which is the registered office of Bonanza and nothing was naturally found and seized from the said flat.

17. Dr. Kaulthawal next refers to a decision of the Hon'ble Supreme Court in the case of **Mohammad Wajid & Anr. vs. State of U.P & Ors**. reported in **2023 LiveLaw (SC) 624**. In the said report the Hon'ble Supreme Court had the occasion to consider the principles laid down in the case of **Bhajan Lal**, **Golconda Linga Swamy, R.P Kapur, Nisar Holia** and others to lay down a comprehensive guideline for quashing of an FIR under Section 482 or Article 226 of the Constitution. Paragraph 30 of the said judgment is respectively quoted as hereunder:-

> "30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior

> motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

Finally in paragraph 34 the Hon'ble Supreme Court concludes as under:-

> "34. The learned Additional Advocate General appearing for the State vehemently submitted that considering the gross criminal antecedents of the appellants before us, the criminal proceedings may not be quashed. The learned Additional Advocate General appearing for the State in her written submissions has furnished details in regard to the antecedents of the appellants. A bare look at the chart may give an impression that the appellants are history sheeters and hardened criminals. However, when it comes to quashing of the FIR or criminal proceedings, the criminal antecedents of the accused cannot be the sole consideration to decline to quash the criminal proceedings. An accused has a legitimate right to say before the Court that howsoever bad his antecedents may be, still if the FIR fails to disclose

> commission of any offence or his case falls within one of the parameters as laid down by this Court in the case of Bhajan Lal (supra), then the Court should not decline to quash the criminal case only on the ground that the accused is a history sheeter. Initiation of prosecution has adverse and harsh consequences for the persons named as accused. In Directorate of Revenue and another v. Mohammed Nisar Holia, (2008) 2 SCC 370, this Court explicitly recognises the right to not to be disturbed without sufficient grounds as one of the underlying mandates of Article 21 of the Constitution. Thus, the requirement and need to balance the law enforcement power and protection of citizens from injustice and harassment must be maintained. It goes without saying that the State owes a duty to ensure that no crime goes unpunished but at the same time it also owes a duty to ensure that none of its subjects are unnecessarily harassed."

18. Relying on the decision of the Hon'ble Supreme Court it is submitted by Dr. Kaulthawal that under the facts and circumstances of the case the FIR cannot stand. The basic ingredient of the offence under which the subject case is instituted, has not been established prima facie to maintain investigation of the case. The case was instituted for wreaking vengeance against the petitioners. This is apparent from the seizure list prepared by the Investigating Officer on search of the office of Bonanza at Mumbai. Along with other documents police seized three numbers of blank letter heads and official seal of the company. The petitioners apprehend that the blank letter heads and official seal would be used for preparation of some evidence against the petitioners.

19. Under such circumstances, Dr. Kaulthawal has prayed for quashing of the FIR instituted against the petitioners vide Narendrapur P.S Case No.573 of 2022 dated 28th May, 2022.

20. Mr. Sandipan Ganguly, learned Senior Counsel and Special Public Prosecutor on behalf of the State of West Bengal has submitted a memo of evidence showing the materials collected against the petitioners of CRR 3629 of 2022 and submits at the outset that an FIR containing the information was given to the police officer of the cognizable offence committed and reducing the same in writing is required by Section 154 Cr.P.C. In other words his information report is the report relating to commission of cognizable offence given to the police and recorded under Section 154 of the Cr.P.C. Section 154(1) mandates the police officer-in-charge of a police station to register FIR, however he receives information relating to the commission of a cognizable offence. He is not vested with the discretion whether to register or not to register a case. After registration of the case the police officer shall proceed to investigate into the case and the process of investigation contemplates the following steps to be carried out:

- i) Proceeding to the spot.
- ii) Ascertainment of facts and circumstances of the case.
- iii) Discovery and arrest of the suspect.
- iv) Collection of evidence relating to commission of the offence which may consist of –
  - a) The examination of various persons (including accused) and the reduction of statement into writing, if the officer thinks fit.
  - b) The search of place and seizure of things considered necessary for the investigation to be produced at the trial.

v) Formation of the opinion as to whether on the material collected there is a case, to place the accused before a Magistrate for trial and if so, to take necessary steps for the same by filing charge-sheet under Section 173 of the Cr.P.C.

