

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 660 of 2020

With

CRR 1855 of 2022

With

CRR 661 of 2020

HTC India Private Limited & Ors.

Vs

Link Telecom Private Limited.

For the Petitioners

: Mr. Y. Anand,
Mr. Manjit Singh,
Mr. M. Chhabra,
Mr. G. Singh,
Mr. A. Bagal,
Mr. B. Mal.

For the Opposite Party

: Mr. A. Bhattacharrya,
Mr. A.K. Mukherjee,
Mr. S. Prosad.

Heard on

: 05.12.2022

Judgment on

: 03.01.2023

Shampa Dutt (Paul), J.:

The petitioners, by way of the present petition, seek to invoke the inherent powers of this Court under Section 401 read with Section 482 Cr.P.C. for recalling, quashing of the proceedings in C/28190/2019 pending before the learned Metropolitan Magistrate, 9th Court, Calcutta (CRR 661 of 2020) and setting aside of orders dated 22.03.2022, 25.04.2022 and 11.05.2022 passed by the Court of the Ld. Metropolitan Magistrate, 9th Court, Calcutta in Criminal Complaint bearing Case No. C/28190 of 2019, namely, “M/s Link Telecom Pvt. Ltd. vs. M/s. HTC Corporation & Ors.” filed by the Complainant/respondent herein under Sections 406/418/420 read with Section 120B of the Indian Penal Code, 1860, pending before the Court of the Ld. Metropolitan Magistrate, 9th Court, Calcutta.

The petitioner’s case is that in the year 2012 One Mr. Deepak Gupta, director of the respondent/complainant company along with other executives approached the senior executives of petitioner no. 1 company and expressed eagerness to enter into a business relationship with the petitioner No. 1 company for distribution, sale and marketing of their mobile phones and accessories in India, under the ‘HTC’ brand. The respondent company represented that they were one of the leading distribution companies in Kolkata, India with a business history spanning more than 110 years.

On December 01, 2012, after extensive discussions and negotiations, a business relationship was formalized by the signing of a Distributor Agreement (hereinafter “Agreement”), which became effective on December 01, 2012. Under the Agreement, the respondent company agreed to act as a national distributor for petitioner no. 1 company for Eastern and North-Eastern regions, comprising the states of West Bengal, Orissa, Bihar, Jharkhand, Assam and six other North-Eastern states.

Clause 6.5 of the agreement defines “Dead on Arrival” (DOA) products and the criteria for determining whether or not a product is a DOA unit.

In clause 15.1 of the agreement, the parties clearly and unequivocally agreed that the agreement would be governed by the laws of Singapore and all disputes would be settled by binding **arbitration** under the auspices of the International Chamber of commerce (“ICC”).

During the year 2013-2014 the business dealings between the parties were conducted in a normal fashion, except for one notable exception. The respondent company was habitually delinquent or late in filing and claiming credit/refund for the DOA units. Despite repeated reminders and warnings, the respondent company simply did not mend its ways in the timely filing of DOA claims. As a consequence of habitual delays on the part of the respondent company, the return of the DOA

units to the petitioner no. 1 company in Taiwan were repeatedly delayed.

On May 25, 2016 in an email message by the petitioner no. 2 company, the respondent company was reprimanded for sleeping on pending claims arising from the years 2013 and 2014.

On June 16, 2016 an executive of the petitioner no. 2 company sent an email message to the respondent company stating that it had under-reported the DOA sets, and consequently, the claims that it could raise from the DOA sets under the agreement.

On June 30, 2016 an executive of the petitioner no. 2 company wrote to the respondent company enquiring whether any DOA claims were pending. However, no response was received from the respondent company.

On August 03, 2016, that the petitioner no. 2 company in another instance scolded the respondent company for not responding to emails regarding pending DOA claims.

On April 27, 2017 and May 03, 2017 the petitioner no. 2 company angrily queried as to why the respondent company had not raised DOA claims for past many months. In this message, the respondent company was clearly warned that if claims were too old, they would not be accepted. Despite the angry tone of this message, the

respondent company did not respond, which led the petitioner no. 2 company to send another reminder.

On June 14, 2017 the petitioner no. 2 company sent a reminder by calling upon the respondent company to upload their DOA claims in a timely manner. In this message, it was also noted that aside from the reminder email messages of May 25, 2016, June 16, 2016, June 30, 2016 and April 27, 2017, several verbal reminders had also been given to the respondent company by the executives of the petitioner no. 2 company. This email message of June 14, 2017 also clearly conveyed to the respondent company that some claims could no longer be accepted because they were time barred under the terms of the agreement.

