

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 585 of 2020

Amita Sen & Ors.

Vs

M/S Chatterjee Enterprises.

For the Petitioners : Mr. Pinak Kumar Mitra,
Ms. Ariba Sahab,
Mr. K. Yashovardhan Shaw.

For the Opposite Party : None.

Heard on : 18.01.2023

Judgment on : 10.02.2023

Shampa Dutt (Paul), J.:

The present revisional application has been preferred praying for quashing of proceeding in connection with Complaint Case No. C – 1218/17 under Sections 420/406/504/506/120B of the Indian Penal Code, now pending before the Learned Judicial Magistrate, 4th Court, Alipore, 24 Parganas (South).

Petitioner No. 1 is the mother of the petitioner No. 2 and 3.

The opposite party/complainant is a company incorporated under the Companies Act, which is run by its proprietor, namely Mr. Suman Chattopadhyay and is engaged in the development, promotion and construction of real estate.

The opposite party/complainant has initiated a proceeding under Sections 406/420/504/120B of Indian Penal Code, before the Court of the Learned Chief Judicial Magistrate, Alipore, 24 Parganas (South) and the same was registered as Complaint Case No. C-1218/17.

That in course of its business, the company was introduced to Prasenjit Sen (husband of the accused no. 1) who disclosed himself as owner of the property of 14A, Lake Temple Road, Police Station – Tollygunge, Kolkata – 700029.

The said Prasenjit Sen being owner of the aforesaid land/property had approached complainant company to construct a ground + IV storied building at the said property and for which the said Prasenjit Sen and the complainant company entered into a **Development Agreement dated 07.11.2008**. Thereafter the said Prasenjit Sen died intestate leaving behind Smt. Amita Sen (wife), Sri Judhajit Sen (Only son) and Smt. Sonia Mukherjee (Sen) (Only Daughter) the petitioner herein.

After the demise of the said Prasenjit Sen the above named accused persons/petitioners have become the absolute owners of a land being Municipal Premises No. 14A, Lake Temple Road, Police Station-Tollygunge, Kolkata – 700029, measuring about 3 Cottahs, 8 Chittacks.

Subsequently on demand of the situation, the accused persons have further entered into a supplementary Agreement for Development dated 05.05.2012 with the persons Complainant/Company.

The Complainant company has duly complied with the terms and conditions of the said agreement and deposited a sum of Rs. 15,00,000/- as a security money with the accused persons. It was also assured and agreed before the complainant company by the accused persons that upon completion of the building in terms of the specifications so decided by and between the parties and also upon the

handing over the possession of the said building they would return back the entire security deposit of Rs. 15,00,000/-.

That after completion of the work, the complainant company had informed the accused persons for returning back the security deposit but the accused persons refused to do so.

Thereafter the accused persons paid Rs. 12,00,000/- with an assurance that they would pay the balance amount of Rs. 3,00,000/-.

The complainant company then approached the accused persons for payment of the rest amount of Rs. 3,00,000/-. On that event, the accused persons conjointly became furious against the representatives of the complainant company and assaulted them including the representative therein. Further the accused persons threatened them with dire consequences by using filthy languages and flatly denied to make any payment to the petitioner in future and stated that they have huge contacts with higher officials and police and so the complainant cannot do anything against them.

The complainant stated that all the accused persons have conspired with each other as well as cheated and dishonestly induced the complainant for delivery of property and criminal breach of trust and as such the ingredients of offence as envisaged in Sections 406/420/504/506/120B of the Indian Penal Code had clearly been made out against the accused persons herein.

The complainant had now realized that from the inception of the transaction, the accused persons had the intention to cheat for which the accused persons have misappropriated the property and thus they are liable for criminal breach of trust by dishonestly misappropriating or converting the property for their own use and wrongful gain.

The Chief Judicial Magistrate, Alipore has taken cognizance in the case. After recording the initial deposition of the complainant, the Learned Judicial Magistrate, 4th Court Alipore, 24 Parganas (South) was pleased to issue process upon the accused persons under Sections 406/420/504/506/120B of the Indian Penal Code. Vide order dated 22.05.2017.

