

**IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

**IA No: CRAN/1/2018 (Old No: CRAN 1714/2018),
CRAN/2/2018(Old No: CRAN 1861/2018),
CRAN/7/2019(Old No: CRAN 1883/2019),
CRAN/8/2021**

In

**CRR/522/2018
Kanakendra Das**

Vs.

The State of West Bengal & Anr.

With

CRAN/1/2018(Old No: CRAN 2679/2018)

In

**CRR/1584/2018
Reba Kundu**

Vs.

The State of West Bengal & Anr.

With

**IA No: CRAN/1/2018(Old No: CRAN/2173/2018),
CRAN/6/2019 (Old No: CRAN/1882/2019),
CRAN/7/2021**

In

**CRR/1683/2018
Subhajit Kundu**

Vs.

The State of West Bengal & Anr.

For the petitioner	:	Mr. Sudipto Moitra, Sr. Adv. Mr. Samiran Mondal Mr. Abhinaba Dan Mr. Nitish Samanta Mr. Dwaipayan Biswas
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For the opposite party no.1/State : Mr. Saswata Gopal Mukherjee, Ld. PP
Mr. Madhusudan Sur
Mr. Dipankar Pramanick

For the Opposite Party No.2 : Mr. Sukanta Chakraborty
Mr. Anindya Halder
Mr. S.T. Meena

Finally heard on : 10.04.2023

Judgment on : 10.07.2023

Ajoy Kumar Mukherjee, J.

1. Being aggrieved by and dissatisfied with the order dated 24.10.2016 passed by Chief Judicial Magistrate, Cooch Behar and the initiation of the criminal proceeding being Kotwali Police Station Case No. 1303 of 2016 dated 04.12.2016 under sections 409/420/471/34 of the Indian Penal Code read with Section 13(1) (d) of the Prevention of Corruption Act and the charge sheet and subsequent orders passed thereto, present application under section 482 of the Code of Criminal Procedure (hereinafter called as Cr.P.C.) has been preferred, separately by 3 accused persons/petitioners herein, seeking quashing of said proceeding being CRR no, 522 of 2018, CRR 1683 of 2018 and CRR 1584 of 2018. Since issues involved in the all the three applications are almost same, all the aforesaid three applications are disposed of by this common order.

2. On 24.10.2016 one Shri Samrat Kundu filed a complaint under section 156 (3) of the Cr.P.C., against the petitioners and others alleging that the Government of West Bengal Department of Municipal Affair through their G.O. No. 185 (sanction)/ MA/P/C-10/IG-2/2015 dated 17.09.2013 sanctioned huge

amount to the tune of Rs. 1,77,75, 000/- for different developmental works for Cooch Behar Municipality. Said amount was allotted against specific work with the direction to complete the work within stipulated period and works in question are to be done through the Cooch Behar Municipality. It is alleged in the complaint that in respect of the said work, no E-tender whatsoever has been sought for, nor there was any paper circulation and thereby the chairman of Cooch Behar Municipality (petitioner of CRR 1584/2018) has flouted the Government norms, rules and regulations, and further more no sorts of work have been done in respect of the construction of paver block at Bhavani Ganj Bazar nor any renovation work was carried out in Harizan quarter building at Gandhinagar as mentioned in the project work. It is further alleged that said petitioner/chairman Reba Kundu and petitioner/councillor Subhajit Kundu (petitioner of CRR 1683/2018) by utilising their post of Cooch Behar Municipality in connivance with the other accused persons which includes, executive officer, the accountant (petitioner of CRR 522/2018) and the ward councillor of ward no. 11 of Cooch Behar Municipality fabricated and manufactured false and fictitious vouchers, bills and other documents showing utilization of the funds for works and with such fabricated and forged documents surreptitiously withdrawn public money from the Cooch Behar Treasury by submitting false bills on different dates in between November, 2015 to April, 2016 and said petitioner/chairman Smt. Raba Kundu in this way withdrawn the entire amount of the said project work under the development Scheme, from the treasury of Cooch Behar. Such financial irregularity and illegalities were also published in a local daily newspaper. By

the impugned order learned Magistrate asked the police to start investigation treating complainant's complain as First Information Report, (in short FIR) and accordingly investigation started and after completion of investigation police submitted charge sheet against eleven accused persons including the present three petitioners, under sections 409/420/471/34 of Indian Penal Code and section 13(1) (d) of prevention of corruption Act, 1988.

3. Mr. Moitra learned counsel appearing on behalf of the petitioners submit that initially the petitioners had no knowledge about the initiation of said case. Aforesaid Complainant filed one writ application being WP No. 1082(W) of 2017, wherein he sought for a direction upon police authorities to take appropriate steps to conduct fair investigation in aforesaid case. After receiving copy of the writ application the petitioners came to know for the first time about the said proceeding wherein this court added section 13(1) (d) of Prevention of Corruption Act, while disposing the writ application.

4. Mr. Moitra further submits that petitioners being the chairman, councillor and accountant being members of Cooch Behar Municipality, has no nexus with the present proceeding for utilizing of the fund allotted by the Government of West Bengal, Municipal Affairs Department. Board of Councillors of Cooch Behar Municipality unanimously had taken a resolution on 30.09.2015 for utilizing the said government fund. It was decided in the said meeting that the work would be executed by the PWD section of the Municipality with the supervision of Sub-Assistant Engineer of PWD. The petitioners have no role to play in the said proceedings, but they have been implicated falsely and Chief Judicial Magistrate without considering the said

petition of complaint and without assigning any reason thereto, passed the order impugned and acted like a post box, directing to initiate the investigation, treating the petition of complaint as FIR.

