**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 458 of 2020**

**Santanu Chatterjee @ Santanu Kumar Chatterjee & Ors.**

**Vs**

**The State of West Bengal & Anr.**

| | | |
|---|---|---|
| **For the Petitioners** | : | Mr. Sekhar Bose, Sr. Adv.,<br>Mr. Soubhik Mitter,<br>Mr. Asif Dewan. |
| **For the State** | : | None. |
| **For the Opposite Party No. 2** | : | Mr. Parvej Anam. |
| **Hearing Concluded on** | : | 30.11.2023 |
| **Judgment on** | : | 08.12.2023 |

**Shampa Dutt (Paul), J.:**

**1.** The present revisional application has been preferred praying for quashing of the proceeding in Case No. C/856 of 2011 under Sections 418/419/467/468/471/34 of the Indian Penal Code and for setting aside of all orders passed in the said case now pending before the Court of Ld. Metropolitan Magistrate, 14th Court at Calcutta.

**2.** The petitioners' case is that the petitioner no. 1 and 2 are brothers of the opposite party no. 2 and they are all sons of Late Santi Kumar Chatterjee. Petitioner no. 3 is the wife of petitioner no. 1 and petitioner no. 4 is the son of petitioner no. 1. Petitioner no. 5 is the wife of petitioner no. 2.

**3.** In the year 2005, the opposite party no. 2 namely Atanu Chatterjee being the plaintiff filed a suit being Title Suit No. 813 of 2005 before the Court of Ld. Judge, 3rd Bench, City Civil Court at Calcutta against (1) S.K. Chatterjee Estate Pvt. Ltd., a company registered under Companies Act, 1956 having its registered office at 20/1, Maharshi Debendra Road, P.S.- Barrabazar (now P.S.-Posta), Kolkata- 700007, (2) Santi Kumar Chatterjee, Managing Director of S.K. Chatterjee Estate Pvt. Ltd. residing at 18/2, Muktaram Dey Lane, Howrah and (3) Smt. Gita Chatterjee wife of Santi Kumar Chatterjee, Director of S.K. Chatterjee Estate Pvt. Ltd. residing at 18/2, Muktaram Dey Lane, Howrah being the father and mother of the parties herein as defendants. Santanu Chatterjee son of

Santi Kumar Chatterjee and Partha Chatterjee son of Santi Kumar Chatterjee were made proforma defendants in the said suit. In connection with the said suit opposite party no. 2 herein being the plaintiff filed an application under Order 39 Rule 1 and 2 read with Section 151 of CPC against the defendants of the said suit with a prayer for injunction restraining the defendants/opposite parties and their men and agents from assigning, transferring, letting out any portion of the property of the company.

**4.** The Ld. Judge, 3rd Bench, City Civil Court by an order dated 19.04.2006 being Order No. 22 rejected the injunction petition.

**5.** Sri Atanu Chatterjee (opposite party no. 2 herein) then filed an application dated 16.11.2005 in Title Suit No. 813 of 2005 praying for directing the defendants not to illegally obstruct the plaintiff to enter his room at premises no. 18/2 Muktaram Dey Lane, Howrah and to take necessary articles as mentioned in the said petition. The said application came up for hearing on 17.10.2006 before the Ld. Judge, 3rd Bench, City Civil Court and upon hearing both sides the said application dated 16.11.2005 filed by the plaintiff namely Atanu Chatterjee was rejected on contest.

**6.** On 20.09.2005, S.K. Chatterjee, Gita Chatterjee and others moved a writ petition before the Hon'ble High Court at Calcutta against the action on the part of the police authorities as per instruction of Atanu Chatterjee, which was registered as W.P. No. 8435(w) of 2005. The said application came up for hearing before the Hon'ble Court and upon hearing, the Court had been pleased to dispose of the said application by an order inter alia directing the police authority not to harass the petitioners without due process of law.

**7.** On 15.04.2007 the Managing Director of M/S S.K. Chatterjee Estate Pvt. Ltd., namely Santi Kumar Chatterjee declared through a paper publication in "Anandabazar Patrika" that Sri Atanu Kumar Chatterjee (the opposite party no.2 herein) son of Santi Kumar Chatterjee does not have any rights, title and interest in respect of the said company.

