

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1067 of 2020

Sujit Barman Roy & Anr.

Vs.

The State of West Bengal & Anr.

For the petitioners : Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee,
Ms. Manaswita Mukherjee.

For the State : None.

For the Opposite Party No. 2 : None.

Heard on : 21.06.2023

Judgment on : 12.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding pending in connection with complaint case no. A.C 3074/2019 now pending before the court of the learned 7th Judicial Magistrate at Alipore, South 24 Parganas and all orders passed in connection therewith including order dated 29.05.2019 whereby the learned Additional Chief Metropolitan Magistrate, Alipore, South 24 Parganas was pleased to take

cognizance of the offences alleged in the petition of complaint filed by the opposite party no.2 and order dated 03.08.2019 whereby the learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas was pleased to issue process against the petitioners herein under Sections 420/406/34 of the Indian Penal Code.

2. The petitioner's case is that a complaint under Section 200 of the Code of Criminal Procedure was preferred by the opposite party no.2 before the court of the learned Additional Chief Judicial Magistrate at Alipore, South 24 Parganas, inter alia, alleging the commission of offences under Sections 406/420/34 of the Indian Penal Code against the petitioners and another co-accused person, namely, Amiya Bhowmick registered as complaint case no. A.C-3074 of 2019.

3. The allegations as leveled in the said complaint are inter alia, to the effect that:-

“It was alleged that the petitioners herein were the owners of a landed property measuring more or less 4 cottahs situated at New Town, Rajarhat, being plot No.CE/1/B/68 AC1 and were in search of a developer for the construction of a multi storied building on the said land. It was alleged that the co-accused person namely Amiya Bhowmick acted as a mediator and introduced the petitioners with the opposite party no.2. It was alleged that a memorandum of understanding was signed by and between the parties. It was also alleged that the opposite party no.2 also executed certain additional jobs which were not included in the Memorandum of Understanding dated 26.03.2012. It has been specifically alleged by the opposite party no.2 in paragraph 10 of the petition of complaint that arrear bills amounting to Rs.18,50,000/-, was allegedly not paid by the petitioners herein.”

4. It is submitted that, on a bare reading of the petition of complaint, it becomes apparent that the opposite party no.2, completely suppressed the aspect of payments made to him by the petitioners herein.

5. The learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas was pleased to take cognizance.

6. The learned 7th Judicial Magistrate, ignoring the settled principles of law and ignoring the dubious conduct of the opposite party no.2, vide order dated 03.08.2019 was pleased to issue summons against the petitioners herein and co accused Amiyo Bhowmick under Sections 406/420/34 of the Indian Penal Code.

7. **Mr. Rajdeep Majumder, learned counsel for the petitioners** has submitted that the petitioners are innocent and are in no way connected with any offence far less the offences alleged herein.

8. **The petitioners state** that the facts which are germane for effective adjudication are as follows:-

a) That the petitioners had an obligation to make payment to Finix Construction only in accordance to the progress of the work. That all throughout the opposite party no.2 resorted to dishonest and unfair practice to squeeze money from the petitioners herein. The opposite party no.2 deprived and cheated his partner Biman Roy. Furthermore said Biman Roy privately complained to the petitioners as to how he had been cheated from time to time in the matter of payment by the opposite party no.2.

b) There were several other aspects of the memorandum of understanding which was not complied by the opposite party no.2.

c) In spite of acting contrary to the requirements stipulated in the memorandum of understanding, the opposite party no.2 went on unabashedly to extort money from the petitioners by suspending work for a long spell of time. It was the petitioners themselves who paid for installing an elevator and fire resistant doors even though the same was the duty of the opposite party no.2 and the partnership firm.

d) On a consideration of the prices of all the above stated materials which have been paid by the petitioners from the total project cost, it would be evident that the petitioners paid the opposite party no.2 far in excess of their entitlement.

e) From time to time by delaying construction the complainant party used to take money from the petitioners.

f) The complainant and his partner finally came to the erstwhile residence of the petitioners on 23.09.2013 and as per their demand a further payment of Rs.6 lacs and Rs.8 lacs by two cheques were made by the petitioners herein. This was the last payment made by the petitioners to the opposite party no.2 directly.

g) The opposite party no.2 and his partner agreed in writing that they would not ask for any further amount of money from the petitioners until and unless construction of the building is fully completed and a certificate of completion is obtained and handed over to the petitioners within the time period mentioned in the said agreement.