5. Mr. Moitra contended that FIR maker, being an outsider has no *locus standi* to implicate public officers of Municipality making false allegations, in respect of which petitioners are not connected in any way. Complainant Samrat Kundu, no way connected with the Municipality and further he has not sworn any affidavit in the petition of complaint under section 156(3) of Cr.P.C, for which such complaint is not sustainable in the eye of law. He further contended that it is admitted in charge sheet that works were executed but after the lapse of due time and as such alleged conspiracy of petitioners does not arise. Mr. Moitra argued that there was no internal audit of Cooch Behar Municipality wherefrom it appears that the money allotted by the government was misappropriated by the Municipality. Accordingly investigation was perfunctory. That apart, since the petitioners were discharging public duty, except without taking any previous sanction from the Government, no cognizance of any offence which has been allegedly committed, can be taken but in the instant case learned Additional District Judge, without any sanction from the Government, has registered the case as special case No. 10 of 2018 and issued warrant of arrest against present petitioners along with others. Petitioners accordingly prayed for quashing of said criminal proceeding.

6. Mr. Saswata Gopal Mukherjee learned counsel appearing on behalf of the opposite party no. 1/State submitted that the prayer for anticipatory bail of one of the petitioners, Subhajit Kundu has been rejected by this High Court

but inspite of that the petitioners never co-operated with the investigating agency and they have now preferred this Application before this court with an evil motive to protract the trial. The point raised by the petitioners that the complaint filed by the defacto complainant under section 156(3) is defective, was never taken by the petitioners in the earlier proceeding. Since the present investigation was continued as court-monitored investigation, as appearing from the different orders passed by this High Court, the question of quashing the proceeding on the ground of technicalities does not arise. The present case is primarily distinguishable from the cited judgments placed by the petitioners, since no such case, investigation conducted was court-monitored investigation. In fact as per direction of this court, during investigation, section 13 of the Prevention of Corruption Act was added by this High Court. Furthermore after completion of investigation police submitted charge-sheet as well as supplementary charge sheet and as such there is no scope to say that the contents in FIR are frivolous or such allegations have been made with *malafide* intention.

7. Mr. Mukherjee further contended, as charge-sheet has been submitted and cognizance has already been taken by the Court below, the petitioners can very well raise all these points before the court below at the time of framing of charge and/or during trial. In this context Mr. Mukherjee further submitted that the application under section 156 (3) was never challenged and since this is a court monitored investigation, so the direction for accompanying affidavit with complaint as laid down in ***Priyanka Shirvasta's case*** reported in **(2015) 6 SCC 287** is not applicable in the present context and on the basis of the

Court's direction, the investigation was conducted and after completion of investigation charge-sheet has been submitted in the present case and accordingly present application under section 482 is a frivolous application and liable to be rejected in limine.

8. Mr. Chakraborty learned counsel appearing on behalf of the opposite party no. 2 submits that contents of the FIR prima facie discloses misuse of public funds by public servant. Since initiation of the criminal proceeding, all along the investigation was conducted by the police officer not below the rank of Deputy Superintendent of Police under the monitoring of this High Court and the report was also submitted under the supervision of the High Court. The argument advanced by the petitioners about alleged irregularity in allowing the petition under section 156(3) of the Code are not tenable in the eye of law. Moreover in the order dated 24.10.2016, it appears that court has recorded that he has seen Petition of complaint and affidavit and heard the complainant and also the learned advocate for the complainant and then after considering the same allowed the prayer. The defacto complainant was also examined on dock before the learned court below and furthermore the defacto complainant had filed the writ petition being WP. No. 1082(W) 2017, stating the same allegation on oath and annexing the complaint petition at page 58 of the said Writ petition and the FIR at page 83-85 of the said writ petition on the basis of which this High Court was pleased to add section 13(1) (d) of the Prevention of Corruption Act. The petitioners have failed to produce any document or raised any kind of objection before filing the present Application. In fact petitioners have challenged the order dated 24.10.2016 only after filing of the charge-sheet

which was submitted on 15.02.2018. Mr. Chakrabortty further contended that **Priyanka Shrivasta's case (supra)** is not applicable in the present case firstly because it is a case of court monitored investigation and secondly from the impugned order it appears that the court below has recorded that he had perused the affidavit and accordingly it must have with the record.

9. Mr. Chakrabortty further submits that the present application under section 482 is not maintainable since the same is hopelessly barred by limitation and no explanation has been given in the present application nor any separate application seeking condonation of delay has been filed along with the applications. In fact the instant applications have been filed under section 482 of the Cr.P.C. which do not permit the petitioners to challenge an order barred by limitation. In this context he relied upon paragraph 8 of the **Bata @ Batakrushna Behera Vs. Annama Behera** reported in **1990 Cri.L.J. 1110** wherein it was held that of course for an application under section 482 Cr.P.C. there is no limitation, but the court is of the view that when there is no limitation for filing an application, the complaint should be filed within the reasonable time. A revision petition challenging an order can be filed within 90 days from the date of the order. The application under section 482 Cr.P.C. should also be filed within a reasonable time so that progress of the case is not disturbed at a belated stage and the court is of the view that period of 90 days, which is at par with a revision petition should be treated as reasonable and if any application under section 482 of Cr.P.C. is filed beyond period of 90 days the petitioner should explain the cause of delay.

10. Regarding the issue of sanction, Mr. Chakrabortty submits that prior sanction from the Government in order to take cognizance of an offence is not applicable here because the petitioners have committed the offence as mentioned in FIR as well as in the charge-sheet, relates to forgery, criminal breach of trust, cheating etc which cannot be said to have discharged in course of their official duty. Secondly section 13(I)(d) of Prevention of Corruption Act has been incorporated by this High Court vide order dated March 23, 2017 and as such question of taking prior sanction is not required. Thirdly in the instant case there is no error or omission or irregularity which resulted in the failure of justice.

