

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 627 of 2020

M/s Gujarat Co-operative Milk Marketing Federation Ltd. & Ors.

Vs

M/s Transafe Services Limited & Anr.

For the Petitioners

: Mr. Sandipan Ganguly,
Mr. Sanjay Banerjee,
Mr. Victor Dutta,
Mr. S. Sen.

For the State

: Ms. Rita Dutta.

Heard on : 11.01.2023

Judgment on : 03.02.2023

Shampa Dutt (Paul), J.:

The revisional application has been preferred by the petitioner praying for quashing of the complaint being case CS 53117 of 2019 under Sections 418, 420 read with 120B of the Indian Penal Code now pending before the Learned Metropolitan Magistrate, 12th Court at Calcutta.

The petitioner's case is that the petitioner No. 1 is India's largest Co-operative organization which is engaged in marketing of milk and milk products under the brand names "AMUL" and "SAGAR" registered under the Gujarat Co-operative Societies Act 1961 having its Registered Office at Amul Diary Road, Anand – 388 001. It is an institution created by the milk producer to primarily safeguard their interest economically, socially as well as democratically. While business houses create profit, and distribute profit to the shareholders, in case of Gujarat Co-operative Milk Marketing Federation, its profits are ploughed back to the farmers through the Members as well as village societies and this circulation of capital benefits the farmers, Thus, Gujarat Co-operative Milk Marketing Federation eventually contributes to the development of not only the farmers, but of the entire village community. The petitioner No. 2 is the Managing Director of the petitioner No.1 and the petitioner No. 3 is the Assistant General Manager (Marketing) of the petitioner No.1.

Complaint case being CS 53117 of 2019 under Sections 418/420/120 of the Indian Penal Code was lodged by the opposite party company in or around October 2019 against the petitioners. The allegation is that the opposite party has entered into a logistic contract with the petitioner No. 1 and the invoice raised by the opposite party was not paid by the petitioner No. 1 illegally and they deducted huge amount on the grounds unknown to the opposite party and the opposite party also alleged about the dishonest intention of the petitioner and its representatives and stated that the petitioners thereby committed offences punishable under Sections 418/420/120B of the Indian Penal Code.

Vide order dated 22.10.2019, the Learned Chief Metropolitan Magistrate at Calcutta was pleased to take cognizance of the said offences.

The petitioner No. 1 has entered into an agreement with the opposite party No. 1 company on October 03, 2017 at Mumbai for transportation of the ice cream and other dairy products marketed by the petitioner no. 1 all over India, as and when instructed by the petitioner no. 1 to be delivered by the opposite party from time to time. An agreement to that effect was executed at Mumbai and the office of the opposite party where the terms and conditions were finalized is at Unit 216, Raheja Arcade, Sector II, CBD Belapur, Navi Mumbai, 400 614.

That as per the terms and conditions of the transport contract the transport carrier undertakes to protect the consignment of the petitioner No.1 diligently, carefully and takes all reasonable precautions to protect them from rain, storm, dust, quality deterioration and damage and the temperature of the insulated container is to be pre cooled at – 10C before loading of products and always maintain air temperature of the container at a constant -22 degree Celsius (+/-2) during transit till the product is fully unloaded at the destination. The petitioner No. 1 and its agent had the liberty to check the temperature at anytime in the interior of the insulated container during the period, immediately before unloading the crates from the refrigerated van to verify the compliance of the transport contract.

The opposite party specifically undertook to supply uninterrupted power to the refrigerator equipment when the insulated container is loaded with the products of the petitioner No.1 and would not control the temperature manually by periodic switching on or switching off the power supply. All responsibilities and risk inherent in the storage and transportation of the said products of the petitioner No. 1 was entrusted to the opposite party including those arising from malfunctioning of the equipment or acts or omission or commission by the opposite party or their employees or shortage of fuel or electric power or failure to observe any instruction given by the petitioner No. 1 company to the opposite party will be on the account of the opposite party.