21. If at any stage the defacto complainant retracts from his initial statement made in the complaint, credibility of the defacto complainant may be called in question. But if the investigation reveals credible materials against the accused persons, such investigation cannot be throttled applying Section 482 of the Cr.P.C.

22. Mr. Ganguly submits that the learned Counsel on behalf of the petitioners mainly made submission in course of his argument, that after institution of Narendrapur Police Station Case No.573 of 2022, the investigating officer and some other police officers allegedly demanded a sum of Rs.10 crores as bribe and assured them that if the said money is paid in hawala, they would be relieve from the further investigation of Narendrapur P.S Case No.573/2022 and the consequent trial of the same.

23. In this regard Mr. Ganguly submits that the petitioners have already lodged a complaint against the police officer. The said complaint has been transferred to CBI for investigation and if the CBI finds material against the accused persons, they will face trail. For such, the instant case cannot be quashed in investigation up to this stage and reveals materials in support of the allegation made against the petitioners.

24. Till date, during investigation, the investigating officer examined six witnesses. It is disclosed from the materials in memorandum of evidence

that Arunava Adhikary petitioner of CRR 2886/2022 recites that his family resides in Flat No.3A at Sunny Valley, Block 5, 484 Uttarpurba Fartabad within P.S Narendrapur. Initially on 28th May, 2022 he made a statement before the police in writing that his address, e-mail ID and password was hacked by some unknown person and the said address has been wrongly used for forging certain documents with the Registrar of Companies as the business address of Bonanza Fashion Merchant Pvt. Ltd. It is on record that just after four days of filing the FIR he retracted his statement and made a statement before the investigating officer who recorded and videographed his statement, that, he permitted the Directors of Bonanza to use the address of his flat as their business address on the request of his friend Gourav Sehgal. Mr. Ganguly submits that Arunava Adhikary is not the so called victim of the case. The victim is one Surojit Roy Chwodhury whose name transpires during the investigation. The said Surojit Roy Chowdhury is the owner of the flat in question where Arunava Adhikary resides as a tenant. It is submitted by Mr. Ganguly that a consent letter purportedly issued by Surojit Roy Chowdhury was forged by the accused persons and it was used with the Registrar of Companies (ROC) for recording the business address of Bonanza.

25. Mr. Ganguly further submits that there is no physical existence of the company at its registered address. Mr. Ganguly further submits that it is revealed during investigation that the Directors of Bonanza and their accountant have also manufactured fake documents regarding general body meeting of the company, allegedly conducted at the registered office

and filed the same with the governing authorities to deceive the ROC in ROC Form 22. The geo location of company is shown to be located in Sunny Valley at Lisbon, USA by the Directors. The capital of the company was enhanced by leaps and bounds from Rs. 1 crore to Rs, 46 lakh and 31 thousand. There are various financial irregularities and it prima facie is established that Bonanza is a shell company which is used a tool to siphon out money obtained by its Directors by way of some criminal activities or irregularities. It is also submitted by Mr. Ganguly that the petitioner No.2 Jitendra Navlani is not assisting the investigating agency for which the investigating authority is not in a position to unearth further evidence against them and the company.