11. Regarding allegation of *malafide* it is submitted on behalf of defacto complainant that he filed an application under the Right to Information Act, 2005 and he got all system generated report of receipts and payments showing mis-utilization of funds. Relying upon ***Lalita Kumari Case*** reported in **(2014) 2 SCC 1**, Mr. Chakrabortty contended that the registration of FIR is mandatory under section 154 of Cr.P.C., if the complain discloses commission of a cognizable offence, no preliminary enquiry is permissible in such a situation. In this context he also relied upon in ***Dr. Monica Kumari and another Vs State of Uttar Pradesh & another*** reported in **(2008) 8 SCC 781**. Accordingly Mr Chakrabortty submits that the allegation of *malafide* may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of *malafides* would be no ground for quashing the proceeding. In fact in catena of Judgments it has been held, where investigation has been completed and charge-sheet had been

filed and charges are framed, the High Court should not ordinarily embark upon an enquiry as to the reliability of offences to sustain the allegations made in the complaint which is the function of the Trial court and in this context he further relied upon ***Som Mittal Vs. Government of Karnataka*** reported in **(2008) 2 SCC 753**.

12. Mr. Chakraborty further submits that the submission of the petitioner regarding alternative remedy prescribed under section 431 of the West Bengal Municipality Act 1993 instead of lodging FIR/complaint, is not tenable in the eye of law. This is because section 431 prescribes procedure in order to dissolve the Board of Councillors for gross neglect or serious irregularities in performance of duty, which has got no connection with lodging of an FIR in respect of the offence committed of any board or other members of municipality.

13. At the very outset let me reproduce synopsis of the outcome of investigation, done on the basis of the aforesaid FIR, as appearing in the charge-sheet

“So far the investigation carried out in this case, it is evident that while executing the works by the Cooch Behar Municipality, the process of e-tenders was not observed. Several procedural lapses were found in the matter. On physical inspection of the work sites, it is found that the works were executed, but after the lapse of due time and payment were done earlier to the private parties. Some of the payments were withdrawn as self-drawl which is not Justified as per the guidelines of the Department of Finance, Government of West

Bengal. From the documents collected till date from the Cooch Behar Municipality as well as from the Treasury-I, Cooch Behar, it is well evident that there is huge mismatch and discrepancies in between the sanctioned amount to the project and the actual amount spent by the Cooch Behar Municipality. The fund heads and the expenditure made are mismatched”.

14. In the above backdrop the petitioners have prayed for quashing the said proceeding mainly on the following grounds:-

- (i)** the application under section 156(3) of the Cr.P.C., was moved by an interloper and the said application was not in accordance with law as pronounced in the judgment of **Anil Kumar, (2014) 1 SCC (Cri) 35 & Babu Venkatesh and others, (2022) 5 SCC 639.**
- (ii)** The application moved before the learned Chief Judicial Magistrate, Cooch Behar under section 156 (3) Cr.P.C. without accompanying affidavit and no affidavit was affirmed by the defacto complainant in connection with the aforesaid petition filed under section 156 (3) of the Cr.P.C.in gross violation of **Priyanka Shrivastava case (Supra).**
- (iii)** Learned Magistrate passed the order impugned directing the Inspector in-charge to treat the petition of complaint as FIR without applying his judicial mind and without being satisfied that the allegations as made, constitute prima facie cognizable offence. As said order passed in connection with application under section 156 (3) of Cr.P.C, does not reflect the application of mind or

satisfaction of learned magistrate to assess prima facie cognizable offence, on that score alone the order impugned is nullity and if the foundation of the impugned proceeding having no leg to stand in the eye of law, all subsequent proceedings must be held to be mere abuse of the process of the law and court.

- (iv)** The concerned authority did not obtain sanction in the impugned proceeding even after charge sheet was submitted nor at the time of taking cognizance. Under the law sanction is to be obtained to prosecute the petitioners under the penal law as contemplated under section 197 of the Cr.P.C. and prosecuting the petitioners under section 13(1) (d) of the prevention of Corruption Act, 1988, sanction is required under section 19 of the Act of 1988. Contents of the charge-sheet shows, while executing works by the Cooch Behar Municipality, the process of E-tender was not observed or there are several procedural lapses which were found in the matter. If that be so then there is proper procedure under the Municipal Act is to initiate departmental proceedings against the petitioners and as such proceedings under the Indian Penal Code is not maintainable, specially when the aggrieved person has alternative remedy under the provisions of section 431 of the West Bengal Municipal act instead of lodging FIR.
- (v)** Complainant has filed the said complaint with *malafide* motive and to take revenge against the petitioners.

15. Now let me examine whether the aforesaid grounds justify the quashing of the proceeding or not. One main allegation of the petitioner is that the FIR maker is an interloper and as much the application is not entertainable in the eye of law. It is the case of defacto complainant that through an application under the Right to Information Act 2005, he got all system generated report of receipts and payments from the concerned office. He also contended that in a local newspaper, such allegation of misappropriation of government fund was published as a news, wherefrom he got information about mis-utilization of funds.

16. It is not in serious dispute in the present case that the contents of FIR discloses act of misappropriation of public fund and/or misuse of public property which, if proved, is certainly an offence against the society at large. Needless to say that *locus standi* of a complainant, involving offence against the society is a concept, not familiar with criminal jurisprudence. Offence against society involving an act or omission made punishable by any law for the time being in force, is not merely an offence committed in relation to any individual or any particular institution which suffers harm, but is also an offence against the society.

17. The term "*locus standi*" came up for consideration before Apex Court in ***Ratanlal Vs. prahlad Jat and others*** reported in **(2017) 9 SCC 340** wherein it was specifically observed:-

"8. In Black's Law Dictionary, the meaning assigned to the term "locus standi" is "the right to bring an action or to be heard in a given forum". One of the meanings assigned to the term "locus standi" in The Law Lexicon of Shri P. Ramanatha Aiyar, is "a right of appearance in a Court of justice". The traditional view of locus standi has been that the person who is aggrieved or

affected has the standing before the court, that is to say, he only has a right to move the court for seeking justice. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in India and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. It is now well-settled that if the person is found to be not merely a stranger to the case, he cannot be non-suited on the ground of his not having locus standi.”