The amount of loss of the value of any stock which are damaged while in the custody of the opposite party was to be debited from the invoices raised by the opposite party with the petitioner No. 1. The amount of loss shall be the sale price inclusive of sales tax and the duties applicable. The quantity of the product so damaged would be destroyed by the petitioner No. 1 and will not be handed over to the opposite party even though the opposite party would be debited for the value of the product.

That when a consignment is lost in transit and not delivered to the consignee within a reasonable period of time, the responsibility for loss of such consignment would entirely lie on the transport carrier. The value of such loss was also to be paid by the opposite party to the petitioner No. 1 and was to be recovered out of the pending freight bill charges of the opposite party, irrespective of, whether the petitioner No.1 has insured the consignments against such loss or not. It would be entirely the discretion of the petitioner No.1 whether to file a claim with the insurance company for such loss or not. In other words the opposite party would be fully responsible to make good such loss to the petitioner No.1.

The opposite party had furnished bank guarantee and the same could be invoked by the petitioner No.1 in case of breach of any of the terms and conditions of the transport contract.

The opposite party accepted the terms and conditions as enumerated in the primary agreement entered between the parties on 03.10.2013 and agreed to the terms and conditions, which included the conditions, that in the event of any dispute or differences arising between the parties during the tenure of the agreement dated 04.10.2017 or thereafter and/or termination of the agreement, the matter shall be referred to Senior General Manager (P & M)/COOO/MD of petitioner No. 1 whose decision will be final and binding. And if any dispute had to be referred to the court then the court at Anand, Gujarat shall have the jurisdiction. It has been further agreed by the parties that such of those contingencies, issues and other matters that are not covered under the agreement and/or transport contract but which may be of material importance or relevance on the transport contract will be jointly discussed and reserved by appropriate documentation.

That during the tenure of the contract, the opposite party raised various bill/invoices with the petitioner No.1 and the same was paid by petitioner No.1 from time to time. The petitioner No. 1 has rejected some of the claims in the invoices/bills raised by the opposite party on the ground of breach of contract and the undertaking already given by the opposite party to deduct such losses from the freight charges as per the terms and conditions entered by the parties on October, 2017.

The opposite party failed to deliver and/or complete the transport contract for the invoices raised by the opposite party being Nos. 950000537, 950000567 and 950000605 for an amount of Rs. 15,66,144/-. The petitioner No.1 has deducted the losses suffered due to the opposite party and paid Rs. 8,22,304/- after deducting the TDS. The products suffered damage and was subsequently destroyed upon notice to the opposite party as per the transport contract.

The petitioner No.1 has deducted plug in charges of Rs. 31,84,584/- from the invoices raised by the opposite party. The opposite party had used the plug in facility of one M/s Snowman, Pune. M/s Snowman Pune has charged the amount to the account of the petitioner No.1 and the same was paid by the petitioner No.1 for the services rendered by M/s. Snowman Pune to the opposite party. The opposite party vide its email informed the petitioner No.1 to deduct the amount from the freight invoices for the services availed by the opposite party from M/s Snowman Pune for plug in facilities.

The petitioner No.1 has also deducted Rs.14,12,000/- for the material damage. But upon request from the opposite party the petitioner No. 1 had not charged the loss in full and reduced the burden of the opposite party to the tune of Rs. 4,91,107/-. There were even instances where the petitioner No. 1 tried to save the consignment by uploading the same with fire fighting speed but the temperature maintained in the container was not correct and therefore the stocks

got damaged during the transit and was unloaded in a very bad shape and had to be destroyed.

The opposite party was fully informed about the deductions and the deductions were made on amicable decision on both the sides. There were even instances where the petitioner No.1 has not charged for the entire loss and even helped the opposite party to reduce the cost of losses to be incurred by the opposite party.

There were series of letters and email exchanged between the parties in regard to the deductions made in the freight charges and as well the negligence on the part of the opposite party in transporting the consignment. That there were even instances wherein the container was not properly chilled to the desired temperature which was set and had to be maintained for transporting good, therefore causing losses to the petitioner No. 1 and the entire products were damaged due to the fault of the opposite party.

