

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 2322 of 2022

**Soumendu Adhikari
Vs.
The State of West Bengal & Anr.**

For the petitioner	:	Mr. Sekhar Kumar Basu, Sr. Adv. Mr. Rajdeep Mazumder Mr. Sourav Chatterjee Mr. Moyukh Mukherjee Ms. Aishwayra Bazaz
For the State/opposite party No. 1	:	Mr. Saswata Gopal Mukherjee, Ld. P.P. Mr. Rudradipta Nandy, APP
For the Opposite party No. 2	:	Mr. Sandipan Ganguly, Sr. Adv. Mr. Sabyasachi Banerjee Mr. Ayan Bhattacharya Mr. Anand Keshari
Heard on	:	29.11.2022
Judgment on	:	31.01.2023

Ajoy Kumar Mukherjee, J.

1. Present applications under section 482 of the code of criminal procedure has been directed with the prayer for quashing of the proceeding being G.R. Case No. 1357 of 2022 arising out of Contai Police Station Case No. 265/22 dated 29.06.2022 under sections 120B/406/409/420/467/

468/471/477A of the Indian Penal code now pending before the Court of the learned Additional Chief Judicial Magistrate at Contai, Purba Medinipur.

2. Mr. Rajdeep Mazumder, learned Advocate on behalf of Petitioner alleged that owing to quit his political association with ruling party, and also because petitioner has joined in another rivalry political party, he became an isore of the ruling political party. The ruling political party being rife with malevolent determination ensured that the petitioner be implicated in a series of vexus and harassive criminal cases. He further alleged that first such attempt was made within a month of the declaration of the results of West Bengal assembly election on 02.05.2021. A criminal case was foisted on the petitioner herein as well as his elder brother who is also a political leader. In the said First Information Report (hereinafter called as FIR) the allegations *interalia* leveled that on 29.05.2021 at about 12:30 pm in the afternoon, on the instructions of the petitioner herein and other co-accused persons, certain tarpaulins were stolen from the godown of the Contai Municipality. The maliciousness of the aforesaid case gets amplified by the fact that two days prior to the lodging of the above mentioned FIR, a General Diary was lodged at Contai Police Station by the Chairman of the Board of Administrators of the Contai Municipality, inter alia alleging that certain person were caught attempting to steal tarpulins. Said FIR was challenged by the petitioner and his elder brother by preferring an application and this court was pleased to stay the aforesaid FIR and the interim order granted in the said proceeding, has been extended time to time.

3. Further allegation of petitioner is that once again another attempt was made to launch a malicious proceeding by the ruling administration that the petitioner herein while being the president of Contai PK College, allegedly did not function in accordance with law and was able to misappropriate funds. Mr. Mazumder on behalf of the petitioner submits that the said complain is also vague and *malafide* as there is no quantifiable amount has been mentioned which was purportedly misappropriated and no time period has also been mentioned with regard to the alleged commission of the offence. Said criminal proceeding was again challenged by the petitioner herein by filing an application under section 482 of the Code of Criminal Procedure and this court was pleased to pass an interim order in favour of petitioner which has been extended from time to time.

4. Mr. Mazumder further submits when said two attempts to implicate the petitioner falsely, did not succeed, the ruling administration once again attempted to harass the petitioner through the present chairman of Contai Municipality, being the Opposite party No. 2 herein. On 29.06.2022 the opposite party no. 2 submitted a written complain with the I.C. Contai police station alleging the commission of offence under sections 120B/406/409/420/467/471/477A of the Indian Penal Code. The allegations leveled in the written complaint in connection with the present proceeding are to the effect that the major part of the Rangamati Cremation Ground was encroached upon and 14 shops/stalls were developed therein by one Satin Das Adhikari, and that there was no development plans or records for the development of such stalls.

5. Petitioner's counsel submits that on the basis of the aforesaid written complaint, the instant case has been started against the petitioner and other co-accused persons. He further submits that on scrutiny of allegations leveled in the written complaint, the *malafide* and malicious nature of the instant case becomes palpable on the face of it. The investigating agency chose to register the present case under such harsh provisions of the Indian Penal Code, when practically the written complaint is bereft of any ingredients, which would constitute any cognizable offence.

6. It is further submitted on behalf of the petitioner that the written complain has been prepared on suppression of material facts that the opposite party no. 2 was one of the signatories of the meeting, which took place on 30.11.2015 by the members of the Contai Municipality and one of the agendas in the said meeting was the construction of the stalls at the aforesaid crematorium ground. Furthermore, the opposite party No.2 was one of the speakers and active participant at the time of inauguration, which took place on 03.02.2018. Accordingly he submits that the petitioner is innocent and is in no way connected with any offence far less the offences alleged in the impugned FIR. The petitioner's counsel further submits that the petitioner has clean antecedents and has no record of past conviction and on bare reading of the allegations in the FIR it is palpably clear that the ingredients of the alleged offence are absolutely missing. Allegations leveled in the FIR, suffers from antagonistic contradiction and inherent absurdity. He further submits that on perusal of the FIR it is apparent that the petitioner herein had not been entrusted with any property of opposite party no. 2, which could have been

misappropriated by the petitioner herein. In the absence of 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. He further submits that even if the prosecution story is accepted to be gospel truth then also placement of fact singularly lacks either of the ingredients of the offence alleged as demonstrated thereof. The story projected through the FIR, suffers from intrinsic hollowness and antagonistic contradictions. The allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach just conclusion that there is sufficient ground for proceeding against the present petitioner. According to petitioner's counsel the present proceeding is clear misuse of the provisions of the criminal law and attempt has been made by the opposite party no. 2, to give a colour of criminal proceeding which is absolutely a dispute of different nature.

7. Mr. Mazumder, learned counsel appearing on behalf of the petitioner, further submits that since from the impugned FIR it is evident, that no offence is disclosed therefrom, therefore there cannot be further investigation which means unnecessary harassment for a litigant thereby causing illegal and improper deprivation of their liberty and property. It is settled law, where the materials on record do not disclose the offence, no investigation should be permitted and investigation in the absence of any offence being disclosed, would result in unnecessary harassment to a party whose liberty and property may be put to jeopardy for nothing and as such the continuation of the impugned proceeding any further will be a clear abuse of process of court.