26. Mr. Ganguly submits that the petitioner No.2 of CRR 3629 of 2022 made some allegations against Rajarshi Banerjee, inspector of CID and immediately he has been removed from the investigation of the case. At this stage the question that is required to be adjudicated is to whether on purported misconduct of a police officer investigation of a case having wide financial ramification should be closed. During investigation it is ascertained from the ROC that No Objection Certificate for using the address of the residential flat of Arunava Adhikary was allegedly issued by Surojit Roy Chowdhuri. Police interrogated Surojit Roy Chowdhuri and he denied that he had issued certificate in favour of the petitioner and original documents have not been recovered from Navlani. Therefore, custodial investigation is absolutely necessary.

27. Mr. Ganguly also submits that Section 156 of the Cr.P.C empowers a police officer to investigate any cognizable offence and Section 157 prescribed a procedure for investigation under Section 157(1) Cr.P.C. It reads thus:-

> "**157 procedure for investigation-**
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> 1. If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender.
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>   Before an arrest during investigation of an cognizable offence is provide in Section 157 read with Section 41(1)(a) Cr.P.C is during investigation the police officer must have a reason to suspect commission of cognizable offence and if there is bonfide reason to suspect that any person is involved in committing cognizable offence, the police officer is empowered to arrest the offender."

28. Learned Counsel on behalf of the State submits that during investigation the investigating officer has unearthed various financial irregularities emerging from the use of false documents, registered a company in Kolkata, suspiciously enhanced capital of the company although there is no physical existence of the said company in or around Kolkata and the petitioners vehemently attempted to evade arrest in connection with the abovementioned case. Thus, the learned Special

Public Prosecutor submits that at this stage it would be improper to quash the investigation of the case against the petitioner of CRR 3629 of 2022.

29. In support of his contention Mr. Ganguly refers to a decision of the Hon'ble Supreme Court in the case of **S.M Datta vs. State of Gujarat & Anr.** reported in **2001 (7) SCC 659**. In this judgment, the Hon'ble Supreme Court was pleased to record its concurrence with the observation made in paragraph 103 of the **State of Haryana vs. Bhajan Lal**. In Bhajan Lal it is observed by the Hon'ble Supreme Court:-

> "103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

30. Relying on the above observation the Hon'ble Supreme Court in S.M Datta (supra) held that at the time of investigation, the genuineness of the averments in the FIR cannot be possibly be gone into and the document shall have to be read as a whole so as to decipher the intent of the maker thereof. It is neither a document which requires decision with exactitude nor it is a document which requires mathematical accuracy and nicety, but the same should be able to communicate or indicate and disclose an offence broadly and in the event the said test stands satisfied, the question relating to the quashing of a complaint would not arise.

31. Mr. Ganguly also refers to **Niharika Infrastructure Pvt. Ltd. vs. State of Maharashtra & Ors.** reported in **2021 SCC OnLine 315** and takes me to paragraph 80 of the said judgment. The following point laid down in Niharika is recorded below:-

> **"i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;**
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> **ii) Courts would not thwart any investigation into the cognizable offences;**
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> **iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;**
>
> **iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).**
>
> **vi) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;**
>
> **vii) Criminal proceedings ought not to be scuttled at the initial stage;**
>
> **viii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;**
>
> **ix) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;**
>
> **ix) The functions of the judiciary and the police are complementary, not overlapping;**

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the

allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr. P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr. P.C., while dismissing/disposing of the quashing petition under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr. P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

> **xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."**

On the same point Mr. Ganguly also refers to a decision in **State of Karnataka & Anr. vs. Pastor P. Raju** reported in **(2006) 6 SCC 728** and **Union of India & Ors. vs. B.R Bajaj & Ors.** reported in **(1994) 2 SCC 277**.

