IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 276 of 2013
With
CRAN 1 of 2013
Samima Absar and Anr.
-Vs-
The State of West Bengal & Anr.

For the Petitioners	: Mr. Sandipan Ganguly Mr. Karan Dudhwewala
For the O.P. No. 2	: Mr. Probal Kumar Mukherjee Mr. Tarak Nath Halder
For the State	: Ms. Ananya Sinha Mr. Pinak Kumar Mitra
Heard on	: 11.07.2023, 14.07.2023, 07.12.2023
Judgment on	: 11.12.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application being aggrieved by and dissatisfied with quashing of the proceeding of G.R. Case No. 3017 of 2010 (T.R. 723 of 2011), pending before the Court of the Judicial Magistrate, 3rd Court, Krishnagar, Nadia and the corresponding proceeding of Dhubulia Police Station Case No. 414 dated 20.10.2010 under Sections 420/120B of the Indian Penal Code.
2. On 22.01.2001 M/s. Dhubulia Brickfield Enterprise represented by its partner Samima Absar, the petitioner no. 1 herein and one Sajeda Khatoon,

wife of the opposite party no. 2 took a lease by way of a Registered Deed of Lease of 4.34 acres of land for a period of 20 years from 1.1.2001 up to December, 2021 at a rent mentioned in the said Registered Deed of Lease. Thereafter a Deed of Partnership was executed on or about 3.4.2001 between (1) Samima Absar, wife of Narul Absar, the petitioner no. 1 herein, (2) Sajeda Khatoon, wife of Abu Taher Jangi, the opposite party no. 2 herein and (3) Abu Taher Jangi, son of Late Patu Sheikh Jangi and husband of Sajeda Khatoon agreed to carry on business for manufacturing brick under the name and style of "Dhubulia Brickfield Enterprise" at and from Village and Post office - Dhubulia , P.S. – Dhubulia, District – Nadia, West Bengal. In the said Deed of partnership there is a clause relating to arbitration in case of difference and disputes arise between the partners.

3. The petitioner no. 1 on 12.6.2010 filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 in the court of the Learned District Judge, Nadia under Arbitration Case No. 54 of 2010 (Samima Absar..petitioner – versus- Sajeda Khatoon & Abu Taher Jangi), inter alia, praying for temporary injunction restraining the respondents and their men and agents from transferring and/or selling and/or dealing with the bricks lying at the Dhubulia Brickfield Enterprise at Dhubulia in any manner whatsoever. The said application was disposed of by a final order no. 11 dated 20.11. 2010 passed by the District Judge. No appeal has been preferred by the respondents from the said order and therefore, the said order has reached its finality. In the said order dated 20.11.2010 the

Learned District Judge was pleased to direct the petitioner herein to make an application to the Appropriate Court for appointment of an arbitrator. Petitioners filed an application before the Hon'ble High Court and by an order dated 21.06.2011 the Hon'ble Justice Sanjib Banerjee was pleased to appoint Hon'ble Mr. Justice G. N. Roy, Retired Hon'ble Judge of Supreme Court of India as an arbitrator. Before the Learned Arbitrator the Statement of Claim has already been filed wherein petitioner no. 1 inter alia prayed for an award of Rs. 3,96,16,943.94 paisa, Counter Statement of claim has already been filed, examination in chief has been concluded and cross examination is going on and petitioners expect that within a very short time an award will be passed.

4. Suddenly on 29.7.2010 the respondent nos. 1 and 2 issued a letter terminating the lease deed. Challenging the said termination letter your petitioner no.1 Samima Afsar filed a Title Suit being Title Suit No. 46 of 2011, inter alia, praying for declaration that the letter dated 29.7.2010 sent by the defendant nos. 1 and 2 (the opposite party nos. 1 and 2 herein) is illegal and invalid. Your petitioners crave leave to refer to and rely upon the said plaint at the time of hearing of this application, if necessary In the said suit on an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, by an order dated 18.4.2011 passed by the Learned Civil Judge (Senior Division), Krishnanagar, Nadia was pleased to pass an order directing the parties to maintain status quo in respect of nature, character and possession of the suit property.

5. On or about 2011 the petitioner filed a writ petition being W. P. No. 23981 (W) of 2011, inter alia, challenging granting of license in favour of new firm "Modern Brickfield Enterprise" on the same land wherein your petitioner is carrying on business in co-partnership with the opposite parties under the name and style of Dhubulia Brickfield Enterprises. The said application was heard after exchange of affidavits by the Hon'ble Justice Biswanath Somadder and His Lordship was pleased to pass an order on 30.1.2012 granting an ad-interim order of injunction in terms of prayers (d) and (e) above of the said writ application. Thereafter the respondent no. 2 filed a writ petition being W. P No. 6083 (W) of 2012 challenging the action on the part of Krishnanagar-11 Gram Panchayet Samity not accepting the license fees if tendered by him for issuance or renewal of a trade license for operating the brickfield under the name and style of Modern Brickfield Enterprise In respect of the said writ petition the Hon'ble Justice Biswanath Somaddar by an order dated 28.8.2012 has held that the order passed by the Panchayet Samity keeping the entire matter of grant or renewal of trade license in abeyance in view of various legal proceedings pending between the parties are perfectly justified and therefore, His Lordship was pleased to pass no order on the application.
6. As a counter blast of the proceedings filed under Arbitration Case No. 54 of 2010 filed initially by the petitioner no.1 to protect her interest, the opposite party no. 2 has filed the complaint before the Learned Chief Judicial Magistrate, Nadia as mentioned hereinafter.

