

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 599 of 2020

With

CRAN 3 of 2023

Romesh Sobti & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Debasish Roy,
Mr. Kaushik Chatterjee,
Mr. Tirthankar Dey.

For the State : None.

For the Opposite Party no. 2 : None.

Hearing concluded on : 23.08.2023

Judgment on : 22.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings in Complaint Case No. CS-105765/2018 pending before the Learned Metropolitan Magistrate, 8th Court, Kolkata under Sections 409/418/420/467/471/120B of the Indian Penal Code and all orders passed therein.
2. **The petitioners case is that the petitioner no. 1 is the Managing Director and the petitioner no. 2 is the company Secretary of the Bank (accused no. 2 in the complaint case).**
3. **It is stated that the bank was maintaining a long-standing relationship with the complainant since 2010.** In 2015 the complainant approached the bank for dealing in foreign exchange through the bank.
4. Thereafter the complainant entered into a Forward Contract Facility with the bank. In a Forward Contract Facility, the customers buy forex through the bank and the duration of such contracts is either 6 months or 1 year.
5. At the beginning of the Contract, the dollar rate is fixed as per market rate.

6. It is further stated that Forex are subject to market fluctuation and customer gains if the dollar rate falls. Then the bank sells dollars to the customer as per the changed rate.
7. But in the event the forex rate appreciates, the customer has to pay the difference to continue the contract. For such situation the customer needs to keep adequate security with the bank in the form of Fixed Deposits over which the bank creates a lien and redeems the same as per sanction term.
8. As per the request of the complainant, the credit limit of the account was enhanced to the tune of Rs. 10 Crores. Innumerable Forward Contract Facility was entered upon between the complainant and the bank since 2016.
9. Each of the contracts was valid for a period of 1 year and the margin money to the tune of 7% was to be deposited in the form of Fixed Deposits. In the revised sanction term such margin money limit was increased to 8% which duly communicated to the complainant.
10. As the dollar price gradually appreciated, the margin money also got breached and the bank informed the market scenario to the complainant through several email communications requesting to replenish the margin money to continue with the deal.
11. Finally when the margin money got breached to the tune of 80% and despite requests, further money was not infused, and the bank was compelled to terminate all the deals and make good the loss from the

margin money held in lien which was duly communicated to the complainant on 15.05.2018.

12. It is stated that, after lapse of more than 7 months from the bonafide cancellation of the contracts by the bank, the complainant has set the criminal law in motion to settle scores against the bank and its employees.
13. **Mr. Debasish Roy, learned counsel for the petitioners** has submitted that there was continuous transaction (banking) between the parties since 2010. Disputes cropped up regarding a few transactions, but none of the ingredients required to constitute the offence of cheating are present in the instant case.
14. The Fixed Deposits kept by the complainant in the form of the margin money as per the contract over which the bank had put a lien with the right to redeem as per sanction terms in the event the margin money is breached to the extent of 80% due to escalation of dollar rate as has happened in the instant case. The Bank has acted strictly as per sanction terms and no mens rea can be attributed.
15. The money kept with the bank being invested in Fixed Deposits was never a refundable security deposit. It was provided as margin money in terms of the sanction letter over which the bank exercised a right of lien. Thus the offence under Section 409 of the Indian Penal Code is not established as the bank exercised a lien over the Fixed Deposits,

redemption thereof, etc. in terms of the sanction terms and the same does not constitute a criminal offence, far less the offence of forgery.

