

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1979 of 2021

Greaves Cotton Limited & Ors.

-vs.-

The State of West Bengal & Anr.

Mr. Sandipan Ganguly,
Mr. Navanil De,
Mr. Sayak Ranjan Ganguly,
Ms. Srijani Ghosh.

...For the Petitioners

Mr. Ayan Bhattacharya,
Mr. Pawan Kumar Gupta,
Mr. M. Sukla.

...For the O.P. No.2.

Reserved on : 16.01.2023

Judgment on : 28.02.2023

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the continuance of complaint case being C.S. No. 61663 of 2019 pending before the Learned Metropolitan Magistrate, 13th Court, Calcutta as also the orders dated 03.12.2019 and 15.03.2021 passed by the Learned Chief Metropolitan Magistrate, Calcutta and the Learned Metropolitan Magistrate, 13th Court Calcutta respectively.

As the subject matter relate to quashing of the petition of complaint and 9 persons have been implicated as accused, pursuant to the process issued against them by the learned Metropolitan Magistrate, 13th Court, Calcutta, a brief introduction in respect of each of them is required for the purpose of this case. There are two sets of accused persons who are associated with two different artificial persons. Accused no.1 in the petition of complaint is M/s Dee Power Corporation a partnership firm with whom Soumik Ghosh (Accused No.2), Kaushik Ghosh (accused no.3) and Sanjay Shah (accused no.4) is associated. On the other hand accused no.5 is M/s Greaves Cotton Ltd. a company with whom Basant Kumar (accused no.6), Sumit D. Burman (accused no.7), Ramendra Nath Dey (accused no.8) and Avishek Paul (accused no.9) is associated.

The petitioners before this Court in the revisional application are petitioner no.1 (accused no.5 – Company namely, Greaves Cotton Ltd.), petitioner no.2 (accused no.6 – General Manager, Auxiliary Power Business of petitioner no.1) and petitioner no.3 (accused no.9, Manager, Sales & Marketing, Auxiliary Power Business of petitioner no.1).

The allegations as set out in the petition of complaint, in brief are as follows:

- (i) The complainant company, M/s RNT Plantations Limited is engaged in plantation and manufacture of tea and other related business and has earned substantial reputation and goodwill in

the market. The complainant company has its tea garden namely, Dalgaon Tea Estate situated at P.O. Birpara, District Alipurduar, West Bengal and Lukwah and Khona Tea Estate situated at P.O. Lakwa, District Sivasagar, Assam.

- (ii) The accused no.1, M/s Dee Power Corporation is a partnership firm and accused no.2 and 3 are the managing partners of the accused firm while the accused no.4 is the Manager of the accused firm. Three accused persons were in-charge and responsible for the day to day business and regular affairs of the accused firm and they enjoyed overall control of the management of the accused at all material time.
- (iii) The accused no.5, M/s Greaves Cotton Ltd. is a limited company within the meaning of the Companies Act, 1956, accused no.6, is the General Manager of Auxiliary Power Business of the accused no.5, accused no.7 is the Zonal Manager of Auxiliary Power Business of the accused no.5. The accused no.8 is a responsible officer of the Auxiliary Power Business of accused no.5 and accused no.9, assistant Manager (Sales & Marketing) of Auxiliary Power Business of accused no.5. Accused no.6, 7, 8 and 9 were in-charge of and responsible for the day to day business and regular affairs of the accused no.5 and enjoyed over all control of the management of the said company at all material time.

(iv) The complainant company was in search of a 'Greaves Power' brand 400 KVA Silent D.G. Set with Microprocessor based Manual Control Panel for its tea unit at Dalgaon Tea Estate. On coming to know of such requirement the accused no. 2 and 3 introducing themselves as partners and accused no.4 introducing himself as a responsible officer of the firm approached the complainant company at its registered office at Kolkata and represented that their firm is the only distributor/authorized agent of the accused no.5 which is the manufacturing company. The said accused persons as agent of the accused no.5 further represented that the advantage in dealing with them is their policy of prompt delivery of the machine and asked complainant company to pay 90% of the total cost of the machine in advance. The management of the complainant company was initially sceptical about the servicing ability of the accused no.1 and as such had shown discomfort in placing order upon the said firm. They as such approached the accused no.7, 8, and 9 who were responsible and authorized officers of accused no.5 in Eastern India. The accused nos. 7, 8 and 9 represented that they only sell their products through their authorized agents and confirmed that accused no.5 is their distributor/authorized agent in Eastern India and the purchase order is to be placed by the complainant company with the accused no.1 and that all financial transactions and supply of the