8. Mr. Mazumder relied upon on this point, paragraph 108(5) of the salutary Judgment **State of Haryana and others Vs. Bhajanlal and others** reported in **AIR 1992 SC 604** and contended that in the said judgment it has been clearly observed, 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, the proceeding is liable to be quashed. Relying upon paragraph 108(6) of the said judgment, he further contended that where there is an express legal bar engrafted in any of the provisions or the concerned act to the institution and continuation of the proceeding and/or where there is specific provision in the code or the concerned Act providing efficacious redress for the grievance of the aggrieved party, then also the criminal proceeding is liable to be quashed and most importantly relying upon paragraph 108(7) of said judgment he contended that where criminal proceeding is manifestly attended with *malafide* 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, the High Court invoking its power under section 482 of the Code, shall quash the proceeding.

9. In the context of said judgment, Mr. Mazumder further submits that in the present case on a bare reading of the written complaint it becomes palpable that the allegations made therein are absurd and inherently improbable for the reason that section 426 of the West Bengal Municipal Act 1993 (hereinafter called as Act of 1993) envisages the supervision by the

director of local bodies which states that the director of local bodies has the power to inspect or caused to be inspected any immovable property owned used or occupied by the municipality or any work in progress under the direction of a municipal authority. Accordingly it is absolutely improbable that said stalls have been constructed at the premises of the crematorium ground, which is at the heart of the town and yet the supervising authority was absolutely unaware about the same. The absurdity of the allegation becomes further evident from a bare reading of section 428 of the Act of 1993, which bears the heading, "Inspection of municipal works and institutions by Government Officers." In view of the above, counsel for the petitioner highlighted that there are various checks and balances incorporated in the said act for any action or work done by any member of the municipality. The opposite party no. 2 here has admitted in the written complaint that he was councilor of Contai Municipality since 1990 and he further admitted that he was elected as the chairman of the Contai Municipality from 16th March 2022 and as such he is well aware about the nitty-gritty's of the functioning of the municipality and other aspect connected thereto. He submits in such backdrop it is baffling to note that the opposite party no. 2 was unaware regarding alleged unauthorized construction of stalls. The opposite party no. 2/complainant was himself a signatory to the resolution, where one of the agendas of the said meeting, was the construction of stalls and that signature of the opposite party no. 2 in the said resolution dated 30.11.2015, has not been disputed. Moreover there are photographs which clearly shows the participation of the opposite party no. 2 in the inauguration ceremony, where

speech was also delivered by the opposite party no. 2. The opposite party no.2 since December 2020 has been a Member of Board of Administrator and it is wholly inconceivable that he was unaware about the construction of stalls at the Rangamati Crematorium Ground and it was only after one and a half year that he unearth the same i.e. in the month of June 2022.

10. Mr. Mazumder further argued that on a bare reading of the instant written complaint it transpires that the opposite party no. 2 being the chairman of the Contai Municipality and using the letter pad of Contai Municipality has instituted the case as an individual member and registered the instant case on the basis of his own decision. Such act of the opposite party in lodging complaint on the basis of his sole decision and to act under individual capacity is impermissible in view of section 406 of the Act of 1993. Section 406 makes it clear that if any offence has been committed which affects the interest of the municipality, then the case /proceeding can only be initiated by the Board of Councilors who are to act in a collective manner and arrive at a decision to initiate such case/proceeding. Thus taking the allegation of the face value, it becomes evident that the same falls within the aforesaid sub-section of section 406 of the said act and as such the chairman of the Contai Municipality could not have acted in an individual and independent manner as would be evident from the tenor of the written complain without there being any resolution or collective consensus of the Board of Councilors to initiate the present case. Mr. Mazumder strenuously argued that the settled legal principle is that if power is giving to do a certain act in a certain way then the thing must be done in that way or not at all.

Accordingly he submits that the proceeding is liable to be quashed in view of the fact that in the Act of the 1993, there is express legal bar engrafted in the said provisions to the institution and continuance of the proceeding, which provides efficacious redress for the grievance of the aggrieved party.

11. Mr. Mazumder in support of quashing of the proceeding stressed heavily on paragraph 108(7) of the said judgment of **Bhajanlal's Case (supra)** which states that if it is manifestly attended that the criminal proceeding has been initiated with *malafide* and /or the proceeding has been 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, the criminal proceeding is liable to be quashed. He submits in the present case it is to be noted as to how the instant case has come into existence. Mr. Mazumder pointed out that the formal portion of the FIR which has been prepared by the officer-in-charge of Contai Police Station, states the time of receipt of the information from the opposite party no. 2 as 17.10 hours on 29.06.2022, which was diarized as Contai police station G.D.E No. 1532 dated 29.06.2022. Thereafter at 23.22 hours on 29.06.2022 a further G.D.E reference transpires being entry number 0061. Thereafter on the self same date i.e. on 29.06.2022, at about 23.49 hours, the instant FIR was registered, by the officer-in-charge. However, the body of written complain reflects that one A.S.I. of Contai Police Station namely A. Majhi received the written complain from the informant on 29.06.2022 at about 17.10 hours and at that time itself, the A.S.I. started the instant case. The manner in which the instant case came into existence gets further murkier from the reading of the forwarding report dated 30.06.2022

submitted by the Investigating Officer (I.O.) which states that a written complain from the opposite party no. 2 was received by the Contai police station on 28.06.2022, on the basis of which a preliminary enquiry took place by enquiring officer who also prepared a report in this regard. Such aspects in the instant case, highlights the unholy alliance/nexus of the opposite party no. 2 with the investigating agency who are hand in gloves with one another and rife with malicious intent to falsely implicate the petitioner at any costs whatsoever. Mr. Mazumder alleged that this third attempt by the state machinery is to entangle the petitioner in a harassive criminal litigation as in the first two attempts, Hon'ble Court has been pleased to interfere. He alleged that the criminal cases are being used as tools for targeted harassment and in this regard he has relied the relevant observation made by the Apex Court in ***Arnab Manoranjan Goswami Vs. State of Maharashtra*** reported in **2021 Cri.L.J 517**.