7. A petition of complaint was filed by the opposite party no.2 before the Court of the Learned Chief Judicial Magistrate, Nadia therein alleging commission of offences by the petitioners punishable under Sections 420/120B of the Indian Penal Code as also praying for a direction from the Learned Magistrate, in terms of the provisions of Section 156(3) of the Code of Criminal Procedure, upon the Officer-in-Charge of Dhubulia Police Station to treat the said complaint as First Information Report and cause investigation thereon. The Learned Magistrate, upon receipt of such petition of complaint, was pleased to direct the Officer-in-Charge of Dhubulia Police Station to treat the said petition of complaint as First Information Report and cause investigation thereon Pursuant to the direction given by the Learned Magistrate, Dhubulia Police Station Case No. 414 dated 20.10 2010 was registered for investigation.
8. The allegations levelled in the said complaint in brief are to the effect that –
    a) The complainant/opposite party no. 2 and his wife along with the witness no. 1 and the accused persons used to run a joint business in bricks at Dhubulia and the opposite party no. 2 used to pay Income Tax on behalf of others.
    b) It is alleged that the opposite party no. 2 and the accused persons used to be equal partners in the business. However, due to various difficulties in the business, the said business is presently closed.
    c) It is alleged that the accused persons have accepted that they have received their shares till 2008 but they have alleged that they have

not received any shares in the profits from 2009. As per the opposite party no.2, on 19.9.2009, the accused persons had received a sum of Rs 1,20,000/- by Cheque No. 758922 drawn on United Bank of India, Krishnagar branch, which was duly encashed on 1.10.2009 by the accused persons. It is also alleged that in 2009, a sum of Rs. 3 lakhs was also paid in cash to the accused persons, against which receipt was not obtained by the opposite party no. 2 due to relationship of trust which had grown out of long association with the accused persons. Despite receipt of such sums of money the accused persons have been propagating in the local area that they have not received any money since 2009.

d) It is further alleged that the accused persons are also involved in causing humiliation to the opposite party no. 2 in public as also have enrolled various anti socials in order to humiliate the opposite party no. 2 in public and the opposite party no. 2 has also received threats to his wife.

9. Petitioners were completely innocent and in no way connected with the commission of the alleged offences or at all but have been falsely implicated in the instant case. The petitioner submitted that the allegations levelled in the said complaint are false and misconceived.

10. The petitioners surrendered before the Learned Court below and were subsequently released on bail.

11. After completion of a purported investigation, the Investigating Agency submitted its report in final form vide Charge Sheet No. 156 dated 7.5.2011 wherein it was stated that a prima facie case has been made out against the petitioners under Sections 420/120B of the Indian Penal Code. The Learned Chief Judicial Magistrate, Nadia, upon receipt of such charge sheet, was pleased by his order dated 25.5.2011 to take cognizance of the offences and transferred the case to the file of the Learned Judicial Magistrate, 3 Court, Krishnagar, Nadia for disposal. At present 30.1.2013 has been fixed by the Learned Magistrate for appearance.
12. That Section 420 of the Indian Penal Code provided punishment for the offence of cheating and thereby inducing delivery of property by the aggrieved to the accused. The primary ingredients of the said Section are -

    a) false and fraudulent representations made by the accused to the aggrieved;

    b) consequent delivery of valuable property by the aggrieved to the accused; and

    c) subsequent misappropriation of the said valuable property by the accused.
13. False and fraudulent representations at the inception of the transaction which induced the aggrieved to hand over valuable property to the accused is an essential ingredient of the offence. The averments made in the petition of complaint as also the charge sheet clearly revealed that the allegation of the de-facto complainant/opposite party no. 2 was that the petitioners, being

partners in business with the opposite party no. 2, had been denying receipt of payment though the opposite party no. 2 had purportedly made payment. Such averments do not in any manner make out the ingredients of the offence of cheating and in such circumstances, the proceeding impugned has is liable to be quashed.

14. Learned Advocate for the petitioners submitted that :-

    i. The impugned proceeding has been a gross abuse of the process of court which if allowed to continue for a single day more beyond the stage it has already reached, will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed for the ends of justice.

    ii. Section 420 of the Indian Penal Code provides punishment for the offence of cheating and thereby inducing delivery of property by the aggrieved to the accused. The primary ingredients of the said Section are

        a) False and fraudulent representations made by the accused to the aggrieved.

        b) Consequent delivery of valuable property by the aggrieved to the accused and,

        c) Subsequent misappropriation of the said valuable property by the accused.