material shall be executed by accused no.1. The accused nos. 6, 7, 8 and 9 as alter ego of the accused no.5 also promised to manufacture the said machine adhering to all the satisfactions and to promptly deliver the same without any default. Based upon the representation and assurances made by the responsible persons of accused no. 1 and accused no.5 the management of the complainant company reposed full trust, faith and confidence upon them and agreed to purchase the said machine manufactured by the accused no.5 through the accused no.1.

- (v) The offer letter was issued by the accused no.1 being DPC/SS/1089/2018-19 dated 11/08/2018 confirming supply of 'Greaves Power' brand 400 KVA Silent D.G. Set with Microprocessor based Manual Control Panel together with an electronic mail dated 31st October, 2018 sent by the accused no.8. Relying upon which the complainant company placed order for purchase of the said machine for its Dalgaon Tea Estate. Soon after such order of purchase, the complainant company paid a sum of Rs.6,56,250/- being the 35% of the total value of the machine on 07.01.2019 as advance and again relying upon the proforma invoice no. 62 dated 6th February, 2019 raised by the accused no.1, the complainant company paid further sum of Rs.13,35,000/- on 07.02.2019 to the accused no.1. Thus the

complainant company made payments of 90% of the total value of the said machine.

(vi) After receiving the said amount in advance, there was complete change in attitude of the accused persons towards the complainant company and in spite of repeated request/reminders the accused persons did not deliver the said machine and bargained time from the complainant company on various false and fake assurances including the plea that due to some problem with the accused no.5 the machine could not be manufactured. In fact the accused no.4 on 22.02.2019 further assured vide his email dated 26.02.2019 that the said machine would be delivered to the complainant company by 15.03.2019. In spite of such specific undertaking given by the accused no.4 on behalf of the accused no.1, 2 and 3 said machine was never delivered to the complainant company for which complainant company had to sustain huge monetary loss to the tune of Rs.35,00,000/- and also suffered monetary loss in the market due to such non-delivery. Under such circumstances the management of the complainant company contacted with accused nos. 6, 7 and 8 at whose instance the said order was placed upon the accused no.1 but the said accused persons denied the entire transactions. The complainant company having no other alternative sent a legal notice on 21.08.2019 to the accused persons, narrating the entire

facts and circumstances and calling upon them jointly and/or severally to make payment of Rs.19,91,250/- entrusted along with interest together with financial loss of Rs.35,00,000/- incurred by the company to be paid within 15 days of receipt of the said notice. After receipt of the said legal notice the accused on behalf of the accused no.1 issued a cheque bearing no.001662 dated 23.09.2019 for Rs.19,91,250/- drawn on HDFC Bank, G.C. Avenue Branch, Kolkata-700013 in favour of the complainant company. It was represented at the time of handing over the cheque that the same would surely be honoured being represented within its validity period. The said cheque on being placed for encashment returned dishonoured by the drawee bank with the remarks "Drawers signature not as per mandate". The reason of dishonour of the said cheque clearly reflects the dishonest design of the accused persons to cheat the complainant company from the very inception and also clearly unveils that the accused no.1 had intentionally issued the said cheque without properly getting it signed as per mandate given to their bank, with the knowledge that the same would be returned dishonoured being placed by the complainant company. When the complainant company informed the accused nos. 1, 2, 3 and 4 about such dishonour of cheque, the accused persons neither returned the said amount lying

entrusted to them nor gave any reply and went beyond reach and contact of the officers of the complainant company.

(vii) The officers of the complainant company tried to contact the accused nos. 6, 7, 8 and 9 over the said issue but the said accused persons also went beyond reach and contact of the complainant company. By this time it was realized that all the representations and assurances made by the accused persons since very inception were false, fake and ingenuine without having any intention to fulfil those and was intentionally made to induce the complainant to part with the advance money which the accused persons have conjointly misappropriated and converted to their own use without delivery of the said machine.

(viii) The complainant company therefore, alleges that the accused persons in a concerted manner by entering into conspiracy with each other misappropriated the money entrusted with them for the purchase of the machine and by way of their representations cheated the complainant company and as such they are liable to be punished under Section 406/418/420/120B of the Indian Penal Code.