Mr. Pinaki Kumar Mitra, learned counsel for the petitioners has submitted that the continuation of the present proceedings in connection with the present case is an abuse of the process of law.

The letter of complaint does not make out any offence against the present petitioners and as such any further continuation of the present proceedings will lead to the wastage of the court's precious time and abuse the process of law.

That Section 24 of the Indian Penal Code defines the term "dishonestly" but on the face of the complaint nowhere is it evident that there was a dishonest intention either to cause wrongful gain hence

therefore in the absence of such allegations the offence of cheating has not been made out.

The order dated 25/04/2017 so passed by the Learned Chief Judicial Magistrate, Alipore is bad in law in as much as the same does not reflect the application of mind.

The Learned Trial Magistrate has failed to appreciate that summoning of accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

The entire dispute in question if any as alleged is of civil in nature and can be decided only after scanning the documents submitted and after taking of evidence on record and as such a parallel criminal prosecution is an abuse of the process of law.

The Opposite Party has tried to convert an essentially civil dispute into a criminal litigation only to harass the present petitioners.

The allegations made in the First Information Report or the petition of 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 persons.

The instant 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 accuseds and with a view

to spite them due to private and personal grudge, and as such it ought to be quashed.

The continuation of the proceedings in absence of the essential elements of the offence alleged in the written complaint will be an abuse of the process of law and the same should be set aside and/or quashed.

In spite of attempting service upon the Opposite Party and the matter running in the list since long there is no representation on behalf of the opposite party/complainant.

Heard the Learned Counsel for the petitioner. Perused the materials on record. Considered.

The **agreement** between the opposite party and the predecessor of the petitioners dated 7th December 2008 **contains an arbitration clause**. Being Clause 15.1.

***“Clause 15.1** All disputes and differences arising out of this agreement regarding the construction or interpretation of any of the terms and conditions herein contained or touching these presents or determination of any liability shall be referred to the sole arbitration of an Arbitrator, if both the parties agree upon and in the event of any disagreement the same shall be referred to the arbitration of two arbitrators, one to be appointed by the owner and another to be appointed by the developer/promoter and the same shall be deemed to be reference within the meaning of the **Arbitration and Conciliation Act** 1996 or any statutory enactment or modification thereof.”*

The **Supplementary agreement** for development between the petitioners and the opposite party in 2012 also contains an **Arbitration Clause being clause 16.**

“Clause 16. In case of any dispute or differences arising out of these presents regarding construction or interpretation of the terms and conditions hereof the same shall be settled mutually and failing which the same shall be settled as per Arbitration and Conciliation Act in force.”

Following Judgments have been relied upon by the learned Counsel for the petitioner.

(1) Uma Shankar Gopalika vs State of Bihar and Ors., Criminal Appeal No. 1049 of 1998, on 24.03.2004.

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B of the Indian Penal Code. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an

offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 of the Indian Penal Code.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B of the Indian Penal Code and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 of the Code of Criminal Procedure which it has erroneously refused.”

(2) *Anil Mahajan vs. Bhor Industries Ltd. and Anr.*, (2005) 10

SCC 228, Criminal Appeal No. 1164 of 2004, on October 6, 2004.

“6. The order of the Magistrate was challenged before the Court of Session. The learned Additional Sessions Judge, Pune, by order dated 19-10-2001 has set aside the order of the Magistrate issuing process. It has been stated by the learned Additional Sessions Judge in the order that:

“In this case there is no allegation that the accused made unlawful representation. Even, according to the complaint, they entered into

memorandum of understanding. Grievance seems to be that the accused failed to discharge obligations under the MOU. In the complaint, there was no allegation that there was fraud or dishonest inducement on the part of the applicant and thereby the opponent parted with the property."

Reliance has been placed, in that order, on various decisions of this Court holding that from mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction.