All of sudden on August 21, 2019, the opposite party issued a legal notice through its Advocates M/s Sinha and Co. and the notice was addressed to the petitioner No. 1 and as well to all the Directors and Chairman of the petitioner No.1 without any reasons whatsoever. The petitioners vide reply notice dated October 07, 2019 through Nanavti Associates, Advocates therein denied all the allegations made in the notice issued by the opposite party through its Advocates.

On November 2019, the petitioners received summons along with a copy of the complaint from the 12th Metropolitan Magistrate at Calcutta in a case registered being No. CS-53117 of 2019 (M/s Transafe Services Ltd. (formerly known as Indian Container & Leasing Co. Ltd.) Vs Gujarat Co-operative Milk Marketing Federation Ltd. & Ors.

That even after issuance of the legal notice and the reply, the opposite party requested the intervention of the Managing Director, the petitioner No. 2, and vide the opposite party's email dated 6th November 2019 from the Secretary of the CEO of the opposite party requested for appointment of the petitioner No. 2 in the said matter to resolve the issue.

No bills are due and payable to the opposite party till date and the same was communicated to the opposite party from time and again vide emails/letters and also on personal meetings. The deductions made by the petitioner No.1 in the freight invoices were justified and in accordance with the terms and conditions under contract.

From the averments in the petition of complaint and the statement of the witness (recorded U/s 200 Cr.P.C.) in the impugned proceedings, it is apparent that there existed continuous business transaction between the petitioner No. 1 and the opposite party and the opposite party had raised invoices for purported services provided by the opposite party to the petitioner No. 1. Due to deficiency in the services provided by the opposite party, the petitioner No. 1, while

paying the major portion of the invoice amount, had deducted certain amounts in consonance with the terms of the Agreement governing the business relationship of the parties. Such deduction cannot satisfy the ingredients of the offence of cheating and at best may be agitated before the dispute redressal body or civil forum. The initiation of the impugned proceeding is clearly misconceived and an attempt to overawe the petitioners by implicating them in a criminal proceedings.

The Learned Magistrate without applying his judicial mind have taken the cognizance in the matter and issued summons under Sections 418, 420 read with 120B against the petitioners.

Mr. Sandipan Ganguly Learned Counsel for the petitioner has submitted that the Criminal justice delivery system should not be utilized as a weapon of harassment by a malicious prosecution whose sole intention is to achieve some oblique purpose by means of a vexatious proceedings and as such in order to secure the ends of justice, the instant proceeding is liable to be quashed.

The dispute, if any, are purely civil in nature. From the four corners of the complaint and examination of the purported authorized representative of the opposite party or its purported witness there is no ingredient to be found of any criminal offence punishable under Sections 418/420/120B of the Indian Penal Code. Admittedly there is commercial dispute between the parties.

The Learned court has also not followed the procedure as laid down under Section 202 of the Code of Criminal Procedure 1973.

The Learned Magistrate failed to appreciate that the parties have entered into a valid contract and the same is subsisting and there was no cause of action which arose under the territorial jurisdiction of the Learned Magistrate to allow the application under Section 200 when the complaint is completely civil in nature and no cause of action had arisen under the jurisdiction of the concerned Court.

The necessary ingredients, which is required to constitute offence under Sections 418/420/120B of the Indian Penal Code seem to be lacking in the case and therefore the issuance of process for offence punishable under Sections 418/420/120B of the Indian Penal Code against the petitioners is bad in law.

The instant proceeding is otherwise bad and thus liable to be quashed.

In spite of notice upon the solicitors of the opposite party No.1, there is no representation on behalf of the opposite party no.1.

Learned advocate for the State Ms. Rita Dutta is present.

On hearing the Learned Counsel present and on perusal of the materials on record including the petition of complaint, the order dated 30.10.2019 of the **Learned Magistrate is reproduced here:-**

CS/53117/2019

Order Date 30.10.2019

Today is Fixed for SA

Complainant is present with two witness.