On the petition of complaint being filed before the learned Chief Metropolitan Magistrate, Calcutta the learned Court by its order dated 03.12.2019 was pleased to record that the allegations pertain to criminal breach of trust, cheating on account of non-repayment of money/loan/credit

advance to the accused persons by the financial institution/bank. Cognizance was taken subject to the question of maintainability of the complaint in terms of the decision of the Hon'ble Apex Court in Satishchandra Ratanlal Shah –Vs. – State of Gujarat and Ors. and subject to the question of territorial jurisdiction. The learned Magistrate was thereafter pleased to transfer the case to the learned Metropolitan Magistrate, 13th Court, Calcutta for inquiry and orders upon taking into consideration the judgment of the Hon'ble Supreme Court referred to above. The learned Metropolitan Magistrate, 13th Court, Calcutta by its order dated 15.03.2021 was pleased to record that the complainant was present and examined under Section 200 of Cr.P.C. and on perusal of the case record, deposition of representative of the complainant company and other materials a prima facie case under Section 138/141 of N.I. Act is well established against the accused persons and directed the complainant to file the requisites at once and fixed 07.06.2021 for S/R and appearance.

Mr. Sandipan Ganguly, learned Senior Advocate appearing for the petitioner submitted that the petitioners are aggrieved by the non application of mind by the learned CMM, Calcutta as well as the learned Metropolitan Magistrate, 13th Court, Calcutta. Drawing the attention of the Court to the order dated 03.12.2019 learned Advocate pointed out that the learned CMM, Calcutta recorded non payment of loan advanced by financial institutions/bank and the learned Metropolitan Magistrate, 13th Court Calcutta issued process under Section 138/141 of the N.I. Act and there was complete

non application of mind by both the learned Magistrates who allowed the proceedings to continue against the present petitioners. Learned Advocate for the petitioners submitted that the allegations in the petition of complaint was for the purpose of issuing process under Section 420/418/406/120B of the Indian Penal Code and none of the offences as complained of do apply so far as the petitioners are concerned. The dealing in respect of purchase of 'Greaves Power' brand 400 KVA Silent D.G. Set with Microprocessor based Manual Control Panel was absolutely done with the accused no.1 and its representatives. The present petitioners are representatives of the manufacturing company with whom there was no financial transaction. The authorised agent/dealer of the petitioner no.1 is entrusted to sell the product and for that purpose the complainant company did not receive a farthing from the complainant company directly. The quality of the product can obviously make the petitioner no.1 responsible, but for advancing of money to the authorised agent i.e. accused no.1, the petitioner no.1 and its officers can in no way be made responsible. Thus the purchase order was placed with the accused no.1 and the payment was also made to the accused no.1 and the cheque which was issued was also issued by the accused no.1. There was no interaction from the side of the petitioner no.1 or its responsible officers with the complainant company and/or authorised officer. It has been pointed out that the subject matter of the cheque relating to the refund was an independent transaction which was entered into between the complainant company and the accused no.1 and the complicity of the present petitioners

have been incorporated without any culpable involvement and only for the purpose of applying pressure tactics. Learned Advocate also submitted that devoid of all the merits of the case the petitioner no.1 company, in fact, found that accused no.1 accumulated huge dues surpassing the amount of the bank guarantees furnished by them and when one of the bank guarantees for 3 crores was presented for encashment, the issuing bank as well as banker of the petitioner no.1 informed that the said bank guarantee furnished by accused no.1/Dee Power Corporation was forged. To that effect a case has already been instituted at the instance of the petitioner no.1 against accused no.1 and its officers which has been registered as Bowbazar Police Station Case no. 28 dated 22.01.2020. Proceedings under the Arbitration and Conciliation Act has also been instituted against the accused no.1 and its partners. Complaint case has also been filed before the learned Chief Metropolitan Magistrate, Ballard Pier, Mumbai against the accused no.1, Dee Power Corporation and its partners. Learned Advocate submitted that even if allegations made in the petition of complaint are accepted to be true the allegations appearing so far as these three petitioners are concerned who were associated with the manufacturing company namely Greaves Cotton Limited it would be transparent that their involvement has been shown in the petition of complaint by using certain phrases and without any documentation to establish a case of conspiracy for non-delivery of the machine as alleged. In fact the requirement of the DG Set was of the complainant company and they were aware that such purchase is to be made from the accused no.1. The accused no.1 and the