On July 05, 2017 the petitioner no. 2 company was again constrained to send another email to the respondent company questioning its 'claim discipline'. In this message, once again it was communicated to the respondent company that claims related to many DOA units were time barred in terms of the agreement executed between the parties, in terms of the agreement executed between the parties.

During year 2015, the Indian mobile handset industry was beset with various new challenges. The adoption of the 4G network, the onslaught of Chinese competition with their cut-throat pricing, led to the shrinkage of profits and market share for all existing mobile headset

vendors in India. In such challenging business conditions, it was imperative that business needed to be conducted with utmost efficiency. However, the respondent company displayed no such urgency and efficiency even in respect of filing timely DOA claims, which was obviously in its own best financial interests.

On June 20, 2019 the respondent company filed a criminal complaint bearing no. C/28190/2019 against petitioner no. 1 and petitioner no. 2, along with other six present and former executives/directors under Section 406/418/420/120B of IPC before the Ld. Chief Metropolitan Magistrate, Calcutta.

On June 29, 2019 the Ld. Chief Metropolitan Magistrate, Calcutta, vide an order was pleased to take cognizance of the criminal complaint and transfer it to the court of the Ld. Metropolitan Magistrate (9th Court) for inquiry and disposal.

On July 31, 2019 the statement of one Shri Anindya Dey, the authorized representative of the complainant was recorded under Section 200 Cr. P.C. The Ld. Metropolitan Magistrate further recorded the statement of another witness, Shri Bhaskar Chatterjee. After recording the statements of the above-named, vide the impugned summoning order dated July 31, 2019, the Ld. Metropolitan Magistrate (9th Court), Calcutta was pleased to issue process of summons against

the petitioners under Section 406/418/420 read with Section 120B of IPC for appearance.

On August 29, 2019 the petitioner no. 1 company received the summons issued by the Ld. Metropolitan Magistrate, 9th Court, Calcutta at its registered office in Taipei, Taiwan.

On 07.11.2019 separate applications on behalf of Accused no. 1 (HTC Taiwan) and accused no. 2 (HTC India, petitioner no. 1 herein) were filed under Section 305 Cr.P.C. and for accused no. 3 & 6 to 8 (petitioners no. 2 to 5) were filed under Section 205, Cr.P.C. before the Ld. Metropolitan Magistrate seeking exemption from personal appearance. The case was adjourned to 13.01.2020.

On 13.01.2020 the complaint case C/28190/2019 was again listed before the Ld. Metropolitan Magistrate when fresh separate applications under Section 305 Cr.P.C. and Section 205 Cr.P.C. seeking exemption from personal appearance were filed on behalf of all accused persons.

On the said date, the Ld. Metropolitan Magistrate rejected the applications for exemption and issued warrants of arrest against the petitioners. The case was adjourned to 05.03.2020.

On 14.12.2021 the complaint case C/28190/2019 was listed before the Ld. Metropolitan Magistrate. On this date the Ld. Magistrate,

in light of the order dated 13.01.2020 issued warrants of arrest against the petitioners and other accused persons in the complaint case.

On 22.03.2022 the complaint case was again listed before the Ld. Metropolitan Magistrate. On this date, the order dated 14.12.2021 passed by the Ld. Magistrate was recalled and fresh warrants of arrest were issued against your petitioners along with other accused persons.

Hence the present revisional petition seeking recall, quashing of proceedings and setting aside of orders dated 22.03.2022, 25.04.2022 and 11.05.2022.

Mr. Manjit Singh, learned Counsel for the petitioners has submitted that the impugned orders dated 22.03.2022, 25.04.2022 and 11.05.2022 being against the weight of materials of record is bad in law and liable to be quashed along with the proceedings. The learned Magistrate erred in law in refusing to consider the applications for grant of exemption from personal attendance on the ground that the petitioners have to appear before him first. There is nothing in Section 205 of the Code of Criminal Procedure which mandates that the petitioners must first personally appear before the learned Magistrate before the prayer for exemption from personal appearance is considered. That the orders dated 22.03.2022, 25.04.2022 and 11.05.2022 issuing warrants of arrest against the petitioners is contrary to and in gross violation and disregard to the law laid down by the

Hon'ble Supreme Court. The impugned orders dated 22.03.2022, 25.04.2022 and 11.05.2022 passed by the Ld. Trial Court in complaint case No. 28190/2019 are also contrary to the recent judgment of the Hon'ble Supreme Court in the case of **Puneet Dalmia vs. Central Bureau of Investigation, Hyderabad [(2020) 12 SCC 695]**.