12. Mr. Mazumder by submitting the compilation of all the orders passed by Apex Court and by this court in respect of the petitioner, as well as his elder brother and the associates of the petitioner, who have been allegedly maliciously implicated in a series of cases, has contended that the Hon'ble Court on the earlier occasions found that such proceedings have been falsely implicated which reeks of political vendetta and for which court passed the orders protecting for such arrest. In this context he also relied upon the judgment of ***Vineet Kumar Vs. State of U.P.*** reported in **2017 (13) SCC 369**.

13. Mr. Mazumder referring the provisions of Article 243 Q and 243 W (a) & (b) read with twelfth schedule of the Constitution of India contended that the

work of the municipality includes development of cremation grounds and crematoriums. Section 13 of the Act of 1993 speaks that municipality means “the Board of councilors” and not chairman alone. So the fund was used proper purpose and cannot be said to be misused. Referring **Lalita Kumari Vs. Government of Uttar Pradesh & others** reported in **(2014) 2 SCC 01** petitioner further submits that where delay is more than three months in registering FIR from the date of occurrence, enquiry is must but in the present case immediate after receiving FIR, even long after three months of alleged incident, investigation immediately started and the reason of delay for lodging FIR, has not been assigned and as such column eight of formal FIR is lying blank and there is discrepancy in forwarding report and the FIR.

14. Mr. Mazumder further submits that in the instant case the bank accounts of the petitioner has been seized by the investigating agency in a malicious manner, though the allegations do not relate to anything with regard to the bank accounts to the petitioner. The *malafide* of the instant case according to him gets further established from the fact that in the instant case one of the accused persons was arrested though he was called giving notice under section 160 of the code by the investigating agency. He further submits that the other accused Ramchandra Panda was arrested by the investigating agency on the allegation that he was close to the petitioner though he was subsequently granted bail. Accordingly Mr. Mazumder submits that in such conspectus the land mark guidelines as has been enumerated in the salutary judgments the meaning of the term “manifestly attended with malafide” is obvious and palpable *malafide* has been established from accompanying

circumstances and accordingly the petitioner has prayed for quashing of the proceeding

15. Mr. Mazumder in this context relied upon following judgments:-

- (i) ***State of Haryana Vs. Bhjanlal*, AIR 1992 SC 604.**
- (ii) ***The King Emperor Vs. Khawaja Nazir Ahmed (privy council Appeal no. 55 of 1943).***
- (iii) ***A.M. Goswami Vs. State of Maharashtra & another*, (2021) 2 SCC 427.**
- (iv) ***Raju Thapar & others Vs. Madanlal Kapoor*, (2013) 3 SCC 330.**
- (v) ***Vineet Kumar and others Vs. State of Uttar Pradesh and another*, (2017) 13 SCC 369.**

16. Mr. Saswata Gopal Mukherjee on behalf of opposite party no. 1/state, beside being paragraph 108 and 114 of **Bhajanlal's Case**, also relied upon paragraph 30,31,32,37,38,80,83,85,92,94,101,109 and contended that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. The dominant purpose of registration of the case and the intended follow up action are only to investigate the allegations.

17. He further submits that discrepancy in time as pointed out by the petitioner in lodging FIR has been caused due to uploading of FIR in the server. He further submits that even if there is any discrepancy in the matter

of timing of lodging FIR, that cannot negate the investigation. He further submits preliminary enquiry reveals that for a particular purpose, the fund was granted but there was no tender. A contractor was appointed arbitrarily for giving him shop rooms. Shop rooms were allotted at through away price either to contractor or to their beneficiary . It has been further disclosed during investigation that said amount of money which was received by the petitioner from the beneficiary not reflected in municipal account and in fact the beneficiaries have given money to petitioner and petitioner gave them white paper receipt and said white paper receipts have been seized. He further submits that it discloses during preliminary investigation that an illegal transaction more than Rs.1 crore of public money involved in this context. When the land is a government land and the fund has been allotted by government , lease cannot be private. Accordingly he submits if anything done for private gain using public property illegally, the efficacious remedy as pointed out by the petitioner in the Act of 1993 does not apply. The Act of 1993 cannot deal with corruption. At this stage there is no question of holding mini trial and the case is at initial stage of investigation. He also relied upon paragraph 30,31,32 of the **Bhjanlal's Case** and contended that information is only requirement at this stage and reasonableness and credibility not to be tested at this stage. In this case since FIR discloses clear cognizable offence, so investigation will proceed because it is imperative that investigation will continue and paragraph 38 of the judgment clearly states that no interference by the court at this stage and jurisdiction of police to investigate cannot be interfered with, as investigative power is upon investigating agency which

should be permitted to exercise. Referring paragraph 38, he further contended that though individual liberty is precious but social liberty is also important. In regard to the allegation of malice Mr. Mukherjee submits that malice of fact are to be tested in trial and even if there is a malice it is to be proved during the trial. Paragraph 40 onwards of **Bhajanlal's Case** (supra) clearly suggests that crime detection is very vital field in criminology. Malice cannot be agitated at the threshold because offence complained of and not the offender. It is the duty of the state to investigate offence and opportunity is to be given to collect material. Mr Mukherjee further submits if allegation has to be quashed on the ground of malice, the malice must be manifested on the surface, which is completely absent in the present case. The principle laid down is reason to suspect the offence and not the offender. The reason to suspect about commission of offence has been discussed in Paragraph 42 to 49 of the **Bhajanlal's Case and** it has been clearly stated that at this stage mini trial cannot be allowed. Petitioner has relied upon **Lalita Kumari's case (supra)** but the essence of the **Lalita Kumari's Case** is to register prompt FIR and in paragraph 120.4 it has been stated that police cannot avoid his duty and in paragraph 120.5 and 120.6 in the said **Lalita Kumari's** judgment the category of cases has been mentioned where there is a scope of preliminary enquiry and in the said list criminal breach of trust or forgery have not been included. Mr. Mukherjee further submitted that this is not a murder case, so timing is irrelevant. Time is relevant when incident has direct involvement about timings. Police had complied directions of law. It is only registration of complaint of offence being done so far and it is too early to conclude that if

proceeding is allowed to be continued it would be abuse of process of court. In this context Mr. Mukherjee has relied upon the following judgments:-

(i) 2005 (13) SCC 540, *State of Odisha and another Vs. Saroj Kumar Sahoo*.