18. Earlier in a salutary judgment on this point in **A.R. Antulay Vs. Ramdas Srinivas Nayak and another** reported in **(1984) 2 SCC 500** it has been specifically held that it is a well recognized principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicate to the contrary. It has been already canvassed that the Act of 1993, nowhere creates any offence of corruption and/or misappropriation of public money or about misuse of public property, nor said Act creates any bar of lodging complaint under the provisions of penal code or excludes operation of penal code by necessary implication. Relying upon Antulay’s case (supra) in a subsequent decision, same principle reiterated in **Manohar Lal Vs. Vinesh Anand & others** reported in **(2001) 5 SCC 407** where it was held:-

“5. Before adverting to the matter in issue and the rival contentions advanced, one redeeming feature ought to be noticed here pertaining to criminal jurisprudence. To pursue an offender in the event of commission of an offence is to subserve a social need — society cannot afford to have a criminal escape his liability, since that would bring about a state of social pollution, which is neither desired nor warranted and this is irrespective of the concept of locus — the doctrine of locus standi is totally foreign to criminal jurisprudence. This observation of ours, however, obtains support from the decision of this Court in A.R. Antulay v. Ramdas Srinivas Nayak [(1984) 2 SCC 500 : 1984 SCC (Cri) 277].”

19. Learned counsel appearing on behalf of the petitioner, Mr. Maitra strenuously argued that application moved before the learned Magistrate , Cooch Behar under section 156 (3) Cr.P.C. without accompanying the affidavit and further no affidavit was affirmed by the defacto complainant in connection with the said application, which is gross violation of the directions made by the Apex Court in **Priyanka Shrivastava Case (supra)** . In this context Mr. Maitra also relied upon **Babu Venkatesh case (Supra), Mukul Roy's Case** reported in **(2019) Cri.L.J. 245.**

20. Though from the order impugned dated 24.10.2016, it appears that learned Magistrate Perused affidavit but it is alleged that no such affidavit was actually accompanied with the said application. However it appears that on the basis of the said direction passed by learned Magistrate and subsequent orders passed by High Court, the investigation was carried out by police officer not below the rank of Deputy Superintendant of Police, under the monitoring of this court and charge sheet was also submitted. On 25th September, 2022 this court finally disposed of the writ application taken into account the supplementary charge-sheet being no. 124/18 dated March, 5th 2018 thereby giving liberty to defacto complainant to pursue any other remedies available in accordance with law, stating further that nothing further remains to be adjudicated in the writ petition. In view of the series of orders passed by this court the argument advanced on the part of the petitioners about alleged irregularities in allowing the petition under section 156(3) of Cr.P.C. in the absence of filing affidavit how far tenable in the eye of law. It is further submitted, due to Police inaction defacto complainant was compelled to file

aforesaid writ petition being No. WP 1082 (w) of 2017 where he stated the same allegation on oath before the High Court and annexed affidavit with writ petition. In fact the petitioners have challenged the order dated 24.10.2016 only after filing of charge-sheet which was submitted on 15.02.2018. In the above background ratio laid down in the judgments cited by Mr. Maitra on behalf of the petitioner, is to be judged in the present context where learned magistrate recorded that he perused the affidavit and he has heard the complainant and secondly the investigation was all along conducted under the monitoring of this court as appears from the orders passed in writ application. All the aforesaid judgments are factually distinguishable from the present case in view of the fact that in the said cases the investigation has not been conducted under the monitoring of High Court and charge-sheet implicating accused persons has not been submitted in a court-monitored investigation. Moreover in those cases basically Civil disputes were tried to be criminalized. In ***Priyanka Shrivasta case (supra)*** the fact was that the borrower of housing loan failed to repay the loan to bank concerned and on action being taken against the borrower by bank authorities under SARFAESI Act, borrower instead of resorting to remedy available under the relevant act, took recourse to section 156(3) Cr.P.C. and getting various FIRs registered against bank authorities was merely trying to harass them with sole intent to avoid loan and not only that by said criminal action bank authorities compelled to concede to borrower's request for one time settlement. In such circumstances, order passed by judicial Magistrate under section 156 (3) Cr.P.C. directing registration of impugned FIR against the Bank authorities without any

application of mind and ignoring the provisions of SARFAESI Act, was held to be not sustainable in law and FIR registered pursuant to said order was quashed. The purpose of passing the direction in the said judgment has also been noted in Paragraph 30 of the said judgment wherein the court categorically held that a stage has come in this country where section 156(3) Cr.P.C. applications are to be supported by an affidavit, duly sworn by the applicant, who seeks the invocation of the jurisdiction of the Magistrate and it was further ordered that in appropriate cases the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. It was made clear in the judgment that such affidavit can make the applicant more responsible. The court was compelled to make such direction as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. Similarly in paragraph 31, the court has categorically held that the warrant for giving a direction that an application under section 156(3) Cr.P.C. be supported by an affidavit, is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law and this will deter him to casually invoke the authority of the Magistrate under section 156 (3) Cr.P.C.