**8.** That during the lifetime of S.K. Chatterjee, Managing Director of M/S S.K. Chatterjee Estate Pvt. Ltd. transferred his 699 shares of M/S S.K. Chatterjee Estate Pvt. Ltd. in favour Partho Chatterjee (474 shares) and Sabya Chatterjee (225 shares) which appears from Annual Return for the year 2005-06 submitted before the ROC and 1 (one) share was transferred in the name of Susmita Chatterjee which appears from the Annual Return for the year 2007-08 submitted before the ROC. **On 24.12.2007, S.K. Chatterjee expired.**

**9.** That during the lifetime of Gitarani Chatterjee, she transferred her 249 shares in favour of Sabya Chatterjee which appears from the Annual Return for the year 2005-06 submitted before the ROC and thereafter her remaining 1 (one) share was transferred in favour of Sudipa Chatterjee which appears from the Annual Return for the year 2007-08 submitted before ROC.

**10.** On 14.09.2011, the plaintiff therein namely Atanu Chatterjee filed an application supported by affidavit in Title Suit No. 813 of 2005 with a prayer to permit him to **withdraw the said case with leave to file a fresh suit.** On hearing, the Ld. Judge, vide an order on 14.09.2011 allowed the prayer of the plaintiff.

**11.** The opposite party no. 2 herein namely Atanu Chatterjee then made an application on 12.05.2011 addressed to the Registrar of companies, Nizam Palace, 234/4, A.J.C. Bose Road, Kolkata 700020 in respect of the affairs of the company under the name and style of M/S S.K. Chatterjee Estate Pvt. Ltd.

**12.** From the annual return for the year 2007-2008 it appears that Shanti Kumar Chatterjee transferred his remaining one share to Susmita Chatterjee, wife of Partha Chatterjee on 19.12.2007, so the following persons hold their respective shares of the said company in the following manner:-

| | | | |
|---|---|---|---|
| 1) | Partha Chatterjee | - | 474 shares |
| 2) | Sabya Chatterjee | - | 474 shares |
| 3) | Santanu Chatterjee | - | 50 shares |
| 4) | Sudipa Chatterjee | - | 01 share |
| 5) | Susmita Chatterjee | - | 01 share |
| | | Total | 1000 shares |

**13.** In the said application Atanu Chatterjee made a prayer to take appropriate steps as the transfer of share was done for wrongful gain, which is clearly contrary to the Memorandum of Association and the provision of the Companies Act.

**14.** It is submitted that Santi Kumar Chatterjee expired on 24.12.2007 and before his demise he seized his Directorship of the company as his entire 700 shares of the said company had been transferred.

**15.** The Opposite Party No. 2 filed a petition of complaint under Section 190(1)(a) of the Code of Criminal Procedure before the Ld. Chief Metropolitan Magistrate, Calcutta against the present petitioners which was registered as Complaint Case No. C/856 of 2011. In the said complaint, complainant alleged that the petitioners committed offences under Sections 162/217 of the Companies Act read with Sections 418/419/467/468/471/34 of the Indian Penal Code in respect of transfer of shares of M/S S.K. Chatterjee Estate Pvt. Ltd. In the said complaint, the complainant suppressed the material facts regarding the Title Suit No. 813 of 2005 as well as the orders passed in the said suit and the paper publication made by Santi Kumar Chatterjee, who happens to be the father of the complainant.

**16.** On 14.03.2013 petitioners filed an application under Section 245(2) of Cr.P.C. in Case No. C/856 of 2011. The said application was rejected by the Ld. Magistrate on 16.09.2014. Petitioners moved a revisional application against the said order dated 16.09.2014 before the Hon'ble

High Court at Calcutta being CRR No. 944 of 2014 which has been dismissed for default by the Hon'ble High Court at Calcutta on 24.06.2016.

**17.** The petitioners further submit that during evidence before charge, on 11.05.2015 the complainant being the P.W. 1, was examined, P.W. 2 namely Badal Chandra Das (who is junior technical Assistant of ROC) was examined on 22.03.2017 and P.W. 3 namely Prodweep Kumar Banerjee was examined on 17.04.2017. In his cross-examination P.W. 3 admitted that *"it is fact that at the relevant point of time I was not a forensic expert. It is fact that in my report I have not mentioned myself as the hand-writing expert and I have described myself as a graphologist"*. After perusal of exhibit - 2, 2/1, 2/2 and 3 upon which he had given his report regarding the signature of Shanti Chatterjee, the witness admitted that those are **photocopies, and that he had not issued any letter to Mr. Atanu Chatterjee for production of the original documents for examining of the signatures in- connection with the report as prepared by him.**