8. *The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs 3,05,39,086 out of the total amount of Rs 3,38,62,860 was paid leaving balance of Rs 33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainant's own*

case is that over rupees three crores was paid and for balance, the accused was giving reasons as above-noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

10. We have examined the complaint and it is clear from its substance that present is a simple case of civil disputes between the parties. Requisite averments so as to make out a case of cheating are absolutely absent. The principles laid down in *Alpic Finance Ltd. case* [(2001) 3 SCC 513 : 2001 SCC (Cri) 565] were rightly applied by learned Additional Sessions Judge and it cannot be said that the ratio of the said decision was wrongly applied. On due consideration, the learned Additional Sessions Judge had rightly set aside the order of the Magistrate issuing process to the appellant.”

(3) V.Y. Jose and Anr. Vs State of Gujarat and Anr., (2009) 3

SCC 78, Criminal Appeal No. 2048 of 2008, on December 16, 2008.

“Only because civil law can be taken recourse to would not necessarily mean that criminal proceedings should be barred. However, there exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, yet in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 Cr.P.C. Section 482 serves a salutary purpose that a person should not undergo harassment of litigation for a number of years although no case has been made out against him. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being a short cut of executing a decree which is non-existent. The

superior courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. They have a duty in terms of Section 483 to supervise functioning of trial courts.

The complainant, in order to prove offence of cheating, is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 can be said to have been made out.

14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.”

**(4) Vesa Holdings P. Ltd. and Ors. vs State of Kerala and Ors.,
Criminal Appeal Nos. 2341 and 2342-2344 of 2011, on
17.03.2015.**

“9. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

(5) *Medmeme, LLC and Ors. vs Ihorse BPO Solutions Private Limited, (2018) 13 SCC 374, Criminal Appeal No. 702 of 2017, on April 11, 2017.*

“11. The moot question before us revolves around Question 1 which was formulated by the High Court and it is to be seen as to whether dispute between the parties is essentially of a civil nature or any case is made out against the appellants for launching criminal prosecution under the aforesaid sections.

12. After going through the allegations contained in the complaint and the material on record, we are of firm conclusion that the matter entirely pertains to civil jurisdiction and not even a prima facie case is made out for the offences under Sections 420, 406 and 409 read with Section 120-B IPC even if the allegations contained in the complaint are to be taken on their face value. The

complaint gives a clear impression that it was primarily a case where the respondent had alleged breach of contract on the part of the appellants in not making the entire payments for the services rendered to the appellants. On the other hand, it is not in dispute that substantial amounts have been paid by the appellants to the respondent company for the services rendered.

13. *Reason for non-payment of the balance amount as given by the appellants is that the services rendered by the respondent company were not in terms of the agreement entered into between the parties and were deficient in nature. For this reason, even the appellants have filed claims against the respondent company alleging that the appellant suffered losses because of the defective services provided by the respondent.*

14. *On the basis of it, we find that it cannot be said that at the time of entering into the agreement, either the first agreement or even the second agreement, there was any intention on the part of the appellants to cheat the respondent. No suspicion of any nature was shown or even alleged. It is also not the allegation of the respondent in the complaint that the agreement was entered into with fraudulent or dishonest intention on the part of the appellants in inducing the respondent to enter into such a contract. At best, the dispute between the parties is of a civil nature, proceedings in respect of which are pending before the learned arbitrator.*

15. *We, thus, allow this appeal, set aside the judgment [MedMeme LLC v. iHorse BPO Solutions (P) Ltd., 2014 SCC OnLine Mad 12832 : (2015) 2 MWN (Cri) 97] of the High Court and thereby allow the petition filed by the appellants in the High Court under Section 482 of Code of Criminal Procedure. The result whereof would be quashing of the proceedings arising out of Complaint No. 142 of 2012 pending in the Court of Judicial Magistrate-II, Puducherry.”*

The offences alleged in the present case are under Sections 420/406/504/506/120B of the Indian Penal Code.