        Thus false and fraudulent representations at the inception of the transaction which induced the aggrieved to hand over valuable property to the accused is an essential ingredient of the offence. The averments made in the petition of complaint as also the charge sheet clearly reveals that the allegation of the de-facto complainant/opposite party no. 2 is that the petitioners, being partners in business with the opposite party no. 2, have been denying receipt of payment through the opposite party no. 2, had purportedly made payment. Such averments do not in any manner out the ingredients of the offence of cheating and in such circumstances, the proceeding impugned has no legs to stand upon and hence liable to be quashed.

iii. The petitioners claim that they had not received their share of profits in the business, though according to the opposite party no. 2, he had made payments. The said assertion of non receipt of profits by the petitioners, despite purported payment of profits by the opposite party no. 2, at best, made out a cause of action for the petitioners to make a claim against the opposite party no. 2 but non-acknowledgement of payment of their dues by the petitioners cannot make out the ingredients of the offence under Section 420 of the Indian Penal Code. In such circumstances, the proceeding impugned, being vexatious and harassive in nature, is liable to be quashed.

iv. The Hon'ble Supreme Court of India in its much celebrated judgment in Chowdhury Bhajanlal Vs. State of Haryana has laid down certain criteria under which the Hon'ble High Courts may exercise their inherent powers in order to quash a proceedings pending before any court of law. The Hon'ble Supreme Court had held that where the averments made in the complaint do not make the offences as alleged or any offence at all, it would only be just and proper in the interest of justice to quash such proceedings as the same amounts to abuse of the process of Court. In the instant case, the facts disclosed in the complaint do not make out any contravention of the provisions of Sections 420/120B of the Indian Penal Code and as such no offence under the aforesaid Sections can be said to have been made out. In such circumstances it would only be just and proper to quash the impugned proceeding.

v. It is expedient in the interest of justice, to uphold the dignity of law that the impugned proceeding be quashed forthwith.

vi. The impugned proceeding is otherwise bad in law and as such the same is liable to be quashed and/or set aside.

15. The Learned Advocate for the opposite party no. 2 submitted that at a preliminary stage this Court should not consider the disputed question of facts since the act of the petitioners deliberately affected the opposite party no.2 and they had been harassed and insinuated on the basis of false propaganda with an ulterior motive to commit criminal breach of trust as well as cheating and the instant revisional application should be dismissed.

16. The Learned Advocate for the opposite party no. 2 relied upon the decision cited in the case of ***Suryalakshmi Cotton Mills Limited vs. Rajvir Industries Limited And Others***.[1], the Hon'ble Supreme Court observed as follows :

> *"**17.** The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.*
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> ***22.** Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in*

[1] (2008) 13 SCC 678

certain matters, both civil proceedings and criminal proceedings would be maintainable.

24. *The High Court, in our opinion, should have further taken into consideration the fact that in the event, the defence of the appellant is accepted in the criminal case, it will have no remedy to prosecute the respondents again. To contend that the acquittal of the appellant would have been the springboard for filing a complaint will not be correct. Nobody knows when the criminal case would come to an end. In a given situation, even it may become barred by limitation. It must also be borne in mind that commercial expediencies may lead a person to issue blank cheques. The course of action in the aforementioned situation, in our opinion, which could be taken recourse to was to make an attempt to find out as to whether the complaint petition even if given face value and taken to be correct in its entirety constitutes an offence under Sections 420, 406 and 463 of the Penal Code or not.*

25. *Ingredients of cheating are:*

> *(i) deception of a person either by making a false or misleading representation or by other action or omission; and*
>
> *(ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.*

26. *A bare perusal of Section 415 read with Section 420 of the Penal Code would clearly lead to the conclusion that* *fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage."*

17. Reliance was further placed by the Learned Advocate for the opposite party no. 2 in the case of ***V. Ravi Kumar Vs. State Represented By Inspector of Police, District Crime Branch, Salem, Tamil Nadu And Others.***[2]**,** the Hon'ble Supreme Court observed as follows :

> *"**22.** In Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] this Court referred to State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and summarised and illustrated the category of cases in which power under Section 482 of the Criminal Procedure Code could be exercised. This Court observed and held : (Zandu Pharmaceutical Works Ltd. case [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] , SCC p. 129, para 11)*
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> *"11. … '102. (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.*
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> *(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.*

[2] (2019) 14 SCC 568

(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 Act concerned (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 Act concerned, 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. (Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , SCC pp. 378-79, para 102)'"

23. *There can be no doubt that a mere breach of contract is not in itself a criminal offence, and gives rise to the civil liability of damages. However, as held by this Court in Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 :*

2000 SCC (Cri) 786] , the distinction between mere breach of contract and cheating, which is a criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In this case, in the FIR, there were allegations of fraudulent and dishonest intention including allegations of fabrication of documents, the correctness or otherwise whereof can be determined only during trial when evidence is adduced.