21. Similarly in ***Babu Venkatesh case (supra)*** though Civil Suits were filed with regard to same transactions and though they were contesting as Respondent by filing written statement, yet complainant has chosen to file complain under section 156 (3) Cr.P.C. after a period of one and half years

from the date of filing of written statement, with an ulterior motive of harassing Appellants. In these circumstances the Apex Court has reiterated in the said case also in paragraph 25 and 26 the purpose of making the direction about accompanying affidavit by saying that the court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such requirement, the persons would be deterred from casually invoking authority of the Magistrate under section 156(3) Cr.P.C. in as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

22. In the above backdrop let me consider the background of the present prosecution case. The Department of Municipal Affairs, Government of West Bengal by a government order sanctioned an amount to the tune of Rs 1,77,75,000/- on account of different developmental works in the Cooch Behar municipal area. On 26th, 27th, 28th September, 2016, in a local newspaper, news about irregularities and illegality regarding misappropriation of Government fund allotted by Department of Municipal affairs, Government of West Bengal was flashed out. The complaint after getting information from RTI officer under RTI Act, lodged complain before the police station against the petitioners herein alleging misappropriation of huge Government fund but instead of treating the said complain as F.I.R, Police only registered it as Kotwali P.S, G.D Entry No 386/16 dated 06.10.2016. The opposite party No.2 then by way of letter informed the superintendent of Police, Cooch Behar, about inaction on the part of the concerned police authority on 15.10.2016. In spite of that, when Police sat tight over the matter, O.P. No. 2 /complainant

preferred an application under section 156(3) of Cr.P.C. before the learned magistrate on 24.10.2016. Even after the impugned order of magistrate, the police authorities did not register FIR on the basis of the complaint lodged by the petitioner and for which the complainant filed a put up petition before the chief judicial magistrate in connection with the said application under section 156(3) Cr.P.C. and after hearing, learned Magistrate on 02.12.2016, sent reminder to the concerned police authority to register FIR in terms of his earlier order. After such direction, on 04.12.2016 the FIR was lodged by police being aforesaid FIR no. 1303 of 2016 under sections 409/420/471/34 of the Indian Penal Code. Thereafter again finding reluctance on the part of the police in conducting investigation in a proper manner, the complainant wrote a letter to Superintendent of Police on 15.12.2016. On 13.01.2017 the petitioner preferred Writ Application before this High Court alleging police inaction. This court on the basis of the said Writ Application was pleased to direct the Superintendent of Police, Cooch Behar to enquire into the matter as to why the officer-in-charge of Kotwali P.S. failed and or neglected to Register FIR inspite of direction by Magistrate. In the said order dated 18.01.2017, this High Court was pleased to observe as Follows:-

“In view of the recalcitrant approach on the part of the investigation agency to register the FIR in spite of direction of the Magistrate Under section 156(3), I am of the opinion that no worthwhile purpose would be served in relegating the petitioner before the Magistrate for seeking report as to the program of investigation in the instant case. Moreover where the uncontroverted allegation in the FIR relates to embezzlement of Public funds by public servants having strong political roots, there is every livelihood that investigation in the instant case shall suffer from indifferent indolence which necessitates monitoring by this court in exercise of writ Jurisdiction”.

23. On 23.03.2017 this Court was pleased to direct superintended of police Cooch Behar to take over the investigation in the instant case from the local investigating agency and also added section 13(1) (d) of the Prevention of Corruption Act to the array of offences and further directed to continue with the investigation in the said case by an officer not less than the rank of Deputy Superintendent of Police to file further report in the matter on the next date of hearing. On 15.02.2018 charge-sheet being no. 55 of 2018 dated 13.02.2018 under section 409/420/471/34 of the I.P.C. along with the section 13(1) (d) of the Prevention of Corruption Act was filed before the court below by the investigating agency. Not only that during pendency of the said proceeding, one of the petitioners herein /accused Subhajit Kundu filed anticipatory bail application before this court being CRR 3821 of 2018, which was rejected by the Division Bench of this court. In the above backdrop CRR 522 of 2018 was filed on 15.02.2018 by one of the accused Kanakendra Das and CRR 1584 of 2018 was filed by another accused Reba Kundu on 26.06.2018 and the other application being CRR 1683 of 2018 filed by aforesaid petitioner/accused Subhajit Kundu on 02.07.2018

24. In view of above facts and circumstances of the case and also in view of the filing of charge-sheet wherein specific allegation has been made out against petitioners in the case of a court monitored investigation , the issue of non filing of the affidavit along with the application under section 156 (3) Cr.P.C. even if taken to be true, has become redundant. In another circumstance procedure adopted by Apex Court, monitoring investigation reflected in **Vineet**

Narain and others Vs. Union of India and another reported in (1998) 1

SCC 226 in paragraph 7 & 8 may not be out of context to quote.

“7. We have taken the view that, given the political personalities of the people to be investigated in the “Jain Diaries” case and the time already lost in commencing the investigations, it was advantageous not to hear the matter through and issue a writ of mandamus, leaving it to the authorities to comply with it, but to keep the matter pending while the investigations were being carried on, ensuring that this was done by monitoring them from time to time and issuing orders in this behalf. Our reasoned orders are dated 18-4-1995, 16-1-1996 (Vineet Narain v. Union of India [(1996) 2 Scale (SP) 42]), 30-1-1996 (Vineet Narain v. Union of India [(1996) 2 SCC 199 : 1996 SCC (Cri) 264]), 22-2-1996 [1996 (2) Scale (SP) 84], 1-3-1996 (Vineet Narain v. Union of India [(1997) 4 SCC at p. 778 (Connected Order)]), 13-3-1996 [1996 (4) Scale (SP) 3], 1-5-1996 [1996 (4) Scale (SP) 56], 26-7-1996 [1996 (6) Scale (SP) 24], 9-7-1997 (Vineet Narain v. Union of India [(1997) 5 Scale 254]). Orders in similar matters, being the orders dated 12-2-1996 [1996 (3) Scale (SP) 35], 2-4-1996, 26-4-1996 [1996 (4) Scale (SP) 71], 26-7-1996 [1996 (6) Scale (SP) 23] and Anukul Chandra Pradhan v. Union of India [(1996) 6 SCC 354 : 1996 SCC (Cri) 1338] — and orders dated 24-2-1997 and 18-3-1997 in — Subramanian Swamy Dr v. Director, CBI [WP (C) No. 38 of 1997 dated 24-02-1997] are also relevant.”

“8. The sum and substance of these orders is that the CBI and other governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would end the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive; this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations. In short, the procedure adopted was of “continuing mandamus”.