The dispute in the present case is admittedly related to the said development agreements which includes the terms and conditions.

Admittedly the Arbitration clause has not been invoked by the parties. The opposite party has chosen to put the criminal law into motion by initiating the proceedings in this case, alleging breach of contract/trust by the petitioners. The parties to the agreement still have the option to use the Arbitration clause or may seek relief from the appropriate forum, the dispute prima facie being civil in nature and also a commercial dispute being given a criminal colour to pressurize the petitioners.

The relevant orders of the Trial Court are:-

Order dated 25.04.2017:-

A Petition of Complaint is filed U/S. 420/406/504/120B I.P.C. Heard Ld. Advocate for the complainant. Perused the petition of complaint. Considered. Cognizance is not taken.

Let the once be transferred to the Ld. 4th J.M. Alipore for disposal according with law.

To 7.6.17 for S.A.

Sd/-
Illegible, C.J.M., in-charge, Alipore

Order dated 22.05.2017:-

Record is put up today.

Complainant is present and he is examined under Section 200 Cr.P.C. No other witness is present.

Complainant filed some documents. Let it be kept with the record.

Heard. Perused the petition of complaint along with statement on oath and other documents on record. Considered.

This court finds sufficient ground to proceed against the accused person for the offence punishable under Sections 420/406/504/506(ii)/120B I.P.C.

Accordingly issue summon against the accused person under Sections 420/406/504/506(ii)/120B I.P.C.

Accordingly issued summon against the accused person under Sections 420/406/504/506(ii)/120B I.P.C.

Fix 30.06.2017 for SR and appearance.

Complainant is directed to file requisite at once.

Sd/-
4th J.M., Alipore.

Considering the nature of dispute between the parties based on a development agreement, the following judgments of the Supreme Court are needed to be read and if applicable to the present case shall be applied to arrive at a just decision.

In M/s. Indian Oil Corporation vs. M/s Npec India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006, the court considered the following point among the two points decided.

8. The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged, the following points arise for consideration :

*(i) **Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?***

*(ii) **Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?***

Re : Point No. (i) :

9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3)

SCC 259], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [2000 (3) SCC 269], *Hridaya Ranjan Prasad Verma v. State of Bihar* [2000 (4) SCC 168], *M. Krishnan vs Vijay Kumar* [2001 (8) SCC 645], and *Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque* [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a

criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. **Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :**

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the

end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

Now in the lines of the judgment under reference let us see if the allegations in the complaint in the present case, if accepted on face value, constitute any offence under Sections 406/504/506/420/120B IPC.

Section 406 of the Indian Penal Code, lays down:-

“406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ingredients of offence.—The essential ingredients of the offence under Sec. 406 are as follows:-

- (1) *Mens rea is essential ingredient of offence.*
- (2) *There must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract.*
- (3) *The accused was entrusted with the property or domain over it.*
- (4) *He dishonestly misappropriated or converted to his own use such property;*
- (5) *He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of-*
 - (a) *Any direction of law prescribing the mode in which such trust is to be discharged, or*
 - (b) *Any legal contract made touching upon the discharge of such trust.”*

Section 405 Indian Penal Code defines :-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that 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 wilfully suffers any other person so to do, commits “criminal breach of trust”.”

In ***M/s. Indian Oil Corporation vs. M/s Npec India Ltd. & Ors.***

(supra) the Supreme Court held:-

“18. In *Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin* [AIR 1953 SC 478], this Court held :

" to constitute an offence of criminal breach of trust, it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."

[Emphasis supplied]

In *Jaswantrai Manilal Akhaney v. State of Bombay* [AIR 1956 SC 575], this Court reiterated that

the first ingredient to be proved in respect of a criminal breach of trust is 'entrustment'. It, however, clarified :

".. But when S. 405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

19. *The question is whether there is 'entrustment' in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note : we are not expressing any opinion on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). The following definitions of the term 'hypothecation' in P. Ramanatha Aiyar's Advanced Law Lexicon (Third (2005) Edition, Vol.2, Pages 2179 and 2180) are relevant :*

"Hypothecation : It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrower enters into an agreement with the lender to hand over the possession of the hypothecated asset whenever called upon to do so. The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledgee."