24. *Exercise of the inherent power of the High Court under Section 482 of the Criminal Procedure Code would depend on the facts and circumstances of each case. It is neither proper nor permissible for the Court to lay down any straitjacket formula for regulating the inherent power of the High Court under Section 482 CrPC.*

25. *Power under Section 482 CrPC might be exercised to prevent abuse of the process of law, but only when, the allegations, even if true, would not constitute an offence and/or were frivolous and vexatious on their fac*

26. *Where the accused seeks quashing of the FIR, invoking inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint. Reference may be made to the decision of this Court, inter alia, in State of Punjab v. Subhash Kumar [State of Punjab v. Subhash Kumar, (2004) 13 SCC 437 : (2006) 1 SCC (Cri) 324] and Janata Dal v. H.S. Chowdhary."*

18. The Learned Advocate for the State submitted at initial stage without considering the veracity of the dispute on trial the revisional application should be dismissed.

19. The main crux of the allegation against the petitioner was despite receipt of Rs. 4,20,000/-, the petitioners were falsely propagating in the area that they had not received any money from opposite party no. 2 for their business and had the opposite party no. 2 known that the petitioners would subsequently deny receiving the said payments, he would have taken necessary receipts from the petitioners and therefore, the opposite party had been cheated by the petitioners. Even if the allegation of the opposite party no. 2 were taken on its face valued, no prima facie case of cheating under Section 420 of the Indian Penal code has been made against the petitioner.

That Section 415 of the Indian Penal Code define the offence of "cheating" as follows:

> *"**415.Cheating**. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*

It is settled law that the essential ingredients for an offence of cheating as defined under section 415, as extracted above, is that there has to be dishonest intention to deceive another person and that, to deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It bears no repetition that the gravamen of the offence under section 415 of the Indian Penal Code is providing of false and fraudulent representations at the inception of the transaction and to thereby induce the aggrieved to deliver property. In the facts of the instant case, there is no allegation that the Petitioners herein had made any false representation to the opposite party no.2, far less any willful misrepresentation at the inception of the transaction i.e. at the time of starting the business between the parties. In absence of any allegation of willful misrepresentation and dishonest inducement by the petitioners, which induced the complainant/victim to make payments to the petitioners and subsequent denial of receipts of payments by the petitioners cannot constitute the offence of cheating.

Pertinently one of the essential ingredients to constitute an offence under Section 420 of the Indian Penal Code is that the due to the commission of cheating accused person has made wrongful gain and the other person has suffered wrongful loss. However, in the instant case, neither has the petitioners made any wrongful gain nor has the opposite party no.2 suffered any wrongful loss. The essential ingredients of the offence of cheating under Section 420 of the Indian Penal Code, as sought to be foisted against the petitioners by the opposite party no. 2 in the petition of complaint are without basis or merit.

20. Prior to the initiation of the instant case, the petitioner no.1 on 12.06.2010, filed an application under Section 9 of the Arbitration Act before the Learned District Judge at Nadia being Arbitration Case no. 54 of 2010 praying for temporary injunction thereby restraining the opposite party no. 2 and his wife from transferring and selling the bricks lying at Dhubulia Brickfield Enterprise, which was granted to the petitioners by order dated 20.11.2010 passed by the Learned Sessions Judge at Nadia. Subsequently, as a counterblast the instant case has been initiated against the petitioners by the opposite party no. 2.

21. List of dates submitted by the Learned Advocate for the appellant are replicated as follows :

Date	**Event**
22.01.2001	M/s Dhubulia Brickfield Enterprise represented by its partner namely Samima Absar and Sajeda Khatoon, wife of Op2 took a lease by way of a registered deed of a 4.34 acre land for a period of 20 years from 01.01.2001 up to December 2021.
03.04.2001	A deed of partnership was executed between petitioner no.1, Sajeda Khatoon and OP2 wherein it was agreed that the firm will carry out the business of manufacturing bricks under the name "Dhubulia Brickfield Enterprise".
12.06.2010	The petitioner no.1 filed an application under section 9 of the Arbitration Act before the Learned District Judge at Nadia being Arbitration Case no. 54 of 2010 praying for temporary injunction thereby restraining the and