25. Similarly in **Lalita Kumari Vs. Government of Uttar Pradesh and others** reported in (2014) 2 SCC 1 the law in this context has been summarized in Paragraph **120.1 to 120.8**

“120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.”

“120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.”

“120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.”

“120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.”

“120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.”

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

“120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.”

“120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

26. Referring **Mukul Roy’s Case (supra)** , **Babu Venkatesh case (supra)**, **Anil Kumar case(supra)** Mr. Moitra argued that in the present case magistrate passed the cryptic order while directed to lodged an FIR. Said order

clearly shows non application of Judicial mind. The aforesaid judgments clearly stipulates that the order passed under section 156(3) Cr.P.C. must reflect the application of mind and satisfaction of learned magistrate to assess prima facie cognizable offence. He further contended that the writ court order confined to the lapses of the investigating agency in respect of investigation of the present case and during the course of hearing of writ application, writ court did not have any occasion to consider the propriety of the order passed under section 156 (3) of Cr.P.C. and said Court did not have any occasion to consider whether complaint under section 156(3) Cr.P.C. was filed in compliance with the procedure as laid down by the Apex Court.

27. Mr. Moitra further contended that the arguments advanced on behalf of the opposite Parties that the impugned proceeding being a court monitored investigation does not require to fulfil the requirements as laid down by the Apex Court, while passing the order, has got no merit since the law laid down by the Apex Court is binding upon all the authorities and the law laid down by the Apex Court can not be diluted and/or overrated by virtue of any order passed by the Writ court. He also contended that the doctrine of Stare Decisis is settled law and it's applicability does not depend upon on factual matrix and said doctrine postulates its application in all the facts and circumstances of the case whenever and wherever said point of law is being raised. In this context he further referred the case of ***Sakshi Vs. Union of India*** reported in **(2004) 5 SCC 518** and accordingly he contended that illegal proceeding is illegal because of infraction of law laid down by the Apex Court in its initiation

and it could not be legalised by any sought of order passed by any authority barring the Apex Court. In the event the impugned proceeding if kept alive, it will simply aggravate the abuse of the process of law and of the court. Accordingly he is firm in his stand that law laid down by the Apex Court in the cited decisions referred above ought to be adhered to initiate proceeding by an order under section 156(3) of Cr.P.C. and the requirements as pronounced by the Apex Court ought to be completed. Proceeding initiated under section 156(3) of the Code, which is not in accordance with law, according to the cited judgments, ought to be quashed. He further contended since the initiation of impugned proceeding is illegal as per law declared by the Apex Court, the said proceeding cannot be regularized by any means so long as the law declared by the Apex Court prevails.

28. There is no dispute about proposition of law that Magistrate is required to apply judicial mind as held in the said judgments though no detailed expression of views is required nor warranted at the stage of passing order under section 156(3) Cr.P.C. In ***Lalita Kumari's case (supra)*** it was also held that registration of FIR is mandatory under section 154 of the code, if information discloses commission of cognizable offence but if information received does not disclose a cognizable offence, but indicates necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. So in appropriate cases where corruption charge has been levelled, Magistrate will make preliminary enquiry. It is true that in the present context the magistrate's order dated 24.10.2016 is cryptic and it can also be said that the order does not prominently reflect as to

whether he applied his judicial mind, while he passed the impugned order or not but nonetheless fact remains that order in connection with application under section 156 (3) Cr.P.C. was passed on 24.10.2016 but police did not take any step. On December 2, 2016 after hearing learned advocate, appearing for the complainant, learned Chief Judicial Magistrate Cooch Behar was pleased to send reminder to the police authority to register an FIR on the basis of the complaint lodged by the opposite party no.2 herein. The defacto complainant also filed writ petition before this court wherein he has stated that the contents of the application on oath and also annexed the complaint with the writ petition. On the basis of which this court was pleased to add section 13(1) (d) of the prevention of corruption act. Accordingly even if the order impugned is cryptic and may not have reflected as to whether there was any application of judicial mind or not and even if no affidavit has been annexed with the application, but all these have now become redundant in view of the court monitored investigation and in view of filing charge-sheet and supplementary charge-sheet which prima facie discloses commission of offence by the petitioners herein under sections 409/420/471/34 of the I.P.C. and prima facie does not disclose falsity of allegations.

29. Mr. Chakraborty on behalf of opposite party no. 2 also took the plea that such prayer is barred by limitation and no explanation has been given in the present applications why separate application for condonation of delay was not filed along with criminal revisional applications.

30. In view of court-monitored investigation and submission of charge-sheet, all those issues raised above by Mr. Moitra have become as if non-est. In this

context I am not agreeable with Mr. Moitra that if the initiation of the impugned proceeding supposed to be irregular for not accompanying affidavit in terms of the law, declared by the Apex Court, the entire proceeding is liable to be quashed under section 482, even though the investigation ended in charge-sheet followed by supplementary charge-sheet, clearly implicating the present petitioners as offenders in the said case, in a court monitored investigation.

31. As regards sanction Mr. Moitra on behalf of the petitioners submits that the concerned authority did not obtain sanction in the impugned proceeding even after charge-sheet was submitted and cognizance was taken in this matter against public servants violating section 433 A of West Bengal Municipal Act, 1993. Accordingly sanction has to be obtained for prosecuting the petitioners under the penal law of the land as contemplated under section 197 of the Cr.P.C. since they are Public servants within the meaning of section 21 of I.P.C and further sanction for prosecuting the petitioners under section 13 (I) (d) of the Prevention of Corruption Act 1988 is also required to be obtained under section 19 of the said Act. In this context he further submits that arguments advanced on behalf of the petitioner /opposite parties that the allegations as made against the petitioners do not require prior sanction for prosecuting the petitioners does not find any leg to stand. The allegations itself established that the petitioners in exercise of their official duty allegedly committed offence and section 197 of the Cr.P.C. contemplates that the offence alleged to have been committed by the petitioners while acting/purporting to act in discharge of their official duty, the previous sanction is necessary and