accused no.5/petitioner no.1 are separate and independent entity. The factum of entrustment which has been emphasized for the purpose of which Section 406 of the Indian Penal Code has been invoked in the petition of complaint was because of the advance and such advance payment as is revealed from the petition of complaint was paid and received by the accused no.1 and the petitioner no.1 and/or its authorized officers are no way responsible for the same. In order to attract the provision of conspiracy in such a case where substantive offences complained of are under Section 420/418 and 406 of the Indian Penal Code, common meeting of minds of atleast some responsible officers of the petitioner no.1 were to be reflected, which resulted in any wrongful loss of the complainant company. Learned Advocate reiterated his submission that learned Chief Metropolitan Magistrate did not apply his mind while taking cognizance and the learned Metropolitan Magistrate, 13th Court, Calcutta also did not adhere to the requirement of the Code of Criminal Procedure. The learned Metropolitan Magistrate, 13th Court, Calcutta issued process so far as the petitioner no.1 and its responsible officers are concerned i.e. accused no.5, 7, 8 and 9 without conducting any enquiry although they were having addresses outside the jurisdiction of the said Court and were bound to comply with the provision of Section 202 of the Code of Criminal Procedure. In order to substantiate his argument learned Advocate relied upon Sivjee Singh -Vs. - Nagendra Tiwary & Ors. reported in (2010) 7 SCC 578; Uday Shankar Awasthi -Vs. - State of Uttar Pradesh & Anr. reported in (2013)

2 SCC 435 and Aroon Poorie –Vs. – Jayakumar Hiremath reported in (2017) 7 SCC 767.

Mr. Ayan Bhattacharya, learned Advocate appearing for the complainant/opposite party no.2 submitted that the question which is required to be answered in the present case is whether the High Court can entertain a plea of quashing of the entire proceeding when it is evidently clear that the orders of cognizance under Section 190(1)(a) of the Cr.P.C. and the process under Section 204 of the Cr.P.C. are faulty for non application of mind vis-a-vis non compliance of mandatory provisions of law. Learned Advocate also submitted that the manner in which the process was issued on March 15, 2021 by the learned Metropolitan Magistrate, 13th Court, Calcutta was in gross ignorance of the provision of law and total non application of mind and complaint was filed for alleged offence under Section 406/418/420 read with Section 120B of the Indian Penal Code and the learned Magistrate issued process under Section 138/141 of the N.I. Act which is patently absurd and the same suffers from complete non-application of mind. The learned Advocate also submitted that in the instant case the learned Metropolitan Magistrate in place of examining the representative of the complainant on dock relied upon an affidavit filed by him which is not permitted in respect of offences made in the Indian Penal Code. However, learned Advocate emphasized that in view of the verdict of the Hon'ble Apex Court and the principles set out therein wherein gross illegality has been committed in respect of issuance of process quashing of the proceeding is not the only remedy, the duty of the High Court is to

compel the learned Magistrate to adhere to the provisions of the Code and for that the case should be remanded to the learned Magistrate. To this effect attention was drawn to National Bank of Oman –Vs. – Barakara Abdul Aziz & Anr. reported in (2013) 2 SCC 488 wherein under similar circumstances, the Hon'ble Supreme court of India set aside the judgment of the Hon'ble Bombay High Court which quashed the proceeding observing that as the learned Chief Judicial Magistrate failed to carry out an inquiry or pass an order of investigation as contemplated under Section 202 of the Cr.P.C. the matter should have been remanded. Paragraph 12 of the said judgment is set out as follows:

“12. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 CrPC. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under Section 418 or 420 IPC. The CJM will pass fresh orders after complying with the procedure laid down in Section 202 CrPC, within two months from the date of receipt of this order.”

It was contended by the learned Advocate that the same position of law was reiterated by the Hon'ble Apex Court in Abhijit Powar –Vs. – Hemant Madhukar Nimbalkar & Anr. reported in (2017) 3 SCC 528 wherein paragraph 30, 31, 32 and 33 are relevant for the purpose of the present case which are set out as follows:

“30. No doubt, the argument predicated on Section 202 CrPC was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (See : National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad [National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad, (2011) 12 SCC 695 : (2012) 2 SCC (Civ) 791] .)