	his wife from transferring and selling the bricks lying at Dhubulia Brickfield Enterprise
27.07.2010	The Opposite Party no. 2 by his letter issued upon the petitioners, dissolved the partnership firm.
29.07.2010	The Opposite Party no. 2 issued a letter for terminating the lease deed and also managed to obtain a licence from Belpukur Gram Panchayat under the name Modern Brick Field for manufacturing brick under the name "gold". Being aggrieved by the said action, the petitioners filed Title Suit no. 46 of 2011, which is pending disposal.
20.10.2010	Dhubulia PS case No. 414 dated 20.10.2010 under section 420/120B of IPC was initiated by the Opposite Party no. 2 against petitioners
20.11.2010	The Section 9 application filed by petitioner no.1 was disposed of wherein the parties were directed to maintain status quo in the matter of transferring and selling the bricks lying at Dhubulia Brickfield Enterprise. No appeal was preferring against the said order
07.05.2011	Charge sheet no. 156 dated 07.05.2011 under section 420/120B of IPC was filed against the petitioners
18.04.2011	The Learned Judge in Title Suit no. 46 of 2011 passed an order of status quo.
21.06.2011	The petitioners filed an application before the Hon'ble High Court at Calcutta and by Order dated 21.06.2011, Hon'ble Justice G.N Roy was appointed as an arbitrator.
31.01.2012	The petitioner filed a writ being WP No. 23981 (W) of 2011 challenging the issuance of licence to Modern Brick Field on the same land wherein the petitioners are partners of the firm namely Dhubulia Brickfield Enterprise. By order dated 31.01.2012 an interim order was passed in

	favour of the petitioners stating that the licence given to Modern Brick Field is per se contrary to law
28.08.2012	That Opposite Party no.2 filed a writ being WP No. 6083 (W) of 2012 challenging the action on the part of Krishnanagar Gram Panchayat Samity not accepting his licence fees. By order dated 28.08.2012, it was held that the Panchayat Samity keeping the matter of grant of trade licence in abeyance due to various legal proceedings is justified
08.07.2016	Arbitration award passed in favour of petitioner no.1 holding that a sum of Rs.89,43,000/- as principal sum, Rs.38,75,300/- as interest and a cost of Rs.2,00,000/- is to be paid to the petitioner no.1 by the opposite party no.2 and his wife on or before 30.08.2016 failing which the same shall bear an interest @8% per annum till the realization of the actual payment. The sole arbitrator was further pleased to direct the sale of partnership properties belonging to Dhubulia Brickfield Enterprise by a Special Officer appointed under the order of the Arbitral Tribunal.
30.03.2019	Being aggrieved by the Award passed by the Learned Sole Arbitrator, the opposite party no.2 and his wife filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the Learned District Judge at Krishnanagar, Nadia being Misc. Case No. 35 of 2016. By order dated 30.03.2019, the operation of the Award passed by the Learned Sole Arbitrator was stayed subject to the opposite party no.2 and his wife furnishing a bond of Rs.30,00,000/- within 45 days of the said order.
18.11.2020	Misc. Case No. 35 of 2016 pending before the Learned District Judge at Krishnanagar, Nadia was transferred to the Learned Judge, Commercial Court at Rajarhat, North 24-Parganas and the said proceedings was re-numbered as Misc. Case No. 18 of 2020. It is pertinent to mention herein that on 18.11.2020, on account of the opposite party no.2 and his wife

	being unrepresented before the Learned Judge, Commercial Court at Rajarhat, North 24-Parganas, Misc. Case No. 18 of 2020 was dismissed for default.
24.03.2021	There being no stay of the arbitral award dated 08.07.2016, the petitioner no.1 proceeded with the execution proceedings being Misc. Exe Case No. 02/2020 (CC) and by an order dated 24.03.2021, the Learned Judge, Commercial Court, North 24-Parganas was pleased to pass an ad-interim order of status quo.
07.01.2022	The opposite party no.2 and his wife filed an application being Misc. Case no. 26 of 2021 (CC) pending before the Learned Judge, Commercial Court at Rajarhat for recalling of order dated 18.11.2020 and restoration of Misc. Case No. 18 of 2020. Since there was delay in filing the restoration application, another application was filed praying for condonation of delay of 56 days in filing the restoration application. Another application inter alia praying for stay of all further proceedings in the execution proceedings initiated by the petitioner no.1. By a common order dated 07.01.2022, the Learned Judge allowed the restoration of Misc. Case no. 18 of 2020 to its original file along with the interlocutory orders subject to payment of cost of Rs.7,000/-.
08.04.2022	Being aggrieved by order dated 07.01.2022, the petitioner no.1 preferred an application under Article 227 being C.O. No. 555 of 2022. The said application is still pending adjudication.

22. The Opposite Party No. 2 lodged a First Information Report against the petitioners through institution of a criminal case being Dhubulia PS case No. 414 on 20.10.2010 under Section 420 and 120B of the IPC. Upon completion of the investigation in the aforementioned case, the

investigation agency submitted a Charge Sheet with number 156 on 07.05.2011 under Section 420 and 120 B of the IPC against the petitioners. Cognizance was taken by the Learned Magistrate in respect of the said proceedings.

23. The petitioners approached the Hon'ble Court in C.R.R. No. 276 of 2013 inter alia praying for the quashing for GR Case No. 3017 of 2010 arising out of Dhubulia PS Case No. 414 dated 20.10.2010 under Section 420 and 120B of the IPC pending before the Learned Magistrate of the 3rd Court, Krishnagar, Nadia.