Complainant as well as the witness is examined U/S 200 Cr.P.C.

Having gone through the initial deposition of both the witness and the document produced the complainant, a prima facie case U/s 418/420/120B of I.P.C. found to have been made out against the accused persons.

Hence, issue summons upon the accused person U/s 418/420/120B of IPC.

Fix 10.12.2019 for SR/APP

Sd/-

12th Metropolitan Magistrate at Kolkata.

Heard the counsels at length perusal the materials on record considered.

The petition of complaint filed before the court of Chief Metropolitan Magistrate, Calcutta shows that **the only address of the opposite parties 1 to 7/accused persons is given as, Anand, Gujarat.**

The petitioners are permanent residents of Anand, Gujarat and there is no other local address of the petitioners. It is submitted that the

learned Magistrate has issued process without compliance of Section 202 of the Cr.P.C.

The Code of Criminal Procedure was amended in the year 2005 wherein Section 202 of the Code was amended by adding of the words.

“And shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”. The main purpose or object behind this amendment was to stop false complaints against such persons residing at far off places in order to save them from unnecessary harassment.

Thus in the present case, the petitioners are residents of working for gain at Anand, Gujarat which is beyond the area where the Magistrate is exercising his jurisdiction, it is mandatory on the part of the Magistrate to conduct an inquiry or investigation before issuing process and as the same was not done in the present case, the order of taking cognizance is bad in law and liable to be set aside and the proceeding impugned is also liable to be quashed.

That the requirement of conducting inquiry or directing an investigation before issuing process is not an empty formality and witnesses are needed to be examined, whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examination of witnesses if any, and **this exercise by the Magistrate for the purpose of examining whether or not there is sufficient ground of proceeding against the accused is not an**

empty formality but is an obligation on the Magistrate to apply his mind carefully and satisfy himself that the allegations in the complaint when considered along with the statements recorded or the inquiry conducted thereon would prima facie constitute the offence for which the complaint is filed. In the instant case the Magistrate erred in law by not complying with the mandatory provisions envisaged under Section 202 of the Code and as such as the order issuing process on taking cognizance is not in accordance with law.

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.”

This court also relies upon the case of **Birla Corporation Ltd. vs. Adventz Investments and Holdings (Criminal appeal No. 875, 876, 877 of 2019)** The Supreme Court on 9th May, 2019 observed and held in respect of Section 202 Cr.P.C. as follows (The relevant paragraph are reproduced herein):-

26. *Complaint filed under Section 200 Cr.P.C. and enquiry contemplated under Section 202 Cr.P.C. and issuance of process:- Under Section 200 of the Criminal Procedure Code, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 Cr.P.C. The purpose of the enquiry under Section 202 Cr.P.C. is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused.*

27. *The scope of enquiry under this section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not under Section 204 Cr.P.C. or whether the complaint should be dismissed by resorting to Section 203 Cr.P.C. on the footing that there is no*

sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. At the stage of enquiry under Section 202 Cr.P.C., the Magistrate is only concerned with the allegations made in the complaint or the evidence in support of the averments in the complaint to satisfy himself that there is sufficient ground for proceeding against the accused.

28. In *National Bank of Oman v. Barakara Abdul Aziz and Another* (2013) 2 SCC 488, the Supreme Court explained the scope of enquiry and held as under:-

“9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a *prima facie* case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”

29. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda and Others* (2015) 12 SCC 420, the scope of enquiry under Section 202 Cr.P.C. and the

satisfaction of the Magistrate for issuance of process has been considered and held as under:-

“2. Chapter XV Cr.P.C. deals with the further procedure for dealing with “Complaints to Magistrate”. Under Section 200 Cr.P.C, the Magistrate, taking cognizance of an offence on a complaint, shall examine upon oath the complainant and the witnesses, if any, present and the substance of such examination should be reduced to writing and the same shall be signed by the complainant, the witnesses and the Magistrate. Under Section 202 Cr.P.C, the Magistrate, if required, is empowered to either inquire into the case himself or direct an investigation to be made by a competent person “for the purpose of deciding whether or not there is sufficient ground for proceeding”. If, after considering the statements recorded under Section 200 Cr.P.C and the result of the inquiry or investigation under Section 202 Cr.P.C, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he should dismiss the complaint, after briefly recording the reasons for doing so.