section 13 (I) (d) of the Act of 1988 contemplates that in case of offence of criminal misconduct in discharge of official duty, sanction ought to have been obtained, before taking cognizance as provided under Section 19 of the Act of 1988. Referring the judgment of **Anil Kumar and others (supra)** Mr. Moitra further contended that even in respect of public servant, order under section 156(3) Cr.P.C. could not be passed, without obtaining sanction. He also contended that it is relevant that the materials collected during the course of investigation and further investigation discloses that while executing the works by the Cooch Behar Municipality, process of E-tender was not observed, several procedural lapses were found in the matter and on physical inspection of the working sites, it is found that the works were not executed within due time but payments were done earlier to the private parties. Some of the payment were drawn as self drawn which is not justified as per the Government rules. Such allegations levelled against the petitioners clearly establishes that it occurred during the course of their employment. In this context he relied upon the **D.T. Virupakshuppa case** reported in **(2016) 1 SCC (cri) 82, Indira Devi case** reported in **(2021) 8 SCC 768 , AIR 2004 SC 730 , (2015) 11 SC 113, (2016) 13 SCC 14.**

32. From the contents of FIR and materials in charge sheet it does not *prima facie* appear that the accused persons have allegedly committed the offence as mentioned in the FIR, while acting or purporting to an act in discharge of their official duty. Furthermore in the instant case section 13 (1) (d) of the prevention of corruption act has been put in the array of offence by this Court vide order March, 23, 2017. In this context the observation made by

the Apex Court in **State of Maharashtra Vs. Mahesh G. Jain** reported in **(2014) 1 SCC Cri 515** may be quoted as appearing in paragraph 20 of the judgment:-

“20. At this stage, we think it apposite to state that while sanctity attached to an order of sanction should never be forgotten but simultaneously the rampant corruption in society has to be kept in view. It has come to the notice of this Court how adjournments are sought in a maladroit manner to linger the trial and how at every stage ingenious efforts are made to assail every interim order. It is the duty of the court that the matters are appropriately dealt with on proper understanding of law of the land. Minor irregularities or technicalities are not to be given Everestine status. It should be borne in mind that historically corruption is a disquiet disease for healthy governance. It has the potentiality to stifle the progress of a civilised society. It ushers in an atmosphere of distrust. Corruption fundamentally is perversion and infectious and an individual perversity can become a social evil. We have said so as we are of the convinced view that in these kind of matters there has to be reflection of promptitude, abhorrence for procrastination, real understanding of the law and to further remain alive to differentiate between hypertechnical contentions and the acceptable legal proponentments.”

33. In **P.K Pradhan Vs. State of Sikkim** reported in **(2001) 6 SCC 704** it was held in paragraph 15,16 as follows:-

“15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; maybe immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was a reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.”

“16. In the present case, the accused is claiming that in awarding contract in his capacity as Secretary, Department of Rural Development, Government of Sikkim, he did not abuse his position as a public servant and works were awarded in favour of the contractor at a rate permissible under law and not low rates. These facts are required to be established which can be done at the trial. Therefore, it is not possible to grant any relief to the appellant at this stage. However, we may observe that during the course of trial, the court below shall examine this question afresh and deal with the same in the main judgment in the light of the law laid down in this case without being prejudiced by any observation in the impugned orders.” (emphasis added)

34. However such question that the act alleged was done not in pretended course of his official duty as claimed by petitioner can only be examined during Trial, since it involves question of fact as well as question of law. Accordingly such question can always be left open to be decided in the judgment or at any stage of trial. In this context reliance has also been placed in a case reported in **2021 Cri. L.J. 1964: AIR Online 2021 cal 94** where in it was held in paragraph 22 as follow:-

“22. Thus, the test to determine as to whether sanction under section 197 is required before taking cognizance of an offence allegedly committed by the public servant are (i) the act complained of must be an offence and (2) it must be done in discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter that the act exceeds what is strictly necessary for the discharge of the official duty, since the question would arise only later when the trial proceeds, but no sanction is required where there is no such connection and the official status furnishes only the occasion or opportunity for the act. The claim of the accused that the act alleged was done reasonably and not in pretended course of his official duty can be examined during the trial by giving an opportunity to the defence to prove it. In such case, the question of sanction should be left open to be decided in the main judgment after conclusion of trial.”

35. In this context Mr. Chakraborty on behalf of the opposite party no. 2 submits that in CRR 522 of 2018 at paragraph 14, the petitioner himself has admitted that the petitioner was not a government employee. Moreover opposite party no. 2 further submits that the charge-sheet also been

submitted under section 420 along with the other sections and any act done by a Public Servant, which constitutes an offence of cheating, cannot be taken to have committed while acting or purporting to act in the discharge of official duty.

36. In view of above it can be safely concluded that the question as to whether sanction is required for the present proceedings, or not if can be kept open during framing of charge and also during trial, neither party will have cause to prejudice.

37. Then comes the allegation leveled by the petitioner, that since there is an express legal provision for taking action against illegalities committed by Municipal authority in the Act of 1993 and as there is specific provision for institution and continuance of the proceeding under the said Act, which infact provides efficacious redress for the grievance of the aggrieved party, paragraph 108(6) of ***Bhjanlal's Case, AIR 1992 SC 604 (supra)*** clearly attracts in the present.

38. In the said provision under section 431 of West Bengal Municipal Act, 1993, the word used is "May" and there is no express bar provided in the Act of 1993, where it prohibits that even if FIR discloses cognizable offence under the Indian Penal Code, an individual is not permitted to lodge complain. It cannot be the intention of legislature that except Board of Councilors of the municipality, nobody else can initiate a complain when allegation pertains to misappropriation of public fund and criminal breach of trust coupled with fraud. The aforesaid section in fact does not restrict any individual to lodge a complaint. It only directs the Board of Councilors to acts in a certain way.