24. The Prosecution alleged that the Opposite Party No. 2 and his wife along with the petitioners used to run a joint business in bricks in Dhubulia. Allegedly the Opposite Party No. 2 and the petitioners were equal partners in the said business and subsequently the said business had to be shut due to various difficulties. Allegedly, the petitioners had received their dividends on shares till 2009 and they had not received any share in profit from the year 2009. Allegedly, the Opposite Part No. 2 on 19.09.2009 gave the petitioners a cheque bearing number 758922 for a sum of Rs. 1,20,000/- which was duly encashed on 01.10.2009. Allegedly, a further sum of Rs. 3,00,000/- was also paid in cash to the petitioners, against which no receipts were obtained by the Opposite Party No. 2. Allegedly, despite receipt of Rs. 4,20,000/-, the petitioners alleged they had not received any money from the Opposite Party No. 2. Had the Opposite Party No. 2 known that the petitioners would subsequently deny receiving the

said payments, he would have taken the necessary receipts from the petitioners. Allegedly, the petitioners conspired to take the total sum of Rs. 4,20,000/- and falsely alleged that they have received no money and thereby caused irreparable loss to the reputation of the Opposite Party.

25. The relevant citations with regard to the instant case have been considered for the sake of discussion. In the case of ***Paramjeet Batra v. State of Uttarakhand***[3], The Supreme Court held the following:-

> *"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.*
>
> *13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal*

[3](2013) 11 SCC 673

proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."

26. The Hon'ble Supreme Court in the case of ***Jaswant Singh vs State of Punjab and Another***[4] held the following:-

"17. A three-Judge Bench of this Court in Gian Singh v. State of Punjab again summarized the legal position which emerged regarding powers of the High Court in quashing criminal proceedings in exercise of power under Section 482 Cr.P.C. R.M. Lodha, J., (as he then was) speaking for the Bench, clearly observed in paragraph 61 of the report that criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. The relevant extract from paragraph 61 is reproduced below:

"61. The position that emerges from the above discussion can be summarisedthus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (in) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be

[4] 2021 SCC OnLine SC 1007

fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its View, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

18. A three-Judge Bench of this Court in ParbatbhaiAahir Alias ParbatbhaiBhimsinhbhaiKarmur v. State Gujarat6 laid down the broad principles for exercising the inherent powers of the High Court under section 482 Cr.P.C. Dr. D.Y. Chandrachud, J., speaking for the bench, enumerated the principles in paragraph 16 and in sub paragraphs. The same are reproduced below:

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Criminal Procedure Code, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (0) to secure the ends of justice, or) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is *founded on the overriding element of public interest in punishing persons for serious offences.*

16.7. distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8, and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

19. From the above discussion on the settled legal principles, it is clear from the facts of the present case that there was a clear abuse of the process of the Court and further that the Court had a duty to secure the ends of justice. We say so for the following reasons:

a) The allegations made in the FIR had an overwhelmingly and predominatingly a civil flavour inasmuch as the complainant alleged that he had paid money to Gurmeet Singh, the main accused to get employment for his son abroad. If Gurmeet Singh failed the complainant could have filed a suit for recovery of the amount paid for not fulfilling the promise.

b) Initially, the investigating officer and two superior officers of the economic wing has found that there is no substance in the complaint making out even a prima facie triable case and had *therefore, recommended for closure. However, on the orders of the Senior Superintendent of Police, the FIR was registered and the matter was investigated. No criminal breach of trust was found and the charge sheet was submitted only against Gurmeet Singh under section 420 I.P.C.*

c) The complainant Nasib Singh had clearly deposed that he had paid Rs. 4 lacs cash to Gurmeet Singh and had also given a cheque of Rs. 2 lacs favouringGurmeet Singh which he had encashed.

d) During trial the present appellant as also the other co-accused Gurpreet Singh were summoned in April 2014 invoking powers of Section 319 Cr.P.C., for being tried under Section 420 I.P.C. It may be noted that no specific allegations of cheating are made against these two accused as they were both settled abroad in Italy.

e) The complainant Nasib Singh entered into a compromise with the main accused Gurmeet Singh which was filed before the learned Magistrate and the same was accepted vide order dated 26.09.2014 and the alleged offence being of financial transaction stood compounded. Proceedings against Gurmeet Singh were closed.

f) Right from 2014, the present appellant and other co-accused Gurpreet Singh who were in Italy were being summoned by the Court. The appellant was declared proclaimed offender. The appellant applied before the High Court challenging the order declaring him proclaimed offender and also filed a 482 Cr.P.C. petition for quashing of the proceedings wherein, he also filed the compounding order of 26.09.2014.

g) The High Court merely perused the FIR and noting the fact that the name of the appellant was mentioned in the FIR, declined to exercise the inherent power under Section 482 Cr.P.C.

20. In our considered view, the High Court erred in firstly not considering the entire material on record and further in not appreciating the fact that the dispute, if any, was civil in nature and that the complainant had already settled his score with the main accused Gurmeet Singh against whom the proceedings have been closed as far back as 26.09.2014. In this scenario, there remains no justification to continue with the proceedings against the appellant."