3. Chapter XVI Cr.P.C deals with “Commencement of Proceedings before Magistrate”. If, in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate has to issue process under Section 204(1) Cr.P.C for attendance of the accused.”

30. *Reiterating the mandatory requirement of application of mind in the process of taking cognizance, in Bhushan Kumar and Another v. State (NCT of Delhi) and Another (2012) 5 SCC 424, it was held as under:-*

“11. In Chief Enforcement Officer v. Videocon International Ltd.

(2008) 2 SCC 492 (SCC p. 499, para 19) the expression “cognizance” was explained by this Court as “it merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes

judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.” It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.”

31. *Under the amended sub-section (1) to Section 202 Cr.P.C., it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.*

32. *By Cr.P.C. (Amendment) Act, 2005, in Section 202 Cr.P.C. of the Principal Act with effect from 23.06.2006, in sub-section (1), the words “...and shall, in a case where accused is residing at a place beyond the area in which he exercises jurisdiction...” were inserted by Section 19 of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places are not harassed by filing false complaints making it obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:-*

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that the innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

33. *Considering the scope of amendment to Section 202 Cr.P.C., in Vijay Dhanuka and Others v. Najima Mamtaj and Others (2014) 14 SCC 638, it was held as under:-*

“12.The use of the expression “shall” prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word “shall” is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word “shall” in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression “shall” and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.” Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit Pawar v. Hemant Madhukar Nimbalkar and Another (2017) 3 SCC 528 and National Bank of Oman v.

Barakara Abdul Aziz and Another (2013) 2 SCC 488.

34. *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.”*

35. *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.*

36. *To be summoned/to appear before the Criminal Court as an accused is a serious matter affecting one’s dignity and reputation in the society. In taking recourse to such a serious matter in summoning the accused in a case filed on a complaint otherwise than on a police report, there has to be application of mind as to whether the allegations in the complaint constitute essential ingredients of the offence and whether there are*

sufficient grounds for proceeding against the accused. In *Punjab National Bank and Others v. Surendra Prasad Sinha* 1993 Supp (1) SCC 499, it was held that the issuance of process should not be mechanical nor should be made an instrument of oppression or needless harassment.

37. At the stage of issuance of process to the accused, the Magistrate is not required to record detailed orders. But based on the allegations made in the complaint or the evidence led in support of the same, the Magistrate is to be *prima facie* satisfied that there are sufficient grounds for proceeding against the accused. In *Jagdish Ram v. State of Rajasthan and Another* (2004) 4 SCC 432, it was held as under:-

“10.The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.”

56. As held in *Chandra Deo Singh v. Prokash Chandra Bose alias Chabi Bose and Another* AIR 1963 SC 1430 and in a series of judgments of the Supreme Court, the object of an enquiry under Section 202 Cr.P.C. is for the Magistrate to scrutinize the material produced by the complainant to satisfy himself that the complaint is not frivolous and that there is evidence/material which forms sufficient ground for the Magistrate to proceed to issue process under Section 204 Cr.P.C. It is the duty of the Magistrate to elicit every fact that would establish the *bona fides* of the complaint and the complainant.

60......The Magistrate who is conducting an investigation under Section 202 Cr.P.C. has full power in collecting the evidence and examining the matter. We are conscious that once the Magistrate is exercised his

discretion, it is not for the Sessions Court or the High Court to substitute its own discretion for that of the Magistrate to examine the case on merits. The Magistrate may not embark upon detailed enquiry or discussion of the merits/demerits of the case. But the Magistrate is required to consider whether a prima case has been made out or not and apply the mind to the materials before satisfying himself that there are sufficient grounds for proceeding against the accused.....