Wherein, it was observed and held by the Court in the aforesaid decision that the normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused, such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court.

That on 22.03.2022, 25.04.2022 and on 11.05.2022, the learned Magistrate in complaint case no. C/28190/2019 mechanically and without application of judicial mind, had passed the orders issuing warrants of arrest against the petitioners directing their personal appearance in clear contravention of the orders passed by this Hon'ble Court in CRR No. 660 of 2020 and CRR No. 661 of 2020, in which orders were extended and continuing by purview of recurring orders passed by this Hon'ble Court in suo moto Writ Petition (C) 5323 of 2020.

The orders dated 25.04.2022 and 11.05.2022 passed by the Ld. Trial Court in complaint case no. C/28190/2019, in furtherance of the

order dated 22.03.2022, are contrary to the order dated 27.02.2020 passed by this Hon'ble Court directing stay on all further proceedings in the complaint case, which order was continuing by virtue of the orders passed by the Hon'ble High Court in suo moto Writ Petition (C) 5323 of 2020.

The petitioners are residing in the National Capital Region and travelling to Kolkata from Delhi on every date of hearing in the complaint case no. 28190/2019 would cause financial hardship and prejudice to the petitioners, in case they are required to attend personally before the learned Trial Court on each day of hearing.

The petitioners never avoided the summons and had appeared before the learned Magistrate through their counsels without being actually served, on the first date itself.

The petitioners have been duly represented by their counsels on each date of hearing before the Ld. Trial Court in the complaint case no. C/28190/2019.

That orders dated 22.03.2022, 25.04.2022 and 11.05.2022 are clearly an abuse of the process of Court and are liable to be set aside and quashed along with the proceedings in C/28190/2019 as there are no ingredients as required to constitute the offences as alleged in the complaint.

That to insist upon the personal attendance of the petitioners would tantamount to an abuse of the process of court as the issue involved in the present set of circumstances is purely civil and not criminal. The process of court ought not to be permitted to degenerate into a weapon of oppression and persecution.

The impugned orders dated 22.03.2022, 25.04.2022 and 11.05.2022 are otherwise bad in law and are liable to be quashed along with the proceedings in C/28190/19.

Mr. Ayan Bhattacharya, learned Counsel for the Opposite Party has argued that it is clear that the conduct of the petitioners and the materials on record make out a prima facie case of cognizable offences against all the petitioners. The orders challenged passed by the learned Magistrate are all in accordance with law and need no interference by this court. It is further submitted that the petitioners having clearly committed the offences are now trying to obstruct the proceedings which if allowed will cause serious miscarriage of justice and will be clear abuse of process of the court and as such all the revisional applications are liable to be dismissed.

Heard the counsels at length. Perused the materials on record.
Considered.

Section 205 Cr.P.C. lays down:-

“205. Magistrate may dispense with personal attendance of accused.

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.”

Section 305 Cr.P.C. lays down:-

“305. Procedure when corporation or registered society is an accused. Right of person against whom proceedings are instituted to be defended.”

Section 317 Cr.P.C. lays down the prosecution for inquiries and trial being held in the absence of accused in certain cases.

By the order dated 11.05.2022, the Magistrate, in C-28190 of 2019 rejected the application under Section 205 Cr.P.C. and issued warrant of arrest against the accuseds with the findings:-

“.....The application under Section 205 Criminal Procedure Code is dismissed at this stage as the accused have not entered their appearance, as yet.....”

The Supreme Court in ***Bhaskar Industries Ltd. vs. Bhiwani***

Denim & Apparels Ltd. (2001) 7 SCC 401 held that:-

*“It is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if he/she finds that insistence of personal presence would inflict enormous suffering or tribulations to the accused, and the comparative advantage would be nominal. While the Apex Court laid down aforesaid principle in dealing with a summons case, it has thereafter applied the same principles in the warrant case of *Puneet Dalmia v. CBI* (2020) 12 SCC 695.”*

“Section 205 gives discretion to the court to exempt a person from personal appearance right from the stage of commencement of the proceedings; Section 317 covers the stage after commencement of the inquiry of trial. Thus effectively, an accused is entitled to seek exemption from personal appearance right from the initial stages including the first appearance, after satisfying the court with proper reasons. Further, the accused need not appear personally to seek exemption. Section 205(1) states that even at the stage of issuing summons, the Magistrate may, if he sees reasons so to do, dispense with the personal attendance of the accused and permit him to appear through his pleader. This discretion may be exercised by the Magistrate even in the absence of any prayer by the accused for exemption from personal attendance.”