Accordingly such provision has got no connection with lodging of FIR in respect of any offence committed by any board or any member of the Municipality.

39. It has been alleged by Mr. Moitra appearing on behalf of the petitioners that out of malice present proceeding has been initiated by the FIR maker, who has no *locus standi*. In this context it can be said that Complainant got the information under the RTI Act and on the basis of the complain registration of FIR was mandatory under section 154 Cr.P.C. as the complain discloses cognizable offence. After getting such information under the RTI Act and also from the newspaper reporting the complainant has lodged the complaint. In this context in ***Dr. Monica Kumar and another Vs. State of U.P and others*** reported in **(2008) 8 SCC 781** may be referred where it was held in paragraph 37 as follow:-

“37. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and offence has been committed which will have to be established in a court of law, it is of no significance that the complainant is a person who is inimical or that he is guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist, then the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the proceedings. (See State of Maharashtra v. Ishwar Piraji Kalpatri [(1996) 1 SCC 542 : 1996 SCC (Cri) 150] ; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] ; State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] and State of Orissa v. Saroj Kumar Sahoo [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] .) There may be some exceptions to the said rule but we are not concerned with such a case.”

40. Supreme Court in **Bhajanlal's Case (Supra)** also held in paragraph 114 that even assuming that complainant has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard the

complaint containing serious allegations which have to be tested and weighed after the evidence is collected.

41. It is a well settled proposition of law that a criminal prosecution, if otherwise justified and based upon adequate evidence, does not become vitiated on account of *malafides* or political vendetta of the FIR maker or complainant. In ***State of Maharashtra Vs. Ishwar Piraji Kalpatri & others***, reported in **(1996) 1 SCC 542** it was observed:-

“22. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not. Allegations of mala fides were also made in P.P. Sharma case [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] against the informer. It was held by this Court that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. 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 itself be the basis for quashing the proceedings.

42. While dealing with the powers possessed by High Court under section 482 of the code, Apex Court reiterated the principles of law to be followed in this context in ***Renu Kumar Vs. Sanjay Kumar & others***, reported in **(2008) 12 SCC 346**, states, when an information is lodged at the police station and an offence is registered, then the *malafides* of the informant would be of secondary

importance. It is the material collected during the investigation and evidence led in the court, which decides the fate of the accused person. The allegations of *malafides* against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings.

43. Now the facts and circumstances of the case and the outcome of the investigation *prima facie* discloses commission of cognizable offence by the accused persons/petitioners as reflected in the charge-sheet, where it has been specifically mentioned that the works were bifurcated in violation of the actual norms and no E-tender was invited. No work was done in time and while execution of the works, proper guideline were not followed. On scrutiny of the documents supplied by chairperson, the documents were not found satisfactory and sufficient in respect of the quarries made. The three sub-assistant engineers of Cooch Behar municipality disclosed that the measurements book were made later under the direction of petitioner Reba Kundu and councillor's son i.e. other petitioner Subhrajit Kundu. The works were allegedly executed during the Puja Vacation after working day and night when the news were published in the local newspaper regarding misappropriation of the government funds. Moreover the said Sub-Assistant Engineer were forced to prepare measurement book later by the chairman Reba Kundu/petitioner herein, as disclosed in report. There is also allegedly huge mismatch in-between the schedule sanction of construction materials and payment made in that respect for labour payment of purchase of materials. Investigation reveals that as per the expenditure statement chairman have made payment of for Rs.84,59,540/- as labour payment but

estimated amount of labour cost (expenses) are Rs.30,86,504/-. There is difference of Rs. 53,73,636/- found and labour director and as well as labour supervisor could not explain the reason behind such mismatch. Some entries are found as “labour payment” in Appropriation Register, but details of labourer against whom payments were made were not supplied. Investigation even revealed that labourers could not be identified physically for which they could not be examined. It was further found during investigation that some of the payments were withdrawn as self drawl which is not justified under the Financial rules and there are at least 80 (eighty) witnesses who are required to be examined during trial. The initiation of criminal proceedings by way of complain has now culminated into a charge-sheet under the monitoring of this court.

44. I have extracted aforesaid finding from the charge sheet which clearly appears to be against the petitioners herein, only to highlight that there is requirement of appreciation of materials collected during investigation to unravel the truth by way of fair trial and also to arrive at the necessary findings on the core issues. Findings of the investigation clearly indicates that a large volume of material facts surrounding of lodging of FIR and it's authenticity needs to be tested by way of trial. Therefore considering the aforesaid it cannot be said that the criminal proceeding against the petitioners/accused persons are in any way an abuse of process of law. The allegations against the petitioners are very serious including hatching a criminal conspiracy in cheating and misappropriation of public fund using forged documents as genuine. All these aspects are required to be considered

at the stage of trial and not while considering the application under section 482 Cr.P.C. At this stage High court is not supposed to embark upon an enquiry as to the reliability and genuineness of the evidence, collected during the investigation, as if High Court is conducting a mini trial.

45. CRR 582 of 2018, CRR 1584 of 2018, CRR 1683 of 2018 are accordingly dismissed. Interim order, if any stands vacated. Connected applications, if any thus disposed of.

46. It is made it clear that views expressed by me in respect of the issue of sanction or relating to merits of allegations (if any) are for the purpose of the disposal of the present application. However petitioners will be at liberty to raise all these questions before the court below during trial/at the time of framing of charge and in the event of raising such points by the petitioners, at any stage of trial, the court below will adjudicate such issue(s) in accordance with law without being influenced by any observation made herein. Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(AJAY KUMAR MUKHERJEE, J.)

(Later): After passing this judgment and order learned Counsel appearing for the petitioners prays for stay of the impugned order.

Prayer is considered and rejected.

(AJAY KUMAR MUKHERJEE, J.)