(ii) 2003 (11) SCC 251, *M. Narayandas Vs. State of Karnataka & others*.

(iii) 2022 (1) AICLR 653 (SC) , *State of Madhya Pradesh Vs. Kunwar Singh*.

(iv) 2022(1) AICLR 167, *State of Odisha Vs. Pratima Mohanty etc*.

(v) J.T. 2002(3) SC 89, *M.L.Bhatt Vs. M.K. Pandita & others*.

18. Mr. Sandipan Ganguly learned counsel appearing on behalf of the opposite party no. 2 submits that on a bare perusal of the FIR lodged by the opposite party no. 2, there is a disclosure of commission of cognizable offence by the petitioner and other accused persons. The grievances made by the defacto complainant in his FIR shows that construction and development of shops at the said area was carried out by using public money. There is no accountability in respect to the amount that was utilized for the construction of stalls. Subsequently, rent agreements were executed with the occupants and the Municipality upon payment of valuable consideration in cash. There is no document in the record of the municipality to depict that consideration amount in lieu of execution of rent agreements was deposited into the designated account maintained by the Municipal authority. It is evident that public money has been misappropriated for construction of stalls and thereafter money has been fraudulently usurped by the accused persons

subsequent to the sale of such stalls and FIR is registered where there are reasons to suspect to commence the investigation and further continuance of the same to unearth the illegalities committed by the accused persons including the petitioner.

19. Mr. Ganguly further submits that petitioner has heavily relied upon proceedings of the meeting of the Board of Councilor dated 30.11.2015 and extract copy of the resolution of the aforesaid meeting and some unauthenticated print of photograph. Mr. Ganguly further submits on bare perusal of the said documents, it is evidently clear that there have been certain subsequent fraudulent additions in the said documents to suit the convenience of the accused and to cover up the irregularities committed by the officials-in-charge of the municipality during their tenure. In order to come to a conclusion with respect to the genuineness of the documents, the investigating agency must be given a fair opportunity to examine the documents and conduct their investigation in a free and fair manner by examination of councilor/witnesses. There are contentions in the aforesaid documents which required a thorough investigation to determine whether such subsequent alleged hand written additions and/or discussions have at all taken place. The subsequent hand written additions are not countersigned by the councilors which casts an apprehension on the genuineness of the document. The extract of Board Resolution dated 30.11.2015 is signed only by the petitioner and does not contain signature of any other councilors of the municipality. Accordingly he argued when the materials relied by a party is required to be tested, no conclusion can be drawn on the basis of those

materials to conclude FIR to be unacceptable improbable at this stage. On the basis of such unexamined document relied by the petitioner an application under section 482 cannot be adjudicated upon by the court.

20. Relying upon the case of ***State of M.P. Vs. Awadh Kishore Gupta*** reported in **2004 (1) SCC 691** Mr. Ganguly submitted that three circumstances under which the courts should exercise its inherent power under section 482 of the code **(a)** to give effect to an order under the code **(b)** to prevent abuse of the process of court **(c)** to otherwise secure the ends of justice. He further submits when the facts of the case are not clear and hazy and there is need for proper investigation to be conducted by the investigating agency, the courts do not intervene into the same and there interference under section 482 of the code is unwarranted. Once the investigation is completed and there are allegations made by the party, in that case the court can venture into it. Criminal proceedings instituted against an accused person must be tried under the provisions of the code and at interlocutory stage the court would be reluctant to interfere with the said proceedings. Referring ***Neeharika Infrastructure private limited Vs. P. Mohan and others*** reported in **2021 SCC Online SC 315**, Mr. Ganguly contended that the Apex Court laid down the parameters of quashing at the initial stage of investigation. It states that at this stage of investigation, a court should not delve into the point of disputed facts. If it is prima facie satisfied that the ingredients of the offence is disclosed then there is no justification upon the court to interfere. The court under its inherent powers can neither intervene at an uncalled for stage nor can it “soft-pedal the course of justice” at a crucial

stage of investigation/proceedings. It is further argued on behalf of opposite party no. 2 that the provisions under sections 226, 227 of the Constitution of India and section 482 of the code of criminal procedure play an instrumental role to advance justice and not to frustrate it. While exercising such power, the court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. His further argument is that in the present facts and circumstances of the case on the face of it, there is allegation of misappropriation of public money and land has been illegally occupied for which a thorough investigation is needed. The court while exercising the power under section 482 of the code cannot tie down the hands of the investigating agency at such a preliminary stage. He further submits that it is well settled that to find out whether factual contents of the FIR disclose commission of cognizable offence, the High Court cannot act like an investigating agency or can exercise its power like an appellate court, while adjudicating an application for quashing of FIR under section 482 of the Code. On the contrary once the court finds that the FIR does disclose prima facie commission of any cognizable offence it should stray its hands and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the code. In this context he relied upon case laws reported in

(i) (2008)14 SCC 661, *Lakhwant Singh Vs. Jasbir Singh and others.*

(ii) 2021 SCC online SC 315, *Neeharika Infrastructure Private Limited Vs. State of Maharashtra and others.*

(iii) (2018) 3 SCC, 104 , Dineshbhai Chandubhai Patel Vs. State of Gujarat and others.

(iv) (2019) 4 SCC 351, Devendra Prasad Singh Vs. State of Bihar and another.