(Sushila Devi vs. Sharda Devi (1961) 1 CriLJ 819.

From the said view of the Supreme Court it is clear that the Magistrate was wrong in his findings/reasons that as the accuseds had

not entered their appearance (meaning personal appearance) before the court, the application under Section 205 Cr.P.C. be dismissed.

As discussed earlier, the said powers of a Magistrate can be exercised at any stage of proceedings or throughout the said proceedings and as such the said prayer can be considered right from the stage of commencement of the proceedings even at the stage of issuing summons and the accused need not appear personally.

Thus the ground on which the said application under Section 205 Cr.P.C. has been dismissed is not in accordance with law as the discretion (if any) of the Magistrate was not judicious and the said order dated 11.05.2022 is thus liable to be set aside/quashed. Consequently the orders dated 22.03.2022 and 25.04.2022 by which the learned Magistrate issued notice upon the accused 1 to 3 and directed requisites for issuance of attachment and warrant of arrests respectively are also liable to quashed and set aside.

The petitioner's further case is that clause 15.1 of the **Distributor Agreement dated 01.12.2012 between the parties, relates to the governing law, Arbitration and official language.**

The dispute in this case is admittedly related to the said agreement of distributorship which includes the terms and conditions relating to defective products (as in this case).

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

Now the orders dated 29.06.2019 and 31.07.2019 in C.S/28190/2019 has caught the attention of this court.

Vide order dated 29.06.2019 the Chief Metropolitan Magistrate, Calcutta took cognizance and transferred the case.

Vide order dated 31.07.2019, the Metropolitan Magistrate, 9th Court, Calcutta on holding an enquiry as required under Section 202 of Cr.P.C. held that the offences as alleged has been prima facie established against the accused persons and issued process.

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

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

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

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

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

Re : Point No. (i) :

9. *The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :*

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

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

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

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

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

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or

has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

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

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

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their

power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

Now in the lines of the judgment under reference let us see if the allegations in the complaint in the present case, if accepted on face value, constitute any offence under Sections 406/418/420/120B IPC.

Section 406 IPC lays down:

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

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

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

Section 405 Indian Penal Code defines :-

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or

converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

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

(supra) the Supreme Court held:-

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

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

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

[Emphasis supplied] In Jaswantrao Manilal Akhaney v. State of Bombay [AIR 1956 SC 575], this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is 'entrustment'. It, however, clarified :

".. But when S. 405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the

creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

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

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

'Hypothecation' means a charge in or upon any movable property, existing in future, created by a borrower in favour of a secured creditor, without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property. (Borrowed from section 2(n) of Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002)"

But there is no 'entrustment of the property' or 'entrustment of dominion over the property' by the

hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor.

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

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

In the present case, the petitioners are admittedly the owners of the products and as such there was no “entrustment” in favour the petitioners. Clause 10.4 of the distributor agreement clearly states about the ownership.

As such the offence of criminal breach of trust by the petitioners has not been committed and the cognizance taken by the Magistrate is bad in law.

Section 420 IPC 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
 - (a) the person so induced to do anything which he would not do or omit if he were not so deceived, and
 - (b) 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.

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

Section 418 IPC 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.”*

Admittedly there is a business relationship between the parties. It is for the benefit of both the parties that the distributor agreement has been executed. Cheating with knowledge to cause loss to the complainant herein will also cause loss also to the petitioners who for extension of their business entered into the said agreement. From the petition of complaint, no such materials has been produced to prima facie show that the petitioners intentionally with knowledge cheated the complainant. The dispute between the parties is regarding defective products and their replacements (within time). As such the ingredient required to constitute the said offence under Section 418 IPC is also absent against the petitioners.

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.”

The petitioner’s learned Counsel in this case has relied upon the following rulings.