'Hypothecation' means a charge in or upon any movable property, existing in future, created by a borrower in favour of a secured creditor, without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property. (Borrowed from section 2(n) of Securitisation and

Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002)"

But there is no 'entrustment of the property' or 'entrustment of dominion over the property' by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor.

20. *The question directly arose for consideration in Central Bureau of Investigation v. Duncans Agro Industries Ltd., Calcutta [1996 (5) SCC 591]. It related to a complaint against the accused for offences of criminal breach of trust. It was alleged that a floating charge was created by the accused debtor on the goods by way of security under a deed of hypothecation, in favour of a bank to cover credit facility and that the said goods were disposed of by the debtor. It was contended that the disposal of the goods amounted to criminal breach of trust. Negativising the said contention, this Court after stating the principle as to when a complaint can be quashed at the threshold, held thus :*

"a serious dispute has been raised by the learned counsel as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section 405, I.P.C. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405, I.P.C. is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405, I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the

relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee.”

In the present case, the petitioners are admittedly the owners of the property which was to be developed and they had “entrusted” the same in favour of the complainant/opposite party and as such there was no “entrustment” in favour the petitioners.

Clause 15.1 and 16 of the development agreements clearly state about the ownership.

As such the ingredients to constitute an offence of criminal breach of trust by the petitioners is not present and the cognizance taken by the Magistrate is bad in law.

Section 420 of the Indian Penal Code, lays down:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ingredients of offence.— The essential ingredients of the offence under Sec. 420 are as follows:-

- (1) There should be fraudulent or dishonest inducement of a person by deceiving him;
- (2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and

(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are –

(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and

(B) Inducing the person deceived to part with property.”

In the present case there is no case against the petitioners that they **dishonestly induced the complainant to deliver any property**. The main allegation is regarding the refund of rupees three lakhs which is governed by the development agreement and thus subject to proof before the appropriate forum.

There was no inducement whatsoever by the petitioners as required. As such the essential ingredients required to constitute an offence under Section 420 IPC being prima facie not present, the offence alleged cannot be held, to have been committed by the petitioners/accused.

(Rekha Jain vs. The State of Karnataka & Anr., 2022 LiveLaw (SC) 468).

Section 504 of the Indian Penal Code, lays down:-

“504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence.— The essential ingredients of the offence under Sec. 504 are as follows:

- (1) The accused intentionally insulted someone;
- (2) He thereby intended to give him provocation;
- (3) He knew that it was likely that such provocation would cause that person to commit a breach of the peace or to commit any other offence.”

Section 506 of the Indian Penal Code, lays down:-

“506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Ingredients of offence.— The essential ingredients of the offence under Sec. 506 are as follows:

- (1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;
- (2) The accused did so with intent to cause alarm to the victim of offence;

- (3) *The accused did so to cause the victim to perform any act which he was not legally bound to do.*

Section 120B of the Indian Penal Code, lays down:-

“120B. Punishment of criminal conspiracy.--(1) *Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

(2) *Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.*

Ingredients of offence.— *The essential ingredients of the offence under Sec. 120B are as follows:-*

- (1) *An agreement between two or more persons to commit an offence,*
- (2) *In doing so the accused either did or caused to be done:*
 - (i) *an illegal act, or*
 - (ii) *an act, which is not in itself illegal, by illegal means.*
- (3) *Such an act done or caused to be done was an offence punishable under the Indian Penal Code.*
- (4) *If the act so done was not an offence then an overt act had been done by*

one or more parties to such agreement in pursuance thereof.”

The ingredients required to prima facie constitute these offences are also clearly absent.

Admittedly there is a business relationship between the parties. It is for the benefit of both the parties that the development agreement has been executed and the dispute is clearly a civil dispute, may even be a commercial dispute.