16. It is further stated that the petitioners being the Managing Director and Company Secretary of the bank had no occasion to deal with the complainant personally. No specific overt act has been attributed to the petitioners as to their complicity in the commission of the alleged offences.
17. The dispute if any arises out of an alleged violation of contractual obligation which can be adjudicated by a civil forum having competent jurisdiction.
18. It is also submitted that no enquiry as envisaged under Section 202 of the Criminal Procedure Code was conducted which was mandatory in as much as both the petitioners reside beyond the jurisdiction of the trial court.
19. A List of dates, provided in the Written notes submitted on behalf of the petitioners, for convenience is reproduced here:-

List of Dates

Date	Particulars
18.01.2010	The opposite party maintains a long-standing relationship with the bank since 2010.
22.12.2015	A sanction letter was issued for the Credit Facility and Forward Contract Facility.
26.10.2017	A revised Sanction letter was issued by bank and the credit limit was also enhanced.

05.03.2018 To 09.05.2018	Communications made by the bank to the opposite party appraising the market fluctuations in the Forex rate and request to provide top-up for margin money.
15.05.2018	The margin money kept in the form of Fixed Deposit got breached to the tune of 80%, thereby compelling the bank to terminate all the contracts as per the sanction terms and the same was duly communicated to the complainant.
21.12.2018	Petition of complaint is filed by the complainant before the Court of the Learned Chief Metropolitan Magistrate, Calcutta

20. A letter dated 25.04.2018 sent by the complainant to the petitioner bank shows that the complainant has admitted that the fixed deposits were kept with the bank in order to enter into foreign exchange contracts and that the relationship between the parties has been for past several years.

21. The following Judgments of the Apex Court have been relied upon by the petitioners:-

(i) In **S.K. Alagh versus of Uttar Pradesh and Others reported in (2008) 5 SCC 662**, the Court held:-

Wherein it has been succinctly laid down that in cases falling under the provisions of Indian Penal Code, vicarious liability cannot be fastened to the Directors/Officers of the accused company **[Para: 20]**.

- (ii) In **Punjab National Bank & Others versus Surendra Prasad Sinha reported in 1993 Supp (1) SCC 499**, the Hon'ble Apex Court has held:-

That action in terms of the contract expressly or implied is a negation of criminal breach of trust defined in Section 405 and punishable under Section 409 of the Indian Penal Code. It is neither dishonest nor misappropriation. Redemption of the FDR held in lien by the bank for due payment of the debt does not constitute criminal offence **[Paras : 5 & 6]**.

- (iii) In **Deepak Gaba & Others versus State of Uttar Pradesh & Another reported in (2023) 3 SCC 423**, the Court held:-

That when bank has acted in terms of the contract and that does not constitute any criminal offence, far less the offences alleged.

- (iv) In **S.S. Binu Versus State of West Bengal & Another reported in 2018 SCC OnLine Cal 16881**, it has been held:-

That the enquiry under the amended provisions of Section 202 of the Code of Criminal Procedure is mandatory in nature and non-compliance thereof vitiates the order issuing process **[Para : 109]**.

22. In spite of the opposite party being represented on earlier occasions, the opposite party no. 2 has not been represented during hearing.

23. The order of the Learned Magistrate dated 05.11.2019 is follows:-

CS/5765/18
Order dated: 05.11.19

Today is fixed for S/A.

Today the witness namely, Mithun Paul is present with his Ld. Advocate.

Mithun Paul is examined as PW-2 and have been initially examined on S.A. u/S 200 Cr.P.C.

It appears that the allegations u/s 409/418/420/467/471/120B of IPC have been established prima facie against the accused person.

Issue summon at once u/s 204 Cr.P.C. upon the accused at once.

To 13/12/19 for S/R.

Complainant is directed to file requisites at once.

D/C,

**Sd/-
M.M. 8th Court, Calcutta.
Metropolitan Magistrate
8th Court, Calcutta.**

24. As seen from the petition of complaint both the petitioners only address is at Mumbai, and thus outside the jurisdiction of the Trial Court.

25. Section 202 Cr.P.C. lays down:-

“202. Postponement of issue of process:-

*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, **may**, if he thinks fit, [and **shall**, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an Officer-in-Charge of a Police Station except the power to arrest without warrant.”