27. The Hon'ble High Court of Andhra Pradesh at Amaravati in the case of ***Rayapati Vankata Siva Rama Chand and Ors. Vs. The State of AP and Ors.***[5]

"*Syed Yaseer Ibrahim vs. State of Uttar Pradesh & another wherein Hon'ble Apex Court has held that:*

Both the FIR and the charge-sheet, which has been submitted after investigation, would leave no manner of doubt that there are rival contentions of the appellant, on the one hand, and the second respondent, who is the complainant, on the other, which form the subject of a pending suit. The contesting parties lay a claim to the immovable property, which is in dispute. The appellant founded his claim on the strength of an alleged deed of gift. On the other hand, the second respondent has claimed on the basis of a Will alleged to have been executed in his favour. The second respondent has instituted a suit for declaration and possession which is pending. The suit was dismissed in default on 13 October 2014. The sale deed was executed by the appellant on 24 November 2014. The suit has been restored to file on 21 April 2016. Each of the rival claims would be tested in the course of the evidence adduced at the trial of the suit. Mr. Sanjay Singh submitted that since the sale took place during the pendency of the suit, doctrine of lispendens will apply. This itself is an indicator of the position that it is essentially a dispute of a civil nature. The execution of a sale deed, during the pendency of the suit, may attract the doctrine of lispendens, but, from reading the charge- sheet as it stands, it is evident that there is no element of criminality which can stand attracted in a matter which essentially involves a civil dispute between the appellant and the second respondent. Insofar as the appellant is concerned, none of the ingredients of the offence punishable under Section 420 of the IPC have been found to exist after the investigation was complete. Neither the FIR nor the charge-sheet contain any reference to the essential requirements underlying Section 420. In this backdrop, the continuation of

[5] 2022 (3) ALT (Crl.) 10 (A.P.)

the prosecution against the appellant would amount to an abuse of the process where a civil dispute is sought to be given the colour of a criminal wrong doing.

The Apex Court clearly held that the continuation of the prosecution against the appellant would amount to abuse of the process where a civil dispute is sought to be given the colour of a criminal wrong. Accordingly, quashed the charge sheet. Even in the present case, admittedly a civil suit is pending for partition of the subject properties and without deciding the rights of the petitioners by the Court, the criminal complaint is not maintainable.

ShaksonBelthissor vs. State of Kerala and another (2009) 14 Supreme Court Cases 466 wherein the Hon'ble Apex Court held that:

The scope and power of quashing a first information report and charge sheet under Section 482 of the CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down.

In Nagawwa v. VeerannaShivalingappaKonjalgi, (1976) 3 SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations made in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate for issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5) "(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;*

The above decision was followed by this Court in Pepsi Foods Ltd. and Anr. Vs. Special Judicial Magistrate and Others [1998 (5) SCC 749]. In paragraph 28 of the said judgment this Court held thus:

"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."

This Court has recently in R. Kalyani v. Janak C. Mehta and Others, (2009) 1 SCC 516, observed as follows:

"15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

In view of the above judgments, the court categorically held that a person who is apparently innocent is not subjected to prosecute and humiliation on the basis of false and vague grounds.

15. In the instant case, also the 2nd petitioner is a senior citizen more than 70 years and she is none other than the mother of the complainant. Only with a malafide and ulterior motive, the present complaint has been lodged and without taking the relevant facts and circumstances, the Court below has taken cognizance which is contrary to the observations made by the Hon'ble Apex Court in the above said judgment.

ParamjeetBatra vs. State of Uttarakhand& others CDJ 2012 SC 883 wherein the Hon'ble Apex Court has held that:

16. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.

Chandran Ratnaswami vs. K.C. Palanisamy and others (2013) 6 Supreme Court Cases 740 wherein the Hon'ble Apex Court has held that:

As noticed above, in the three writ petitions filed by respondent No. 1, though not against the appellant but against the C.B.I. in respect of different transactions, the High Court dismissing all those writ petitions observed that the modus operandi of the writ petitioner (respondent No. 1) was to defraud the person or entity and thereafter approach the Courts with multiple proceedings in order to distract attention from his own misdeeds.

Neither the High Court nor the Magisterial Court have ever applied their mind and considered the conduct of the respondent and continuance of criminal proceedings in respect of the disputes, which are civil in nature and finally adjudicated by the competent authority i.e. the Company Law Board and the High Court in appeal.

We are of the definite opinion that the complainant has manipulated and misused the process of Court so as to deprive the appellants from their basic right to move free anywhere inside or outside the country. Moreover, it would be unfair if the appellants are to be tried in such criminal proceedings arising out of alleged breach of a Joint Venture Agreement specially when such disputes have been finally resolved by the Court of competent jurisdiction. Hence, allowing the criminal proceedings arising out of FIR No. 7 of 2007 to continue would be an abuse of the process of the Court and, therefore, for the ends of justice such proceedings ought to be quashed. Since the High Court failed to look into this aspect of the matter while passing the impugned order, in our opinion, the same could not be sustained in law."