- (a) *Hridaya Ranjan Prasad Verma & Others vs. State of Bihar & Another.*
- (b) *V.P. Shrivastava vs. Indian Explosives Limited & Others (2010) 10 SCC 361.*
- (c) *S.W. Palanitkar & Others vs. State of Bihar & Another (2002) 1 SCC 241.*
- (d) *Suvra Dey & Others vs. State of West Bengal & Another, CRR No. 3280 of 2018.*

In the present case admittedly there was no dispute between the parties from 2012 to 2017. (Legal notice and petition of complaint).

The learned counsel for the opposite parties has relied upon the following rulings:-

- (i) ***In State of Madhya Pradesh vs. Awadh Kishore Gupta and others, 2003 AIR SCW 6501.***

“13.While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only *prima facie* be satisfied about existence of sufficient

ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.....”

(ii) In Ravindra Kumar Madhanlal Goenka & Anr. Vs.

M/s. Rugmini Ram Raghav Spinners P. Ltd., 2009

AIR SCW 3211.

“14.....While entertaining a petition under Section 482 Cr.P.C.. the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are prima facie materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases.”

(iii) In S.P. Gupta vs. Ashutosh Gupta, 2010 AIR SCW 3683.

“13.....However the aforesaid provision clearly indicates that if at the very initiation of the negotiations it was evident that there was no intention to cheat, the dispute would be of a civil nature. But such a conclusion would depend on the evidence to be led at the time of trial. In the instant case, the complaint does make out a prima facie case to go to trial.”

The said observation supports the case of the petitioners as admittedly (from notice and petition of complaint), at the very initiation (from 2012 to 2017 (5years) of the negotiations it is evident that **there**

was no intention to cheat. Such a dispute would be of civil nature (which would depend on the evidence to be led at the time of trial). And in the present case the complaint as discussed earlier also does not make out a prima facie case to go to trial.

(iv) In Alka Bapu Gund vs. Prakash Kanhaiyalal Kankaria, AIR 2017 SC 724.

“5. The High Court in the impugned judgment seems to have embarked on a virtual trial of the case though it was entertaining an application under Section 482 Cr.P.C./Article 227 of the Constitution of India for quashing of the order taking cognizance and the complaint as a whole. The probity of the evidence tendered by the complaint’s witnesses prior to issuance of process was even gone into by the High Court.”

No such exercise has been undertaken by this court in this case.

(v) Priti Saraf vs. State of NCT of Delhi, AIR 2021 SC 1531: AIR Online 2021 SC 148.

“28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception.

32. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420 IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that

whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 CrPC for quashing such proceedings.”

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 Jiwarekar 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.....”*

The Supreme Court in **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021**, citing several precedents held :-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under **Section 482** Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

In Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, the Supreme Court held :-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the**

allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

In ***Umesh Kumar Vs State of Andhra Pradesh and Anr.***

(Supra) the Supreme Court **also** held :-

“20. *The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide Pepsi Foods Ltd. v. Judicial*

Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158]* this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the

material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : *Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*”

22. In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of *whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)*

“68. ... *Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to ‘killing a stillborn child’. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report.*”

(emphasis supplied)

23. *The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)*

“16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”

24. In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] *this Court held as under : (SCC p. 43, para 74)*

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] *this Court held as under : (SCC p. 529, para 8)*

“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also *K. Karunakaran v. State of Kerala* [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251].)

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

27. The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”

In the instant case, cognizance has been taken and process has been issued (including attachment and warrant of arrest) by the Magistrate concerned.

The Supreme Court in State of Maharashtra vs. Salman Salim Khan (2004) 1 SCC-525, also held:-

“12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....”

The materials in the present case including the written complaint clearly shows that there was no dispute from the year 2012 to 2017 (initial period). The ingredients of ‘entrustment’, dishonest intention leading to delivery of property and cheating with knowledge to cause wrongful loss are not on record. The dispute is clearly civil in nature, may be even a commercial dispute but the ingredients required to constitute the criminal offences alleged are totally absent **(1989 SCC online cal 284, J.Th.Zwart & ors. vs. Indrani Mukherjee)**.

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

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

Accordingly, criminal revisional application being **CRR 660 of 2020 with CRR 661 of 2020 with CRR 1855 of 2022 stand allowed.**

The proceedings being C/28190/2019 pending before the learned Metropolitan Magistrate, 9th Court, Calcutta including all orders therein is quashed.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

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

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

(Shampa Dutt (Paul), J.)