26. In *Birla Corporation Ltd. vs Adventz Investments and Holdings Ltd.*

and Ors., (2019) 16 SCC 610, on May 9, 2019, the Supreme Court

held:-

“33. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in *Mehmood Ul Rehman*, this Court held as under:-

“22.the Code of Criminal Procedure requires speaking order to be passed under Section 203 Cr.P.C. when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or

report of investigation under Section 202 Cr.P.C., if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 Cr.P.C., by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 Cr.P.C., the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

34. *In Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others (1998) 5 SCC 749, the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law governing the issue. In para (28), it was held as under:-*

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The principle that summoning an accused in a criminal case is a serious matter and that as a matter of course, the criminal case against a person cannot be set into motion was reiterated in GHCL Employees Stock Option Trust v. India Infoline Limited (2013) 4 SCC 505."

- 27. From the said order dated 05.11.2019, it is evident that there has been no application of mind by the Magistrate, as even the basic material on which the total case is based has not been considered.**

Thus there has been no proper consideration even under Section 200 Cr.P.C., and definitely not under Section 202 Cr.P.C.

- 28.** The specific case against the petitioners is that they are the office bearers of the bank, who have committed the offences alleged.

- 29.** In *M. N. Ojha & Ors. vs Alok Kumar Srivastav & Anr., Criminal Appeal No. 1582 of 2009 (arising out of SLP (crl.) No. 1875 of 2008)*, on 21 August, 2009, the Supreme Court held:-

“14. In our considered opinion, the learned SDJM set the criminal law in motion against the appellants without even examining the allegations and averments made in the complaint filed by the respondent-complainant. The learned SDJM took cognizance of the case without considering the allegations on merits. Had the learned SDJM perused the complaint properly he would have realized that the complainant himself had made a mention about the lodging of the FIR for criminal breach of trust and other offences against the respondent-complainant and others. Had he looked into the complaint properly, he would have certainly asked the complainant to furnish the copy of the said FIR. A copy of the legal notice issued on behalf of the respondent-complainant to the appellants was filed along with the complaint and a mention is made about it in the order passed by the learned SDJM. Had the learned SDJM perused the said legal notice, he would have realized that the complainant himself admitted about his execution of agreement of guarantee and other documents unconditionally agreeing to discharge the loan amount in case of failure of the principal borrower to pay the said amount to the bank. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself along with

the complaint, surely he would have dismissed the complaint. He would have realized that the complaint was only a counter blast to the FIR lodged by the Bank against the complainant and others with regard to same transaction. This Court in Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. [(1998)5 SCC 749 held:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

15. *The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even adverting to the basic facts which were placed before it for its consideration. It is true that the court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending. Interference by the*

High Court in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the Complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended 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. If such power is not conceded, it may even lead to injustice". [See: State of Karnataka Vs. L. Muniswamy (1977) 2 SCC 699]. We are conscious that inherent powers do not confer an arbitrary jurisdiction on the High Court to "act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases". [See: Kurukshetra University Vs. State of Haryana (1977) 4 SCC 451].

16. This is one case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realize and recover the amounts due to the bank from the borrower as well as the guarantors. The complaint obviously has been filed as counter blast to the proceedings already initiated by the bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation. Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior

motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM by mere asking to do so by the complainant. The High Court almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure though the case on hand required its interference in order to prevent abuse of the process by a court subordinate to it. A clear case is made out requiring our interference to secure the ends of justice.”

- 30. The present case** has been filed against a Bank and its officers (in their official capacity).
- 31.** Admittedly there is an agreement between the parties and there is a business relationship since the year 2010. The present case has been registered in the year 2018.
- 32.** The Complainant’s specific case is that the petitioners have committed the offences alleged, when they allegedly misappropriated the Fixed deposits kept with the bank as lien, as the complainant did not perform his part of the agreement, for which the petitioners had been compelled to terminate all deals to make good the loss suffered by the bank for the conduct of the opposite party no. 2/complainant.
- 33.** The Supreme Court in ***N. Raghavender vs State of Andhra Pradesh, CBI, Criminal Appeal No. 5 of 2010, on 13.12.2021***, held:-

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

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

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

- (i) Entrusting any person with property or with any dominion over property;*
- (ii) That person has dishonestly misappropriated or converted that property to his own use;*
- (iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.*

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

apart for ones use and to the exclusion of the owner.