21. Mr. Ganguly further argued that the petitioner has leveled allegations on the point of *malafide*. The point of *malafide* agitated by the petitioner is against the state machinery and not against the opposite party no. 2. The decree of proof in a criminal proceeding is appropriately decided at the end of a trial. The decree of proof about allegation of general *malafide* cannot be decided at this preliminary stage, when the investigation is on-going and is at a nascent stage. Justice won't be served if this court acts upon and quashes an FIR when there is a general allegation of *malafide* at this preliminary stage. The allegation of *malafide*, if at all, may be relevant while judging the correctness of the allegations or while examining the evidence. The court should give investigating agency a fair opportunity to conduct their investigation without any fitter to collect the relevant materials and/or information pertinent to the offences committed. It is the material collected during the investigation which decides the fate of an accused person. The truthfulness of the allegations and the establishment of the guilt of the accused persons can only take place when the investigation, is over. He also pointed out the power of quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It is trite law that the burden of proof is on the party alleging *malafide* and the burden is very

heavy. Mere allegation of *malafide* won't suffice enough grounds for quashing of a criminal proceeding. In this context he relied upon

- (i) (1996) 1 SCC 542, ***State of Maharashtra Vs. Iswar Piraji Kalpatri and others.***
- (ii) (2013) 14 SCC 304, ***Mutha Associates and others Vs. State of Maharashtra and others.***
- (iii) 1993 supp (4) SCC 260, ***Union of India and another Vs. W.N. Chadha.***
- (iv) (1987) 1 SCC 213, ***Ambica Quarry works Vs. State of Gujarat and others.***
- (v) 2022 Cri.L.J. 2075, ***Ramveer Upadhyay and another Vs. State of U.P. and another.***

22. Mr. Ganguly further contended that the petitioner has placed reliance on interim orders passed by this court and Hon'ble Supreme Court in various matters in order to call upon this court to infer "*malafide*" against the prosecuting agency. In this context Mr. Ganguly argued that interim order passed by a court, which does not finally and conclusively, decide an issue, cannot be set as precedent. Any reason assigned in support of an interim order containing prima facie findings are only tentative. Interim order is passed in favour of a party are mere temporary arrangements to preserve the status quo till the matter is finally adjudicated and accordingly court of law ought not to rely upon any interim order passed by the court and in this context he relied upon the judgment reported in ***State of Assam Vs. Barak Upatakya D.U. Karmachari Sanstha*** reported in (2009) 5 SCC 694.

23. In this context he further argued that the act of 1993 is state legislation, which extends to the whole of West Bengal barring the exceptions laid down in section 1 of the Act. The offence committed by the accused person comes within the Indian Penal Code (I.P.C.) and cannot be displaced for the sole reason that there is an enforcement clause in a special statute. If there lies no restriction as to the applicability of general law, the procedure laid down in the general law shall be applicable in respect to the offence committed which comes under the purview of general Law. There is no mention in any provisions in the act of 1993, which penalizes for the commission of the offences, which are disclosed in the FIR. He further submits that in the present case, on a bare perusal of the complaint, discloses commission of serious cognizable offences under the code and efficacious investigation ought to be conducted by the police investigating agency and in this context reliance has been placed upon a judgment in ***State of West Bengal Vs. Narayan K. Patodia*** reported in **(2000) 4 SCC 447**.

24. He further contended that the resolution of the meeting dated 30th November, 2015 has been heavily relied upon by the petitioner to prove that the FIR has been maliciously initiated but there are material discrepancies and inconsistencies in the documents and on bare perusal of the documents it is apparent that the document has interpolations which have been fraudulently added subsequently to suit the connivance and irregularities committed by the officials-in-charge of municipality during the tenure of the petitioner . The petitioner has also relied upon certain documents and photographs which forms part of the annexure of the petition but the authenticity of aforesaid

documents and photograph are itself a matter of investigation and therefore, the same cannot be relied upon by the court while exercising the power under section 482 of the code. Besides the photographs are beyond the scope of consideration in terms of law laid down by the supreme Court in **Awadh Kishore (Supra)** It is further submitted that those photographs are no way connected to decide any of the issues which are the subject matter of the present investigation. The petitioner herein alleged that it is wholly unconceivable that the opposite party no. 2 could be unaware about the construction of stalls at Rangamati Cremation ground since opposite party no. 2 has been a Member of Board of Administrator since December, 2020. Mr. Ganguly in this context submits that allegation regarding the knowledge of the opposite party 2 about construction of stalls being disputed issue of fact and a triable issue cannot be considered by the High Court at this stage. The petitioner further argued that opposite party no. 2 has no *locus standi* to initiate the proceeding. Said contention according to the Mr. Ganguly is not sustainable in view of the fact that the aforesaid section in Act of 1993 based on the word 'May'. The use of word 'May' indicates that it is not mandatory but a directory provision. Every property coming under the municipality is public property. From the bare perusal of the complaint, it indicates that there is misappropriation of public money , land is illegally occupied by others and can be rightly said that the offence is against the society and public at large and there is no express bar provided in the Act of 1993, wherein it prohibits that an FIR disclosing offence under the Indian Penal Code cannot be lodged by a person. It does not specify that except the Board of Councilors of the

Municipality, nobody else can initiate a complaint. The aforesaid section does not restrict any individual to lodge a complaint but only directs the board of the councilors to Act in a certain way. There is no restriction laid down in the Act of 1993 to initiate proceedings for offence under I.P.C. In this context he relied upon

(i) (1984) 2 SCC 500, *A.R. Antulay Vs. Ramdas Srinivas Nayak and another.*

(ii) (2001) 5 SCC 407, *Manohar Lal Vs. Vinesh Anand and others.*

(iii) (2017) 9 SCC 340, *Ratanlal Vs. PrahladJat and others.*

25. Referring Section 154 read with section 157 of the Code of criminal procedure, Mr. Ganguly argued that it only deals with the words “reason to suspect” which is sufficient for starting investigation. What is required to be proved at the end of trial not required to be proved at the time of initiation of FIR. At this stage only requirement is, “reason to suspect” as embodied in section 157 of the code. A general allegation of *malafide* will not be an impediment when otherwise it is material in law. In view of the said facts and circumstances of the case Mr. Ganguly concluded that present application under section 482 of the code has been preferred, is a desperate attempt to curb the investigation that is being conducted by the investigating agency and if the same is allowed would amount to miscarriage of justice and would prejudice the investigating agency which in the alternative would unearth the illegalities committed by the accused persons including the petitioner and as such the present petition ought to be dismissed by the Hon’ble court with exemplary costs.