**18.** On 21.08.2017 petitioners filed an application before the Ld. Metropolitan Magistrate, 14th Court, Calcutta in connection with Case No. C/856 of 2011 with a prayer to discharge them under Section 245(3) of Cr.P.C. Complainant filed a written objection. Ld. Magistrate, 14th Court, Calcutta passed an order on 19.07.2018 with an observation that the accused shall not get benefit of Section 245(3) of Cr.P.C. Next date was fixed on 12.09.2018 for framing charge and appearance of all accused persons.

**19.** Petitioners filed a revisional application before the Ld. Chief Judge, City Sessions Court at Calcutta which was registered as Criminal Revision No. 209 of 2018. The Ld. Additional Sessions Judge, Fast Track Court No. 2, Bichar Bhawan, Calcutta and upon hearing both the parties on 16.11.2019 Judgment was delivered and the said revisional application was dismissed.

**20.** Hence the present revision.

**21.** Written notes of argument has been filed on behalf of the petitioners.

**22. The following judgment have been relied upon by the petitioners:-**

i. Paramjeet Batra vs State of Uttarakhand and Ors., (2013) 11 SCC 673.

ii. K. D. Sharma vs Steel Authority of India Limited and Ors., (2008) 12 SCC 481.

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

iv. M. Srikanth vs State of Telangana and Anr., (2019) 10 SCC 373.

v. Sardool Singh and Anr. vs Smt. Nasib Kaur, 1987 (Supp) SCC 146.

vi. Century Spinning & Manufacturing Co. Ltd. vs The State of Mahrashtra, AIR 1972 SC 545.

**23. Learned counsel for the opposite party no. 2 has argued on filing a written notes of arguments that:-**

Since 2005 Santi Kumar Chatterjee due to his age old disease and broken health condition, was unable to look after the affairs of the said Company personally, caused him take all assistance from the Opposite Party No. 2/Complainant only to look after the affairs of the company on his behalf. But curiously enough, the petitioner no.1 restrained the Opposite party No. 2 from discharging his duties to carry out the desire of his father, Santi Kumar Chatterjee, although the opposite party no. 2 was willing to continue to look after the affairs of the said company as per the desire of his father, but due to the wrongful acts and activities of the Petitioner No.1 and 2, the Opposite party no. 2 was completely restrained to participate into the affairs of the said Company.

On December 24, 2007 in the early morning said Santi Kumar Chatterjee breathed his last leaving behind his widow Smt. Gitarani Chatterjee and three sons namely Santanu Chatterjee, Partho Chatterjee, the Petitioner No.1 and 2 herein and Atanu Chatterjee, the Opposite party No.2 as his heirs and heiress, successors and legal representatives after a prolonged illness.

It is further submitted that since 2005 and till the demise of Santi Kumar Chatterjee, all the accused persons by their premeditated and/or pre consorted plan in connivance with each other and for their wrongful gain and also to frustrate the legal entitlement of the opposite party No.

2, as son of Santi Kumar Chatterjee, forged the signature of Santi Kumar Chatterjee and by way of impersonation transferred the share of the deceased Santi Kumar Chatterjee.

The opposite party no.2 submits that prima facie the ingredients of the offences are present in the complaint petition, against the petitioners and the learned Magistrate after considering the evidence and the documents on record, on full satisfaction issued process against the petitioners and the next date is fixed for framing of charge. As such the quashing of the criminal proceedings pending in Complaint Case No. 856 of 2011 cannot and/or does not arise at all.

**24. The following judgments have been relied upon on behalf of the opposite party no. 2:-**

i. Rajiv Thapar & Ors. vs Madan Lal Kapoor, (2013) 3 C Cr LR (SC) 142.

ii. Pallavi vs State (UT of Chandiragh) and Ors. (2020) 3 SCC (Cri) 612.