The Supreme Court in ***Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021)*** while considering an appeal against an judgment and order of the High Court of Karnataka in an application under Section 482 of the Cr.P.C. wherein the prayer of the petitioners for quashing of proceedings of offence punishable under Section 406, 419, 420 read with Section 34 of the IPC was dismissed, held:-

“26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant case:

- Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?*
- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?*

- Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?

37. *Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even prima facie made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.*

“.....Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

41. *Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7, as under :-*

“14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law,

should himself be made accountable, at the end of such

7. (2006) 6 SCC 736 misconceived criminal proceedings, in accordance with law.”

42. *It was also observed:-*

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

43. *On an earlier occasion, in case of G. Sagar Suri and Anr. Vs. State of UP and Ors.8, this Court has also observed:-*

“8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

8. (2000) 2 SCC 636

44. Furthermore, in the landmark judgment of *State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.* 9 regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-

“(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 F.I.R. 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;

9. (1992) SCC (Cri) 426 (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.”

45. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.

46. Recently, this Court in case of *Randheer Singh Vs. The State of U.P. & Ors.*¹⁰, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-

“33.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

10. Criminal Appeal No. 932 of 2021 (decided on 02.09.2021) 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.”

47. *Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.*

48. *In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section 34 IPC stands quashed.”*

This Court also relies upon the judgment of the Supreme Court in **Birla Corporation Ltd. vs. Adventz Investments and holdings, Criminal Appeal no. 877 of 2019**, wherein the court held:-

“86. *In Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736, the Supreme Court after observing that there is a growing tendency in business circles to convert powerful civil disputes in criminal cases held as under:-*

“14. *While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the*

end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

(Medmeme LLC & Ors. vs. M/s. Ihorse BPO Solutions Pvt. Ltd. (2018)13 SCC 374).

The judgment in ***Birla Corporation Ltd. vs Adventz Investments and holdings (supra)*** has already been discussed earlier.

In the said judgment the Supreme Court also observed:-

“82. *Exercise of power under Section 482 Cr.P.C. envisages three circumstances in which the inherent jurisdiction may be exercised namely:- (i) to give effect to an order under the Code;*

(ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Inherent jurisdiction under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution.

83. *It is well settled that the inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:-*

“5. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused; (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

84. *In State of Haryana and Others v. Bhajan Lal and Others* 1992 Supp (1) SCC 335, the Supreme Court considered the scope of inherent powers of the Court and after referring to earlier decisions, the Supreme Court enumerated categories of cases by way of illustration where the extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised by the High Court to prevent abuse of process of Court or otherwise to secure ends of justice. It was held that “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.”

87. *In Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandojirao Angre and Others* (1988) 1 SCC 692, it was held that “when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima-facie establish the offence.” It was further held that “while considering the matter, the court is to take into consideration any special feature which appear in a particular case showing whether or not it is expedient in the interest of justice to permit a prosecution to continue.”

88. *The FIR or the criminal proceedings can be quashed if the allegations do not make out a prima-facie case or allegations are so improbable that no prudent person would ever reach a just conclusion that there are sufficient grounds for proceeding against the accused.....”*

Thus from the materials on record it is evident that the ingredients required to constitute the offences alleged, are clearly not present against any of the petitioners. Thus considering the nature of the case as discussed, this is a fit case where the inherent powers of this court is required to be exercised for ends of justice to prevent the abuse of process of law/court.

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:*

“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.**”*

The ultimate test therefore, is whether the allegations have any substance (**Prakash Singh Badal Vs State of Punjab, AIR 2007 SC 1274**).

In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the

petitioners in cognizable offences as alleged. As such the proceedings in this case is liable to be quashed.

CRR 585 of 2020 is thus allowed.

The proceedings being Complaint Case No. C-1218/17 under Sections 406/420/504/506/120B IPC pending before the learned Judicial Magistrate, 4th Court, Alipore, 24 Parganas (South), is hereby quashed.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Let a copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)