26. The instance matter pertains to an FIR, which at the outset is required to be reproduced below:-

*"To
The Inspector-In-Charge,
Contai police Station
Purba medinipur*

Date: 28.06.2022

Sub- Complaint against illegal construction at Rangamati Cremation Ground at Contai and Causing huge financial loss to Contai Municipality.

I, Subal Kumar Manna s/o Lt Achinta Manna of Kumarpur, PO+PS Contai, Dist-Purba Medinipur would like to inform the following facts to your kind office so as to take up necessary investigation into the misappropriation of government property by collusive corruption of Contai Municipality officials and contractors.

The undersigned was a Councillor in contai Municipality since 1990 and was re-elected as councilor from Ward No. XIV in the Municipal elections conducted in February 2022. Considering the administrative experience, the undersigned was elected as the Chairman of Contai Municipality and took charge on 16th March, 2022.

As part of the agenda of the new Board of Councillors, it was decided to modernize the civic amenities available at Contai Municipal area. Rangamati Cremation Ground, popularly known as Rangamati Smasaan, is located in the heart of Contai town and is surrounded by residential area. It has been a long standing demand of the local population that the electric crematorium may be constructed so as to reduce the air pollution caused by use of fire wood and other conventional fuels. The undersigned therefore visited Rangamati Smasaan or around 1st week of June, 2022 to inspect the facilities available at the cremation ground and to discuss with local public regarding development of the same.

To the utter surprise of the undersigned it was found that major part of the cremation ground was encroached upon and large number of shops, almost 14 in number, were constructed at the spot. On local inquiry with the people who were running the shops, it was brought to the notice of the undersigned that the said plot i.e. kishorenagar Mouza, JL-265, plot No. 657 was developed by Contai Municipality in 2019-2020. Information collected also indicates that a contractor named Satinath Das Adhikary r/o Kishorenagar, PS-Contai, Purba Medinipur constructed the stalls at the spot and he had collected Rs. 8-10 lakhs as the cost of each shop from the present owners. Some of the shop owners also showed rent agreements which were executed in their favour and allegedly issued by contai Municipality to run such shops.

The undersigned then decided to verify the records available at the Municipality office. Upon scrutiny, it was found that no such development plan was passed by Board of Councillors and that there was no resolution found regarding the conversion of land at Rangamati for construction purpose. It was also found that there was neither any detailed project report prepared nor any approval of plan and cost estimate. It is also significant to mention here that the construction of shops were undertaken by Satinath Das Adhikary without any tender or work order from contai Municipality. No record existed in the Municipality

pertaining to issuance of work order and/or allocation of funds for such construction of shops at the crematorium ground.

The undersigned would also like to state that there is no clarity regarding the funding of the entire project. The amount paid by the shop owners, which runs into almost hundreds of lakhs, were collected in cash from shop-owners and no official record is found about the same. The cash collected as cost of shops constructed on government land was never deposited in the Municipality accounts. It is also important to mention here that there was no proper procedure followed during allocation of shops constructed and the same was distributed as per whims and fancies of some corrupt officials. There was no open auction procedure which is generally followed by the Municipality and the shops were sold for rates much lower than the competitive market price, thereby causing huge loss to the Municipality. Even the rent agreements were missing from the records of the Municipality. The contractor Satinath Das Adhikary committed such huge amount of financial scam with convenience by the then chairman Soumendu Adhikary and sub-assistance engineer Dilip Bera.

The aforementioned events and circumstances clearly point towards an evil design hatched by erstwhile officials of the Contai Municipality in conspiracy with other accused persons to cheat and cause pecuniary loss to the Municipality. Through their illegal acts, the accused persons have misappropriated government property and generated illegal funds which in turn have been funneled for their own wrongful gains. Despite being government officials, the accused persons have misused their official position to cause wrongful loss to the Municipality as well as the public. All the persons behind such illegal acts are responsible for criminal misconduct, as they have, by corrupt and illegal means, misappropriated government property and obtained pecuniary gains while abusing their position as public servants. In doing so, the accused persons have also committed forgery as they have manufactured false and bogus work orders, contracts, rent agreements etc to render genuinity to their illegal acts. The accused persons have breached the public trust and have committed forgery for the purpose of cheating the Contai Municipality so as to make illegal monetary gains.

The undersigned firmly believes that such large-scale corruption and blatant misuse of government property can happen only with the collusion of Municipality officials, the concerned contractor and other private parties. Hence, under this present fact scenario, I am compelled to request you to initiate and investigation into the acts and conduct of the accused persons for commission of offences under section 406/409/420/467/468/471/477A/120B of the Indian Penal code, 1860.”

Yours faithfully,

Date-28.06.2022

*Subal Kumar Manna
Chairman, Contai Municipality
Purba Medinipur*

27. It is not in serious dispute that the contents of FIR does disclose cognizable offence. While considering the aforesaid issue, law on the exercise of powers by the High Court under section 482 of the code, to quash the FIR/complaint and the extent for exercise of such powers and scope are required to be referred, for understanding the parameters, which are required to be applied while quashing an FIR. At first, I would like to refer privy council judgment in the case of **The King-Emperor Vs. Khwaja Nazir Ahmed**, reported in **AIR 1945 PC 18**, where it was observed that in India, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities. It was further observed in the said judgment that the functions of the judiciary and the police are complementary, not overlapping and the combined of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.