32. Learned Advocate on behalf of Arunava Adhikary, petitioner of CRR 2886 of 2022, submits that from the facts and circumstances disclosed, somebody, either Bonanza and its Directors or the police authority in CID, W.B are acting with malice. The petitioner has been made conduit in such malicious act. From the submission made by the learned Special Public Prosecutor, no allegation of cheating, forgery, using false document and genuine creation of false documents as valuable security etc. have not been attributed to Arunava Adhikary. However from the entire conspectus of the case it is at least established that police authority was considering relentlessly, to rope in the Directors of Bonanza even before the institution of the Narendrapur case. They first wanted to tie the tagged Bonanza with the recovery of money at some place within Raniganj police station. When their attempts failed, the office-in-charge of Raniganj police station obtained a search warrant from the learned Chief Judicial Magistrate, Asansol. On the basis of said search warrant Flat No.3A of

Sunny Valley was searched, though recorded business address of Bonanza was at Flat No.1A, Sunny Valley. From the possession of Arunava Adhikary his mobile phone, sim card, one laptop and two external hard disks were seized by the police. Arunava was made to file a complaint against Bonanza on the basis of which Narendrapur P.S 573/2022 was registered. At the time of search and seizure the team of police officers said that they were conducting a investigation of money laundering. However under the Prevention of Money Laundering Act they are not empowered to investigate any case of money laundering. Search of a house of innocent persons and seizure of some materials by police are sufficient to terrorize the petitioner. Therefore he lodged a complaint in writing immediately within four days. He retracted from his earlier version made in the complaint and again on 4th August, 2022 he affirmed an affidavit stating, inter alia, that on the request of his friend Gourav Sehgal he permitted Bonanza to use his residential address as the business address of the company. It is submitted by the learned Advocate for Arunava Adhikary that he has filed the instant criminal revision on the appreciation that he may be further prosecuted. Therefore, he is required to be protected from the malicious act.

33. It is also submitted by the learned Advocate for Arunava Adhikary that search and seizure was made in connection with Raniganj P.S GD Entry No.681 dated 11.05.2022. However, till date it has not been established that the seized money belonged to the petitioner or that he was transferring the money to some other place for some illegal act.

Therefore no case has been made out against him and his retraction from the initial complaint made on 28th May, 2022 may be accepted and the said complaint may be quashed.

34. Having heard the learned Counsels for the parties at length and on careful perusal of the entire materials on record as well as the decision cited by the learned Counsels for both the parties, I like to state at the outset that Bonanza Fashion Merchant Pvt. Ltd was a Calcutta based company formed by one Sanjib Pal about ten years ago by using credentials of one Dilip Saha without his knowledge. After DIN number was received in the name of Dilip Saha, he was removed from directorship by the said Sanjib Pal and allegedly disclosed that he used to make such companies and sell them on payment of Rs. 7,000/-. Presently the petitioners are Directors of the company. It is within the knowledge of Sanjib Pal that the Directors of the said company have been using the same for the purpose of cheating. In his statement recorded under Section 164 of the Cr.P.C before the learned Magistrate the said Sanjib Pal did not make any allegation against the directors/petitioners of CRR 3629 of 2022. It is ascertained from his statement under Section 164 of the Cr.P.C the said company was formed in the year 2009. Apart from Sanjib Pal, the Investigating Officer examined one Surojit Roy Chowdhuri who is the owner of Flat No.1A, Sunny Valley at 484 Uttarpurba Fartabad within P.S Narendrapur. Arunava Adhikary stays in the said flat as a tenant on monthly rent of Rs.14,000/- which he has been depositing in the bank account of Surojit Roy Chowdhuri.

35. From the documents collected from the office of ROC by the investigating officer of this case, it is revealed that Jitendra and Bhumika Navlani purchased Bonanza sometime in 2012/2013. Their names are recorded in the ROC as Directors since 27th September, 2013. They also filed their annual return and balance-sheet ledger on 8th March, 2022. Indisputably, there is no physical existence of the company.