31. We may like to record that though Mr Bhatt had refuted the arguments founded on Section 202 CrPC, even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr Bhatt, for this purpose, referred to the judgment in National Bank of Oman [National Bank of Oman v. Barakara Abdul Aziz, (2013) 2 SCC 488 : (2013) 2 SCC (Cri) 731] .

32. For the aforesaid reasons, the criminal appeal arising out of SLP (Crl.) No. 9318 of 2012 is allowed thereby quashing the notice dated 24-11-2009 in respect of A-1 with direction to the learned Magistrate to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202 CrPC.

33. Insofar as appeal filed by the complainant discharging A-2 is concerned, the High Court has quashed the notice on the ground that he is only shown as the Chairman and is not shown to be actually associated with the publication of the newspaper. Since, we are relegating the matter insofar as A-1 is concerned, for the same reasons the complainant needs to be given an opportunity to show

as to whether A-2 was actually associated with the publication or not. It is more so when we find that the High Court has not given any cogent reasons on the basis of which it has said that the Chairman is not shown to be associated with the impugned publication. Thus, we allow the second appeal as well and direct the learned Magistrate to hold the same inquiry as directed qua A-1 and apply his mind as to whether notice against A-1 and A-2 needs to be issued or not. No orders as to costs.”

Attention of the Court was drawn to Mehmood Ul Rehman –Vs. – Mohammad Tunda & Ors. reported in (2015) 12 SCC 420 wherein according to the learned counsel the Hon’ble Supreme Court was pleased to observe that the order of process under Section 204 of the Cr.P.C. was not in accordance with law and has been detected. It would not be fit and proper for the High Court in quashing the entire proceeding, the same should have been remanded back for fresh consideration. Paragraph 7 of the judgment is relevant which is set out as follows:

“7. Though the learned Senior Counsel made an attempt to canvas on the merits of the matter as well, we do not find it necessary and it is not proper also at this stage to deal with the same. However, the contention that the Magistrate has not even formed an opinion as to whether the allegations in the complaint would constitute an offence, when considered along with the statements recorded under Section 200 CrPC, requires consideration.”

Drawing the attention to the judgment of Narmada Prasad Sonkar @ Ramu –Vs. – Sardar Avtar Singh Chabara & Ors. reported in (2006) 9 SCC 601, learned Advocate rebutted that the principles laid down by the Hon’ble

Supreme Court is consistent and when the order of process was a flawed one the High Court should not quash the entire proceeding adjudicating the legality of the case and in the fitness of things it would be for the High court to remand the matter back for fresh consideration. The learned Advocate over the said issue contended that the settled proposition of law having been spelt out by the Hon'ble Supreme Court and when the order of issuance of process is bad in law the High Court should not enter into the issue relating to the merits of the case and the prayer for quashing of the petitioners as such could be revised and the matter be remanded back for fresh consideration by the learned Metropolitan Magistrate, 13th Court, Calcutta.

Mr. Sandipan Ganguly, learned Senior Advocate appearing for the petitioners submitted that the very purpose of incorporating the amendment in Section 202 of the Cr.P.C. is to be taken into account for appreciating the submissions advanced by the complainant/opposite party. Drawing the attention of the Court to the object and reasons of the 2005 Amendment Act, it was submitted that in order to prevent false complaints against innocent persons who were/are staying at far off places the legislature introduced the aforesaid provisions. The Amendment is set out as follows:

“Amendment Act, 2005 – False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the

case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused. (Notes on Clauses).”

Refuting the contentions advanced by the learned Advocate appearing for the complainant/opposite party learned advocate for the petitioners submitted that the amendment in Section 202 of Cr.P.C. was never meant for bolstering up a case by the complainant on being sent back by a higher forum. To that effect reliance was placed on Aroon Poorie (supra) paragraphs 2, 3 and 4 of the said judgment relied upon by the petitioner are set out as follows:

“2. The above apart, from the materials on record it appears that the appellant-accused in the present appeals have and maintain residence beyond the local jurisdiction of the learned trial court. Under the provisions of Section 202(1) CrPC, it was, therefore, mandatory for the learned Magistrate to hold an inquiry either by himself or direct an investigation by the police prior to the issuance of process. Admittedly, the same had not been done. If the aforesaid mandatory provisions of Section 202(1) CrPC had not been followed, the learned trial court would not have the jurisdiction to issue process/summons as has been done.