h) After a few days, the complainant stopped making any construction at the said plot. The petitioners over telephone time and

again requested them to complete the construction within 40 days from 23.09.2013 as promised in the work agreement. However, the opposite party no.2 did not act in terms of the said work commitment, instead, the opposite party no.2 put a lock on the main gate of the building without clearance from the petitioners. They were asked merely to construct the building in terms of the sanctioned plan. Being lawful owners of the property the petitioners did not give up possession of the property at any point of time to the complainant.

i) The petitioners in such aforesaid circumstances had to approach the New Town Police Station for such illegal acts of the opposite party no.2. In the presence of the New Town Police Station, the opposite party no.2 and his partner opened the lock and removed it.

j) In such circumstances, the petitioners had to engage some labourers and complete the remaining construction of the building themselves. After completion of the construction, petitioner himself had to approach the New Kolkata Development Authority with the help of the architect for issuance of completion certificate and plan. Sometime thereafter, NKDA authorities issued completion plan and certificate to the petitioners upon payment of necessary fee. Such fee was also supposed to be paid by the opposite party no.2 and his partner. The petitioners regretfully state that the respondent did not even pay the fee of the architect even though the said architect was appointed by the respondent. Such fee was also paid by the petitioners.

k) The order taking cognizance and the order issuing summons was passed without considering the following:-

i) The matter entirely pertains to civil jurisdiction and not even a prima facie case is made for offences against the petitioners under Sections 420, 406 and 34 of the Indian Penal Code, even if the allegations contained in the complaint are taken on their face value though not accepting the same.

l) The statement of solemn affirmation of the opposite party no.2 clearly reflects that a sum of Rs.83 lakhs has already been paid by the petitioners to the opposite party no.2, and it has been reiterated time and again by the Hon'ble Apex Court that when there has been substantial payments made prior to the initiation of criminal proceedings, the same would not constitute the ingredients of the offences of cheating and criminal breach of trust.

9. That the charge under Section 420 of the IPC is a misnomer. Section 420 of IPC defines "cheating and dishonestly inducing delivery of property".

10. The petitioners herein had not been entrusted with any property of the opposite party no.2, which could have been misappropriated by the petitioners. In the absence of the element of 'entrustment' in favour of the petitioners and 'misappropriation' thereof, no case of offence of criminal breach of trust can be said to have been made out.

11. The petitioner further submits that:-

(i) In ***Medmeme, LLC and Ors. vs. Ihorse BPO Solutions Pvt. Ltd.*** **2017 (6) SCALE 503** quashed the criminal proceedings on the ground that:-

"11. After going through the allegations contained in the complaint and the material on record, we are of the firm conclusion that the matter entirely pertains to civil

jurisdiction and not even a prima facie case is made out for offences under Sections 420, 406, 409 read with Section 120B of Indian Penal Code even if the allegations contained in the complaint are to be taken on their face value. The complaint gives clear impression that it was primarily a case where the respondent had alleged breach of contract on the part of the appellants in not making the entire payments for the service rendered to the appellants. On the other hand, it is not in dispute that substantial amount have been paid by the appellants to the respondent-company for the services rendered.”

- (ii) In **G. Sagar Suri vs. State of UP 2000(2) SCC 636**, the Hon'ble Supreme Court observed that:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of a criminal offence. Criminal proceedings are not a shortcut 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.”

- (iii) In **Pepsi Foods Limited and Anr. vs. Special Judicial Magistrate and Ors. (1998) 5 SCC 749** the Supreme Court observed that:-

“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 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 the 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.”

12. It becomes apparent that as per the allegations, substantial amount of payment has been made thereby eliminating any aspect of deception at the very inception of the transaction.

13. For that the impugned proceeding is otherwise bad in law and thus is liable to be quashed.

14. In spite of appearing on earlier occasions, the learned counsel for the opposite party no. 2 has failed to appear at the time of final hearing.

15. **The present case of the complainant** is that by virtue of the memorandum of understanding he has received Rs.83,00,000/- on completion of the project. As per the complainant, a sum of Rs.18,50,000/- is still due to him and that allegedly the petitioners have taken forcible possession of the property.

16. The present case is under Section 406/420/34 of IPC.

17. The Supreme Court in ***Inder Mohan Goswami & Anr. Vs State of Uttaranchal & Ors., Appeal (Crl.) 1392 of 2007, on 09.10.2007***, held:-

“The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly

an abuse of the process of the court. Scope and ambit of courtspowers under section 482 Cr.P.C.

This court in a number of cases has laid down the scope and ambit of courtspowers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (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 powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

Discussion of decided cases Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. DPP [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in DPP v. Humphrys [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the courts power to prevent such abuse is of great constitutional importance and should be jealously preserved.