36. Now, fulcrum of this case is the creation of a letter purportedly signed by Surojit Ray Chowdhuri, who is the owner of Flat No.1A, Sunny Valley permitting the petitioners No.1 and 2 to use residential address of Arunva Adhikary as the business address of Bonanza in Kolkata. The investigating agency during investigation for one year and four months could not ascertain the name of the person who manufactured the said letter. On the contrary, it is found from the statement of Arunava Adhikary that on the request of Gourav Seghal, he permitted Bonanza to use his residential address as the business address of Bonanza. Thus, it is not clear till date as to who handed over the No Objection Certificate to the Directors of Bonanza for using the address of Arunava Adhikary as the business address of the company. Arunava Adhikary is the bonafide tenant of Flat No.1A. It is found from his statement dated 2nd June, 2022 and affidavit dated 4th August, 2022 that he on the request of Gourav Sehgal permitted the Director of Bonanza to use his residential address as the business address of the said company. He claimed that his statement was videographed by the investigating officer. However, no videograph is produced by the prosecution at the time of hearing of this case. It is

needless to say that in order to prove an allegation of cheating, it is obligatory for investigating agency to produce evidence to the effect that a person was deceived fraudulently or dishonestly; secondly, such deception was to induce a person to deliver any property to any person, or thirdly, to consent that any person shall retain any property, or fourthly, intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived to cause damage or harm to that person in body, mind, reputation or property. In the instant case there is absolutely no evidence that Arunva Adhikary who permitted the petitioners to use his residential address as the business address of their company was deceived and by such deception the accused persons fraudulently or dishonestly induced Arunava Adhikary to give consent to use his residential address as the business address of the company.

37. The investigating agency has failed to collect any evidence under Section 417/419/420 of the IPC.

38. In order to submit police report under Section 173 of the Cr.P.C under Section 465/467/468/471 of the IPC, it is absolutely necessary for the investigating officer to collect evidence that the accused persons made false documents, viz., the NOC allegedly signed by one Surojit Roy Chowhdhuri, owner of Flat No.1A, Sunny Valley. In this regard, this Court likes to record the following paragraph from the **Law of Crimes by Ratan Lal and Dhiraj Lal, 25th Edition at page No.2310**:-

> "To constitute the offence of forgery the simple making of 'false documents' is sufficient. What amounts to the making of 'false document' is explained in Section 464. The person who makes a 'false document' commits forgery. A person who is not the writer of a forged document cannot be charged with committing the substantive offence of forgery. If he has caused such 'false document' to be made he will be guilty of abetment. A charge of forgery cannot lie against a person who is not the writer of the forged document or who does not sign the forged note. Thus the mere forging of body writing in any cheque belonging to other does not by itself make it available for being used for the purpose of cheating any one. The prosecution also has to establish that the signatures thereon had been made by the accused himself".

Only upon such evidence coupled with the three circumstances mentioned in Section 464 of the IPC can it be specified that a person is said to make a false statement, if he-

i) Dishonestly of fraudulently makes, signs, seals or executes a document or part of a document or makes any mark denoting the execution of a document; and

ii) Does the above with the intention of causing it to be believed that such document or part of document was made signed, sealed or executed;

iii) By or by the authority of a person by whom or by whose authority it was so made, signed, sealed or executed, or

iv) At the time which he knows that it was not made, signed, sealed or executed.

39. In the instant case, the investigation reveals that Arunava Adhikary consented to use his residential address as the residential address of the company. He also gave a letter and electricity bills for submission in the

office of ROC, to his friend Gourav Sehgal and the petitioners/accused persons got the said letter and electricity bill of Flat No.1A from his friend Gourav Sehgal. Thus, if at all forgery is committed, and the forged document is used as genuine in the office of ROC, it is not done by the petitioners or that it was not within the knowledge of the petitioners that the said NOC was forged. It was either made by Arunava Adhikary or by some other person. The investigating agency has failed to collect any evidence in this regard. From the memo of evidence it is ascertained that according to the investigating agency, there are certain suspicious circumstances about the formation of Bonaza Fashion Merchants Pvt Ltd. in Kolkata. The suspicious circumstance are as follows:-

i) It is suspected that all these highly suspicious irregularities are committed by the Directors of the company to conceal some clandestine activity and that may be even a threat to a state/or endanger public at large and that needs to be probed thoroughly by investigating agency.