28. In R.P. Kapur Vs. State of Punjab reported in **AIR 1960 SC 866**. It was held that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of process of any court or otherwise to secure the ends of justice, ordinarily criminal proceedings instituted against an accused person must be tried under the Provisions of the code, and the High Court would be reluctant to interfere with the said proceeding at an interlocutory stage. The court however carved out some exceptions to the said rule which are

(i) “Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

29. Then comes the above referred judgment of the Supreme Court in the case of Bhajanlal, reported in **AIR 1992 SC 604**. Where the court identified the cases in which FIR/complaint can be quashed.

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

(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.”

30. In the case of **Jhandu Pharmaceutical works limited Vs. Md. Saraful Haque** reported in **(2005) 1 SCC 122** in paragraph 11. The Apex Court observed as follows:-

“11.....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. 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 being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire 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 magnitude and 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 proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. 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 themselves be the basis for quashing the proceedings.”

31. In the case of **Sonapareddy Maheedhar Seshagiri and another Vs. State of A.P. and another** reported in **(2007) 13 SCC 165** in paragraph 31 it was observed by the Apex Court as follows:-

31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 CrPC.”

32. In **Skoda Auto Volkswagen India private Limited Vs. State of Uttar Pradesh and others** reported in **2020 SCC online SC 958**, the Apex Court held as follows:-

“40. It is needless to point out that ever since the decision of the Privy Council in King Emperor v. Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : AIR

1945 PC 18] , the law is well settled that the courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

41. As cautioned by this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint.

42. In *S.M. Datta v. State of Gujarat* [*S.M. Datta v. State of Gujarat*, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] , this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In *S.M. Datta v. State of Gujarat*, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] , this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.”

33. From the aforesaid decisions of the Apex court right from the decision of the privy council, the Supreme Court in **Neeharika Infrastructure Private Limited Vs. State of Maharashtra** reported in **(2020) 10 SCC 118** in paragraph 57 has observed that the following principles of law emerges from the previous judgments:-

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

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

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

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

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

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

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

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is

not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

34. Learned counsel for the petitioner relied heavily on sub paragraph (5),(6), (7) of paragraph 108 of **Bhajanlal’s Case (supra)** and contended that first of all the allegation leveled in the FIR are absurd and inherently improbable, which does not justify proceeding of investigation any further because it is absolutely improbable that the alleged stalls constructed at the premises of the Cremation Ground were constructed without the knowledge of the opposite party no. 2. According to the act of 1993 there are various checks and balances incorporated in the said Act for any action or work done by any member of the municipality as embodied in section 428 of the Act. The story of unawareness regarding the alleged unauthorized construction of stalls, according to petitioner shows the absurdity and inherent improbability of the present allegation as also the complainant /opposite party no. 2 was himself a signatory to the resolution dated 30.11.2015 and complainant himself being a member of Board of Councilors since December 2020 did not disclose anything but it is only after a year and half, that he unearth the same in the month of June 2022, which again according to petitioner shows about the absurdity of the allegation. In this context learned counsel appearing on behalf of the opposite party no. 1/state referring a particular page of original case diary pointed out that the resolution dated 30.11.2015 which has been heavily relied upon by the petitioner, in support of his case of absurdity, reveals that the documents has interpolation and it is alleged that certain handwritten have

been fraudulently added subsequently to suit the convenience of the accused and to cover up irregularities allegedly committed by the officials of the Municipality during the tenure of the petitioner. It is specific case of the opposite party no. 1/state that the photographs as well as the interpolation itself are matter of investigation and at this stage relying upon such Xerox copies of documents filed as annexure, it is not a fit case to exercise court's inherent power under section 482 of the code. Accordingly though it has been argued by the counsel for the petitioner that the allegations of misappropriation of public fund are wrapped in a cocoon of ambiguity falsehood and vagueness and are conceived with *malafide* motivations, which were geared up by the state administration in order to gain mileage in the journey of their political career but said argument needs to be dealt with in the context of the observations made in **Bhajanlal's case (supra)**. In the **Bhajanlal's Case** it was observed in para 114, when the entire matter is only at a premature stage and when the investigation is not yet proceeded with, except some preliminary effort taken at the initial stage, the evidence has to be gathered after a thorough investigation and placed before the court, on the basis of which alone the court can come to a conclusion one way or the other on the place of *malafides*. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage when there are only allegations and recriminations but no evidence, this court cannot anticipate the result of the investigation and render a finding on the question of *malafides* on the materials at present available.

35. In this context it is also to be mentioned that the investigation is at a budding stage and it has not yet been advanced even at a substantial stage. In state of **M.P. Vs. Awadh Kishore Gupta** reported in **(2004) 1 SCC 691** it was observed in paragraph 13 as follows:-

“13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In Chand Dhawan v. Jawahar Lal [(1992) 3 SCC 317 : 1992 SCC (Cri) 636] it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No. 116 of 1994) registered by the Special Police Establishment, Lokayukta, Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the matter further.

36. In the FIR there are specific allegations in regard to the irregularities which have been committed in the course of the work of construction of stalls/shops on public land and misappropriation of public fund. As such, at this stage, I am of the view that the High Court ought not scrutinize the material in the manner in which the trial court would do in the course of the criminal trial, after evidence is adduced. As the FIR discloses financial irregularities in the course of the administration of a public scheme, an investigation into the merits and authenticity of the allegation needs to be

investigated. Since the allegations leveled against the accused persons are serious in nature including, hatching a criminal conspiracy in allotment of 14(fourteen) number of shops at a throwaway price, causing thereby loss in the public exchequer, public interest has to be the prime guiding consideration. In ***Rramana Dayaram Shetty Vs. the international Airport Authority of India*** reported in **AIR 1979 SC 1628**, the Apex Court has held that it must be taken to be the law that even in the matter of grant of largesses including award of jobs, contracts, quota, licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land. Therefore looking to the allegations in the present case, against the petitioner, it cannot be said that the criminal proceeding against the petitioner tantamounts to abuse of process of law and/or court and as such it cannot be said that the instant case falls within the exception as carved out by Apex Court in para 108(5) in the case of **Bhajanlal Lal (supra)**.