**25.** In the present case charge has not yet been framed by the Trial Court.

**26. From the materials on record,** it is evident that:-

i. From the annual return for the year 2007-2008 it appears that Shanti Kumar Chatterjee transferred his remaining one share to Susmita Chatterjee, wife of Partha Chatterjee on 19.12.2007. So the following persons now hold their respective shares of the said company in the following manner:-

| | | | |
|---|---|---|---|
| 1) | Partha Chatterjee | - | 474 shares |
| 2) | Sabya Chatterjee | - | 474 shares |

| | | | |
|---|---|---|---|
| 3) | Santanu Chatterjee | - | 50 shares |
| 4) | Sudipa Chatterjee | - | 01 share |
| 5) | Susmita Chatterjee | - | 01 share |
| | | Total | 1000 shares |

ii. Admittedly the Title Suit being No. 813 of 2005 filed by the opposite party no. 2, in respect of the self same dispute **was withdrawn by him on 14.09.2011 with liberty to sue afresh.**

iii. **Instead of exercising the said liberty, the opposite party no. 2 filed the present (criminal) case being complaint case no. 856 of 2011.**

iv. Annexure 'P' 2 is the **copy of notice in the newspaper** dated issued by the company, stating that the company has no connection with the opposite party no. 2. A photograph of the opposite party no. 2 was also published in the said notice and it was also stated in the notice that the opposite party no. 2 has no right, title and interest in respect of the company S.K. Chatterjee Estate Pvt. Ltd.

v. From the order dated 19.07.2018, passed by the Magistrate in C/856/2011 and affirmed by the Revisional Court vide order dated 16.11.2019, it appears that the learned Magistrate while rejecting the petitioners application under Section 245(3) Cr.P.C. relied solely upon the evidence of PW 3, who has a private consulting firm which deals with examination of handwriting.

**27. This witness has himself stated on oath as follows:-**

*"…………It is fact that at the relevant point of time I was not a Forensic Expert. It is fact that in my report I have not mentioned that myself as the hand writing Expert and I have described myself as a Graphologist.*

*After perusal of Exhibit- 2, 2/1, 2/2 and 3 upon which he had given his report regarding the signature of Shanti Chatterjee, the witness admitted that those are photo copies.*

*I have not issued any letter to Mr. Atanu Chatterjee for production of the original documents for examining of the signatures in connection with the report as prepared by me.*

*Yes, it is fact that on believing upon the said Atanu Chatterjee I regarded the signature of Exhibit-2 as the admitted signature of Shanti Chatterjee. Neither I have asked nor the complainant has produced any other admitted signature of Shanti Chatterjee for examination. I agree that the hand writing Expert is a much more Scientific and accurate process for examination of signatures than Graphology. It is fact that I have not mentioned in my report or suggested to my client to have the signatures verified by the hand writing expert for more accurate result.*

*It is fact that I have not produced the bill which I have issued as fees for verification of the signatures. It is not a fact that I have prepared this report as per instruction and dictation of Shri Atanu Chatterjee. As per hand writing science a person's signature changes after every 7 years. It is fact that the hand writing of a person suffering from ailments or having some nervous disease or some infirmity may vary with time and situation. It is fact that I have not asked Atanu Chatterje whether the said Shanti Chatterjee is aged or infirm or suffering from any disease. It is fact that in my report I have mentioned the signatures were made at different dates and times as reflected from the date of the document.*

*(Cross examination before charge is closed)."*

***Sd/-***
***Metropolitan Magistrate***
***14th Court, Calcutta***

**28.** **The learned Magistrate in his order dated 19.07.2018 has observed as follows:-**

> *"……….In this case the defence has prayed for considering the documents which they have mentioned in their petition dated 21/08/2017, during charge hearing to prove the conduct and motive of the complainant.*
>
> *First of all the documents which have been mentioned in the petition dated 21/08/2017, are not regarding this case. As I have already stated that the all three witnesses of the prosecution have been cross examined by the defence, the question of unrebuttal as defined in Section 245(1) of CRPC does not arise at all. Moreover, at the initial stage of framing of a charge the question of defence evidence would not arise at all……….."*
>
> ***Sd/-***
> ***Metropolitan Magistrate***
> ***14th Court, Calcutta***

**29.** There is no observation of non-compliance by the Registrar of companies.

**30.** **In the present case** prima facie, no direction was issued by the Registrar of Companies.

**31.** Admittedly the complainant/opposite party no. 2 had initiated a civil suit in the year 2005, which he withdrew in the year 2011 and immediately thereafter filed the present criminal case on the self same cause of action/disputes/allegations. **The paper publication by the company while the opposite party no. 2's father was alive, is witness to the fact that the opposite party no. 2 was not included in the affairs of the company.** The share's of the company were also owned by the other family members on transfer/or ownership. The opposite party no. 2 after the death of his father started making claims into shares of the company as one of the legal heirs, though during the lifetime of his father, the company had issued a notice stating that the opposite party no. 2 had no right, title and interest in the company. Clearly the dispute in this case is a family property dispute, and thus prima facie a civil dispute. The criminal case has been filed only to harass the petitioners/family members.