3. We have also taken note of the complaint petition and the averments made therein and the necessary ingredients to attract the offence(s) alleged which is under Section 295-A read with Section 34 IPC.

4. On such consideration, we interfere with the orders [Aroon Purie v. Jayakumar Hiremath, 2015 SCC OnLine Kar 8719] , [Mahendra Singh Dhoni v. Jayakumar Hiremath, 2015

SCC OnLine Kar 8718] of the High Court; allow the appeals and set aside and quash the proceedings qua the appellants as a whole including the summoning order dated 17-1-2015.”

Lastly it was submitted by the petitioners that the emphasis on National Bank of Oman (supra) made by the complainant is without any basis as the judgment of the Bombay High Court which was under challenge would make it clear that for non-compliance of provisions of Section 202 of Cr.P.C. whole of the proceedings was quashed for which the Hon’ble Supreme Court had to interfere focusing on the necessity of Section 202 of the Cr.P.C. before quashing the complaint.

In Deepak Gaba & Ors. –Vs. – State of UP & Anr. reported in 2023 SCC OnLine SC 3 the Hon’ble Supreme Court in paragraph 11, 12, 22, 23, and 25 was pleased to hold as follows:

“11. *In case of a private complaint, the Magistrate can issue summons when the evidence produced at the pre-summoning stage shows that there is sufficient ground for proceeding against the accused. The material on record should indicate that the ingredients for taking cognizance of an offence and issuing summons to the accused is made out.*

12. *In the present case, the trial court did not issue summons under Sections 420 and 471 of the IPC, or for that matter, invoke the provision relating to conspiracy under Section 120B of the IPC. Although the summoning order dated 19th July 2018 does not deal with these sections of the IPC, we deem it imperative to examine the ingredients of the aforesaid sections, and Section 406 of the IPC,*

and whether the allegations made in the complaint attract the penal provisions under the relevant sections of the IPC. We have undertaken this exercise in order to carry out a complete and comprehensive analysis of the factual matrix and the legal provisions, and rule out possibility of an error to the detriment of respondent no. 2 - complainant.

22. *We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold. To avoid prolixity, we would only like to refer to the judgment of this Court in *Thermax Limited v. K.M. Johny*, as it refers to earlier case laws in copious detail. In *Thermax Limited (Supra)*, it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement*

of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

23. While summoning an accused who resides outside the jurisdiction of court, in terms of the insertion made to Section 202 of the Code by Act No. 25 of 2005, it is obligatory upon the Magistrate to inquire into the case himself or direct investigation be made by a police officer or such other officer for finding out whether or not there is sufficient ground for proceeding against the accused. In the present case, the said exercise has not been undertaken.

25. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when

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

Primarily on a reading of the aforesaid set of judgments it can be held that if in a case where the complaint itself fails to make out any offence, added to that the examination under Section 200 of the Cr.P.C. also do not attract any culpability to an accused or accused persons so named, mere non-compliance of Section 202 of Cr.P.C. would never deter the High Court from exercising its inherent powers in such cases where persons are asked to face a criminal trial without any substantive cause of action being made out.

In the present case the agreement was entered between accused no.1, namely, Dee Power Corporation the terms and transactions were made with the Accused No.1, Dee Power Corporation, even the advances were made to the accused no.1. Accused no.5 is the manufacturing company whose authorised agent was accused no.1 for the purpose of sales and service. Implicating the manufacturing company (accused no.5 and its officers) for non-supply of DG set and after the refund cheque issued by the accused no.1 is dishonoured by invoking the provisions of the Indian Penal Code in respect of representations

relating to the quality of the product or time required for supplying a product, is abuse of process of law. The same is bound to cause miscarriage of justice.

Accordingly, all further proceedings arising out of complaint case being C.S. No. 61663 of 2019 including the orders dated 03.12.2019 and 15.03.2021 passed by the Learned Chief Metropolitan Magistrate, Calcutta and Learned Metropolitan Magistrate, 13th Court, Calcutta are hereby quashed so far as the petitioners namely, Greaves Cotton Limited, Basant Kumar and Avishek Paul are concerned.

Thus, CRR 1979 of 2021 is allowed.

Pending applications, if any, are consequently disposed of.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)