37. Then comes the allegation leveled by the petitioner, 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 (supra)** clearly attracts in the present context as it is alleged by the petitioner that the opposite party no. 2, being chairman of Contai Municipality using a letter pad of Contai Municipality has instituted the case solely and has acted in an individual manner in submitting the written complain and Mr. Mazumder strenuously argued that such act of the

opposite party is impermissible under section 406 of the Act of 1993 and he cannot act in an individual capacity without there being any resolution or collective consensus of the Board of Councilors to initiate the present case as because the legal principle suggests that if power is given to do certain act in a certain way, then the thing must be done in that way or not at all. The learned counsel for the state in this context argued that in the said provision 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 and 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.

38. 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.

39. 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.”

40. 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].”

41. Accordingly there is hardly any scope to say that the present case falls within the exception as carved out in paragraph 108 (6) in the case of **Bhajanlal (supra)**. Furthermore even if there would have been any specific provision in the Act of 1993, providing efficacious redress for the grievance of the opposite party No. 2, even then, if any proceeding is initiated under the provisions of Indian penal code, then only thing to be taken care of is that accused must not be punished twice for the same offence. Here there is no allegation that beside the initiation of the impugned FIR, any other proceeding has been initiated and disposed of by the Municipal authority in respect of same allegation under the Act of 1993.

42. In support of malice and *malafide* intention of opposite party no. 2/ complainant, the petitioner relied upon earlier two criminal proceedings initiated against him and it is alleged that all these attempts of malicious prosecution have been lodged as the petitioner had quit his political association with the ruling political party and has joined in a rivalrary political party. Further contention is allegation of malice is evident from the fact that immediate after declaration of assembly election results, such attempts of malicious prosecution were made by State Agency against the petitioner. Some of the points taken on behalf of petitioner in support of malice are delayed FIR and immediate commencement of investigation violating directions of Lalita

Kumari's Case(supra), anomalies and discrepancies in formal FIR, FIR with forwarding report, improbable story set out by FIR maker that he being chairman of municipality and signatory of resolution was unaware about construction, seizing of bank account of petitioner in an illegal manner inspite of the fact that allegations do not relate to anything with regard to his bank account, the other accused persons in this case have been arrested with malice motive, though they obtained bail from court of law etc.

43. Even though, while this court examining the validity of the action taken by the opposite party No. 2, there are certain disturbing circumstances, but in my opinion such circumstances arising out of general allegation of malice due to political vendetta, can hardly uphold the plea of *malafide* on the ground of mere probabilities at this initial stage of investigation. In ***E.P.Royappa Vs. State of Tamilnadu and another*** reported in **(1974) 4 SCC 3** a note of caution in this regard was sounded by the Apex Court. It was held that it ought to be slow to draw dubious inferences from incomplete facts particularly when imputations are grave and they are made against the holder of an office, which has highest responsibility in the administration.

44. 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.

45. Therefore *malafide* on the part of investigating agency is of no consequence at this budding stage of investigation and the same is a pure

question of facts, which requires to be established by evidence. In **Assistant Collector Vs. L.R. Malwani** reported in (AIR 1970 SC 962) it was held that *malafide* is no ground for quashing. Subsequently in **State of Bihar Vs. P.P. Sharma** reported in 1991 Cri. L.J. 1458, not only endorsed aforesaid view but also held that annexure to the petition cannot be taken into consideration in deciding the question of quashing.

46. 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.

47. 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**, which 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.

48. In this context it is to be mentioned that the judgment referred by the petitioner in ***Vineet Kumar & others Vs. State of Uttar Pradesh*** reported in **(2017) 13 SCC 369** is factually distinguishable as in that case prayer for quashing was entertained by the court at the stage of issuance of process after investigation. Said proceeding was alleged to be a counterblast under section 138 of the Negotiable Instrument Act. Similarly in case of ***A.M. Goswami Vs. State of Maharashtra & others*** reported in **(2021) 2 SCC 427**, after through investigation report was submitted under section 306 of the penal code, which was accepted but at that stage, a further investigation was suddenly started, without being any order from court, which is not the situation in the present case, where investigation just started on the basis of FIR, prima facie disclosing commission of cognizable offence. In ***Rajiv Thappar & others Vs. Madan Lal Kapoor*** reported in **(2013) 3 SCC 330**, which also relied by petitioner relates to a situation which arose after conclusion of investigation and after issuance of process.

49. For the above reasons and in view of the position of law highlighted above, I am constrained to conclude that the present case does not fall within any of the exceptions as carved out by the Apex Court in **Bhajanlal's Case**. It cannot be said that the present criminal proceeding initiated against the petitioner herein is an abuse of process of any court or law and as such FIR or impugned proceeding is not liable to be quashed.

50. In conclusion following observations and directions are passed in view of aforesaid discussions:-

- (a)** This court refused to quash the impugned proceeding being CRR No. 1357 of 2022 arising out of Contai Police Station case No. 265 of 2022 dated June 29th, 2022.
- (b)** However during investigation, the investigating authority shall not take any coercive action/measure including arrest against the petitioner, so long petitioner will make co-operation with the investigating agency.
- (c)** If at any stage of investigation, it would appear to the investigating authority that the petitioner is not co-operating with the investigating authority and the investigating authority is convinced about petitioner's non-cooperation, they will issue notice to show cause immediately to the petitioner in writing.
- (d)** No coercive measure/action including arrest against the petitioner in the present case shall be carried out during investigation in connection with such notice to show

cause for a period of 10(ten) days from the date of receipt of such notice to show cause by the petitioner , to enable him to avail of his remedies, if any, before appropriate authority.

(e) The examination of petitioner and recording of his statement, if any, by police under section 161 of the code of criminal procedure, during investigation shall also be made by audio-video electronic means.

(f) It is made clear that this court has not entered into the merit of the allegations whatsoever and as such, the investigation shall be carried out in accordance with law.

51. CRR 2322 of 2022 along with connected application if any are accordingly dismissed and interim order thus stands vacated.

However, there will be no order as to costs.

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.)