44. *No sooner are the two fundamental ingredients of ‘criminal breach of trust’ within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:*

- (i) The accused must be a public servant or a banker, merchant or agent;*
- (ii) He/She must have been entrusted, in such capacity, with property; and*
- (iii) He/She must have committed breach of trust in respect of such property.*

45. *Accordingly, unless it is proved that the accused, a public servant or a banker etc. was ‘entrusted’ with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. ‘Entrustment of property’ is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was ‘entrusted’ to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof. Where the ‘entrustment’ is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner.”*

34. The facts and circumstances in the present case and the materials on record clearly show that:-

- (i) There is no material to prove “dishonest intention” and thus the existence of ‘mens rea’.

- (ii) There has been no “mis appropriation” of the “property entrusted” as the petitioners have all prima facie acted as per terms and conditions of the contract between the parties.
- (iii) There has been no “use” of the disputed property by the petitioners in violation of law or contract. Thus, no “mis appropriation” which means improperly setting apart for ones use and to the exclusion of the owner (opposite party), **(N. Raghavender vs State of Andhra Pradesh (Supra))**.
- (iv) There has been no ‘actual use’ of the property by the petitioners and no dishonest intention and thus no mis-appropriation.
- (v) As such the two fundamental ingredient of ‘criminal breach of trust’ within the meaning of Section 405 IPC has not been proved in the present case **(N. Raghavender vs State of Andhra Pradesh (Supra))**.

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

36. Accordingly there is no prima facie case against the petitioner for commission of offence under Section 409 IPC and consequently no ingredients for offences alleged under Sections 418/420/467/471/120B IPC are also prima facie present against the petitioners and allowing the proceedings to continue against the petitioner will be an abuse of the process of law/court.

37. From the facts and materials on record it also appears that the dispute between the parties is civil/commercial in nature.

38. The Supreme Court in *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022*, held:-

*“17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. **Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.**”*

39. The Supreme Court in *Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023*, held:-

*“21. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations pertain to alleged breach of contractual obligations. **Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not be***

entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in **Thermax Limited and Others v. K.M. Johny (2011) 13 SCC 412**, as it refers to earlier case laws in copious detail. In **Thermax Limited and Others** (Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

24. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”

40. 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.**”*

- 41.** The present case is thus clearly covered by the guidelines in ***State of Haryana vs Bhajanlal (Supra) (Para 102)***.
- 42. In the present case,** the essential ingredients of a criminal offence as alleged are not present. The complaint and the materials on record are in substance a dispute of civil nature and as such the proceeding is liable to be quashed.
- 43.** The offences alleged are under Sections 409/418/420/467/471/120B of the Indian Penal Code. None of the ingredients required to constitute the said offences alleged are applicable in respect of **the petitioners, who have all acted in accordance with law in their official capacity**. On the basis of a contract between the parties.
- 44.** If an Authorised Officer of a bank/institution has to face criminal charges, for acting in accordance with law, then it is clearly an abuse of the process of law and such proceeding should not be allowed to continue in the interest of justice.
- 45. Accordingly, the revisional application being CRR 599 of 2020 is allowed.**
- 46.** The proceedings in Complaint Case No. CS-105765/2018 pending before the Learned Metropolitan Magistrate, 8th Court, Kolkata under Sections 409/418/420/467/471/120B of the Indian Penal Code and all orders passed therein **is hereby quashed**.
- 47.** All connected applications, if any, stands disposed of.

- 48.** Interim order, if any, stands vacated.
- 49.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 50.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)