**32.** The Magistrate has held in his order dated 19.07.2018 that there is a prima facie case against the petitioner, on the basis of the evidence of PW 3, who it is seen has clearly admitted that **he is not a hand writing expert and that he did not compare the original signatures with the disputed questioned document. This witness has been hired by the complainant/opposite party no.2.**

**33. The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party.** Some of the rulings are as follows:**-**

a) *M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).*

b) *Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).*

c) *Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).*

d) *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).*

e) *Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).*

f) *Paramjeet Batra vs State of Uttarakhand & Ors., (2013) 11 SCC 673.*

**34.** In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). ……… 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:*
>
> *"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**."*

**35.** The present case falls under category 1, 3 and 7 of ***Para 102 of Bhajan Lal (Supra).***

**36.** The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626,*** held:-

> *"**18.** The only question is whether there is any criminal offence disclosed in the FIR so far as the Appellant is concerned. When the High Court passed its order dated 5th October, 2017, Rajan Kumar (since deceased), the executant of the sale deed and the Power of Attorney holder was also an applicant before the Court. Today, there has been a change in situation, in that, criminal proceedings against Rajan Kumar have abated since Rajan Kumar is no longer alive. It is the case of the private respondent that the private respondent purchased property. In the meantime, Rajan Kumar, who is no longer alive, on the basis of a false Power of Attorney of Bela Rani, executed a sale deed in favour of Randheer Singh, i.e., the Appellant herein. There is only a vague averment "by connivance". The next part of the sentence reads "Bela Rani had no right to sell the aforesaid plot."*
>
> ***23.*** *Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since*

*deceased). Alternatively, the Power of Attorney, in itself, was a forged document.*

***24.*** *A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a Power of Attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the Power of Attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness."*

**On noting several precedents the Court finally held:-**

*"**33.** In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil*

> *nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.*
>
> ***34.** The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died."*

**37.** **From the evidence before charge on record,** it is clear that no criminal act or intent of the petitioners has been prima facie made out in respect of the offences alleged. All the shares had been transferred prior to the father's death. The opposite party no. 2/ complainant was never included in the affairs of the company. Even during the lifetime of his father, he had not been permitted to be involved in the affairs of the company. The dispute is clearly a civil family property dispute, with no materials on record to prima facie show that the essential ingredients required to constitute the offences alleged are present against the petitioners. The scope of a handwriting expert is also available before a Civil Court and on final adjudication, depending on the outcome, the doors of the criminal courts is always open for the aggrieved party, being armed with prima facie evidence.

**38.** The complainant/opposite party no. 2 having initially filed a civil suit in 2005, withdrew the same in 2011 for reasons best known to him. But immediately thereafter he filed the present case, in spite of there being prima facie no materials before the civil court to make out the offences as alleged in this case. The proceedings in this case before the Trial Court is thus clearly an abuse of the process of law.

**39.** There was no love lost between the opposite party no. 2/complainant and the petitioner's even during the lifetime of their father. The dispute which was also present during the father's lifetime is continuing for 18 years after his death. **Even an effort by this Court for mediation has failed.**

**40.** Thus there being no prima facie materials on record against the petitioners in respect of the offences alleged, the proceedings being Case No. C/856 of 2011 under Sections 418/419/467/468/471/34 of the Indian Penal Code and for setting aside of all orders passed in the said case now pending before the Court of Ld. Metropolitan Magistrate, 14th Court at Calcutta **is liable to quashed.**

**41. CRR 458 of 2020 is allowed.**

**42.** The proceeding pending before the learned Metropolitan Magistrate, 14th Court, Calcutta being C/856 of 2011 under Sections 418/419/467/468/471/34 of the Indian Penal Code, including order dated 19.07.2018, therein **is hereby quashed,** in respect of the petitioners.

**43.** All connected applications, if any, stand disposed of.

**44.** Interim order, if any, stands vacated.

**45.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.

**46.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**