61. *The object of investigation under Section 202 Cr.P.C. is “for the purpose of deciding whether or not there is sufficient ground for proceeding”. The enquiry under Section 202 Cr.P.C. is to ascertain the fact whether the complaint has any valid foundation calling for issuance of process to the person complained against or whether it is a baseless one on which no action need be taken. The law imposes a serious responsibility on the Magistrate to decide if there is sufficient ground for proceeding against the accused. The issuance of process should not be mechanical nor should be made as an instrument of harassment to the accused. As discussed earlier, issuance of process to the accused calling upon them to appear in the criminal case is a serious matter and lack of material particulars and non-application of mind as to the materials cannot be brushed aside on the ground that it is only a procedural irregularity.....”*

Thus it is clear that Section 202 Cr.P.C. makes it obligatory upon the Magistrate that before summoning the **accused residing beyond** his jurisdiction he shall inquire into the case himself or direct investigation to be made by a Police Officer or by such other person as he thinks fit, for finding out whether or not there is sufficient ground for proceeding against the accused.

It is clear from the said orders that no inquiry as obligatory under Section 202 Cr.P.C. has been conducted.

The Magistrate did not comply with the provision of Section 202 Cr.P.C., even though the petitioners reside outside the jurisdiction of the court, (the only address being in the State of Jharkhand).

In the present case the Magistrate did not Conduct any inquiry into the case himself or direct an investigation as required under Section 202 Cr.P.C. before directing the issue of process and as such the order is not in accordance with law, and is thus an abuse of the process of law.

Thus considering the facts and circumstances of the present case, the nature of case pending between the parties, the non-compliance of Section 202 Cr.P.C. by the Magistrate before issuance of process is prima facie an abuse of process of Court.

In the present case, cognizance by the Magistrate has been taken against the accused persons for offence punishable under Sections force 418/420/120B IPC.

Section 418 of the Indian Penal Code, lays down:-

“418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, 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. 418 are as follows:-

- (1) Accused cheated a person;
- (2) At the time of offence accused was bound by law or legal contract to protect the interests of the person whom he cheated;
- (3) The obligation related to the transaction involving the cheating;
- (4) Accused had the knowledge that his act was likely to cause wrongful loss to the person cheated and whose interest he was bound to protect.”

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 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 Jiware 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.....”*

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.** There was neither any inducement nor any delivery of property as required. As such an essential ingredient required to constitute an

offence under Section 420 IPC being prima facie not present, the offence alleged cannot be held to be proved against the petitioners/accused.

(Rekha Jain vs. The State of Karnataka & Anr., 2022

LiveLaw (SC) 468).

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.”*

In the present case, the nature of act is a dispute between the parties relating to their business which is a civil dispute or even a

commercial dispute and there is no prima facie evidence of overt act on the part of the petitioners.

In M/s. Indian Oil Corporation vs. M/s Nepc India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006, the Supreme 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 418/420/120B IPC.

The dispute in this case is admittedly related to a transport contract which relates to arrangement which also includes the terms and conditions relating to defective/damaged products (as in this case). The dispute is a commercial dispute, civil in nature.

Clause 11.1.2 at page 11 of the Transport contract agreement is:-

11.1.2- In case of any dispute arising in respect of this contract, the decision of the Managing Director shall be final.

Considering the nature of dispute between the parties based on a Transport Contract Agreement and the judgments of the Supreme Court, in the present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the applicants in cognizable offences. As such the proceedings in this case should be quashed by exercising its inherent powers for ends of justice and to prevent the abuse of process of the court.

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

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.***

Accordingly, CRR 627 of 2020 is thus allowed.

The proceedings being Case No. CS 53117 of 2019 under Sections 418, 420 read with 120B of the Indian Penal Code, pending before the learned Metropolitan Magistrate, 12th Court, Calcutta, is hereby quashed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

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

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

(Shampa Dutt (Paul), J.)