28. The allegation is despite the opposite party no. 2 making payments, the petitioners have denied to have received a sum of Rs. 4,20,000/- towards share of profit of the said business. The allegations of opposite party no.2 do not constitute any cause of initiation of any criminal proceedings. During the pendency of the instant case, the Learned Arbitrator by Judgement dated 08.07.2016 has passed an Arbitration award passed in favour of petitioner no.1 holding that a sum of

Rs.89,43,000/- as principal sum, Rs.38,75,300/- as interest and a cost of Rs.2,00,000/- is to be paid to the petitioner no.1 by the opposite party no.2 and his wife on or before 30.08.2016. Therefore the opposite party no.2 was liable to pay the petitioners a huge sum of money towards the share of profit from the said business.

29. It had been the admitted case there was a partnership agreement between the petitioner no.1, the opposite party no.2 and the wife of opposite party no.2, wherein petitioner no.1 was the 50% owner and the opposite party no.2 and the wife of opposite party no.2 were the other 50% owner. The petitioner no.2, being the husband of the petitioner no.1, was not related to the business of 'M/s Dhubulia Brickfield Enterprise' and in such circumstances, there was no possibility for the petitioner no. 2 to make any false representation to the opposite party no.2, at the inception of the transaction, which induced the complainant/victim to make payments to the petitioners. Prima facie case against the petitioner no. 2 does not exist.

30. The opposite party no. 2 herein had submitted since charge sheet has been submitted in the instant case, a prima facie case under Section 420/120B of the Indian Penal Code has been made out against the petitioners. Mere submission of charge sheet in a case ipso facto does not lead to the conclusion that a prima facie case has been made out against an accused person. Charge-Sheet filed in a case is an expression of opinion of the investigating officer on the materials

collected by him during investigation and is always vulnerable to judicial scrutiny. Requisite allegation in the First Information Report supported by relevant evidence collected during investigation are the prerequisites to make out a prima facie case against an accused person. In the instant case, as stated hereinabove, even if the allegation made in the First Information Report as well as in the Charge-Sheet are taken on its face valued, no prima facie case of cheating under Section 420 of the Indian Penal Code has been made against the petitioner as the essential ingredients for constituting an offence of cheating under Section 420 of the Indian Penal Code are completely missing from the facts of the instant case. Furthermore, no cogent evidence has been submitted by the investigating agency to establish the offence of cheating.

31. The opposite party no. 2 has sought reliance upon **Suryalakshmi Cotton Mills Limited V. Rajvir Industries Limited[6]**(para 17, 25)to emphasize on the settled principle of law that High Court should exercise its inherent powers under Section 482 of the Code of Criminal Procedure with a great deal of caution. However in the same judgment, **State of Haryana V. Bhajan Lal[7]**(para 102) has been relied upon, wherein it had been clearly laid down that when the allegations made in the First Information Report, even if taken on its face value do not make out a prima facie case or when the uncontroverted allegations

[6](2008) 13 SCC 678
[7](1992) Supp (1) SCC 335

made in the FIR and the evidence collected in support of the same do not disclose the commissions of an offence or where a criminal proceedings is manifestly attended with mala fide, then in those circumstances a criminal proceedings may be quashed. In the instant case as well, it has been clearly established hereinabove that no prima facie case has been made out, the evidence collected in support of the allegation do not disclose the commissions of an offence and the instant proceedings is manifestly attended with mala fide.

32. The opposite party no. 2 has sought reliance upon **Ravi Kumar V. State**[8] (para 22 and 26) to emphasise that it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegation in the complaint.

33. The facts narrated in complaint and the sequence of events, scheduled in the 'list of dated' as aforementioned conspicuously portray the dispute between the parties to have been addressed at different forum and the institution of the instant complaint case in a disguised form is harrassive and coercive in nature in order to intensify the grudge and enmity between the parties. The sequence of events as delineated in the aforesaid 'List of dates' has not been objected to by the opposite party no. 2.

[8](2014) 14 SCC 568

34. The dispute between the parties is primarily civil in nature with agreed terms to recourse to arbitration proceedings in case of differences and the same had been resorted to.
35. Several legal proceedings had been instituted with few of them awaiting conclusive determination. The ingredients to constitute the offence under Section 420 of the IPC are absent.
36. In view of the above discussions, the proceeding of G.R. Case No. 3017 of 2010 (T.R. 723 of 2011), pending before the Court of the Judicial Magistrate, 3rd Court, Krishnagar, Nadia and the corresponding proceeding of Dhubulia Police Station Case No. 414 dated 20.10.2010 under Sections 420/120B of the Indian Penal Code is quashed.
37. The criminal revisional application being CRR 276 of 2013 is allowed.
38. Accordingly, CRR 276 of 2013 along with CRAN 1 of 2013 stand disposed of.
39. There is no order as to cost.
40. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
41. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)