In R.P. Kapur v. State of Punjab AIR 1960 SC 866, this court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) *where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;*

(ii) *where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;*

(iii) *where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

This court in **State of Karnataka v. L. Muniswamy & Others** (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be

permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

*In **Chandrapal Singh & Others v. Maharaj Singh & Another** (1982) 1 SCC 466, in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at page 467 as under:-*

A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous. The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

*This court in **Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others** (1988) 1 SCC 692 observed in **para 7** as under:*

7. *The legal position is well settled 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 is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts*

of a case also quash the proceeding even though it may be at a preliminary stage. In State of Haryana & Others v. Bhajan Lal & Others 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

*This court in **Janata Dal v. H. S. Chowdhary & Others** (1992) 4 SCC 305 observed thus:*

*132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles. **In G. Sagar Suri & Another v. State of UP & Others** (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.*

*This court in **Roy V.D. v. State of Kerala** (2000) 8 SCC 590 observed thus:-*

18. It is well settled that the power under section 482 Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which

*are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice. This court in **Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another** (2005) 1 SCC 122 observed thus:-*

*It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. In **Indian Oil Corporation v. NEPC India Ltd. & Others** (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that 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. The question before us is - whether the case of the appellants comes under any of the categories enumerated in **Bhajan Lal** (supra)? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120B IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the*

appellants, the ingredients of the offences and the averments made in the FIR/complaint.”

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

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

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

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

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

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

20. In ***M/s Indian Oil Corporation vs. M/s NEPC 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."

21. **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 406/420/34 IPC.

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

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

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

- (1) Mens rea is essential ingredient of offence.
- (2) There must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract.
- (3) The accused was entrusted with the property or domain over it.

- (4) He dishonestly misappropriated or converted to his own use such property.
- (5) He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of-
 - (a) Any direction of law prescribing the mode in which such trust is to be discharged, or
 - (b) Any legal contract made touching upon the discharge of such trust."

23. **Section 405 of the 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"."

24. In ***M/s. Indian Oil Corporation vs. M/s NEPC 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. Negating 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.....”

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

26. The memorandum of understanding clearly state about the ownership.

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

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

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

either description for a term which may extend to seven years, and shall also be liable to fine.

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

- (1) There should be fraudulent or dishonest inducement of a person by deceiving him;*
- (2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
- (b) the person so induced to do anything which he would not do or omit if he were not so deceived, and*
- (c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.*

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

- (A) Deceit, that is to say dishonest or fraudulent misrepresentation, and*
- (B) Inducing the person deceived to part with property.”*

29. **In the present case** there is no case against the petitioners that they **dishonestly induced the complainant to deliver any property**. The main allegation is regarding balance payment which is governed by the memorandum of understanding and thus subject to proof before the appropriate forum.

30. There was no inducement whatsoever by the petitioners as required. As such the essential ingredients required to constitute an offence under

Section 420 IPC being prima facie not present, the offence alleged cannot be held, to have been committed by the petitioners/accuseds.

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

32. Admittedly there was an agreement between the parties. It is for the benefit of both the parties that a memorandum of understanding has been executed and thus the dispute is clearly a civil dispute, there being no criminal element prima facie present in the present case.

33. 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 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.”

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;

(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.”*

34. This Court also relies upon the judgment of the Supreme Court in ***Birla Corporation Ltd. vs. Adventz Investments and holdings Limited & Ors., Criminal Appeal no. 875 of 2019*** with ***Criminal Appeal no. 877 of 2019*** with ***Criminal Appeal no. 876 of 2019, on 09.05.2019***, 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).

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

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

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

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

38. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s).....of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that

allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

*41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not*

hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have

extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just

conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**”*

39. In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the petitioners in the cognizable offences as alleged. As such the proceedings in this case is liable to be quashed.

40. **CRR 1067 of 2020 is thus allowed.**

41. The proceedings being complaint case no. A.C 3074/2019 now pending before the court of the learned 7th Judicial Magistrate at Alipore, South 24 Parganas and all orders passed in connection therewith including order dated 29.05.2019 whereby the learned Additional Chief Metropolitan Magistrate, Alipore, South 24 Parganas was pleased to take cognizance of

the offences alleged in the petition of complaint filed by the opposite party no.2 and order dated 03.08.2019 whereby the learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas was pleased to issue process against the petitioners herein under Sections 420/406/34 of the Indian Penal Code, is hereby quashed.

42. No order as to costs.

43. All connected Applications stand disposed of.

44. Interim order if any stands vacated.

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

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

(Shampa Dutt (Paul), J.)