ii) The location of this fake company is in West Bengal. The Directors are from Mumbai. West Bengal being a State with international border has been chosen to run this fake company since 2013 and there must be some reason behind it that needs to be probed thoroughly. At this stage we cannot rule out the involvement of this company in human trafficking/Narco trafficking or any other anti national activity. Therefore, there is a need to investigate all the entries of transaction and do audit trial of the source accounts from which funds are flowing in and flowing out and find the actual source of fund, beneficiaries and purpose to rule out anything.

iii) It is pertinent to mention that "geo location" of the company which depicted at ROC portal is from America whereas the location of company is in Kolkata. It is required to be investigated for what purpose the fake location is used. It is also required to be investigated from where the huge transaction bank account and balance sheet of the company of the accused is credited out of what purpose could be used.

iv) The huge amount which is transferred through company may be used for anti national activity, drug, smuggling activity and human traffic, addiction which is required to be investigated.

v) It is a proven fact that Bonanza Fashion Merchants Pvt. Ltd is a fake company, in spite of the fake entity, the accused person succeeded to get loan of Rs.45 crores from India Bull Commercial Credit Limited a NBFC company in the name of the said company.

40. All these so called suspicious circumstances appearing in the memo of evidence do not hold good because of the fact that the conspectus of investigation in the instant case is as to whether the accused persons forged a NOC and used the said forged document as genuine with ROC to falsely record their business address in Kolkata. The investigating agency has failed to collect any evidence till date to the effect that the accused persons made the false document or they caused the false document to be made by some other person. The occupier of the flat that is Arunava Adhikary stated that he permitted the accused persons to use the address

of his flat as the business address of Bonanza. It is the case of accused persons that Bonanza Fashion Merchant Pvt. Ltd. principally runs its business from Mumbai. For the purpose of purchasing the said company, an address was required to be given in the Kolkata. So the accused persons requested their childhood friend Gourav Sehgal to collect a suitable address to be shown as business of Bonanza for the time being in Kolkata. Gourav Sehgal gave the residential address of Arunava Adhikary and his consent was given to the accused persons accordingly to use the said address.

41. The investigating agency did not find it necessary to investigate as to whether the petitioners are running the company 'Bonanza' at Mumbai or not.

42. In Bhajan Lal it is held by the Hon'ble Supreme Court that 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, and that there is no sufficient ground for proceeding against the accused and 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, the FIR and consequent investigation should be quashed.

43. In the instant case the animosity of the investigating agency is clear when the accused persons were attempted to be tagged with recovery of some alleged tainted money on 11th May, 2022 at Ballavpur within P.S

Raniganj. When the said attempt failed, Arunava Adhikary was brought in to file a complaint against the accused persons. At the risk of repetition, it is recorded that the defacto complainant retracted from his version made in the complaint. The investigating agency suspected that the said company may be involved in interstate and international racket of human trafficking, narcotics and other schedule offences under the IPC. However this is not the scope of investigation of this case. The investigation is limited to unearth the maker of the No Objection Certificate in respect of Flat No.1A, Sunny Valley which was used by the accused persons. The investigating agency till date has failed to collect any evidence and the attempt of the police authority to tag the accused persons in a criminal case can be held to be into order to wreck vengeance.

44. In view of the above discussion this Court is of the considered opinion that the FIR and further investigation in connection with Narendrapur P.S Case No.573 of 2022 under Sections 417/419/420/120B/465/467/468/471 is liable to be quashed.

45. Accordingly the revisional applications are allowed on contest. The FIR of Narendrapur P.S Case No.573 of 2022 under Sections 417/419/420/120B/465/467/468/471 and consequent investigation are quashed.

46. With the disposal of the revisions, connected applications are also treated to be disposed of.

(Bibek Chaudhuri, J)