

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 2476 of 2017****With****IA No. CRAN 5 of 2022****IN THE MATTER OF****Mansion House Properties Pvt. Ltd. & Ors.****Vs.****State of West Bengal & Anr.**

**For the Petitioners : Mr. Sabyasachi Benerjee, Adv.,
Ms. Diksha Ghosh, Adv.,
Ms. Swati Bhattacharyya, Adv.,**

**For the opposite party : Mr. Debabrata Ray, Adv.,
Ms. Sarbani Mukhopadhyay, Adv.,
Ms. Soura Sarkar, Adv.**

Judgment on : 07.06.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Code of Criminal Procedure for quashing of a complaint case being no. C60989 of 2016 u/s 120B/420/418/406 of IPC arising out of Shakespeare Sarani Police Station case no. 295 dated 4th November 2011 (GR no. 3888 of 2011) pending before the Learned Metropolitan Magistrate 16th Court Calcutta.

The brief fact of the case is that opposite party no. 2 (Company) wanted to purchase a landed property belonged to the petitioner's company. Finally they agreed to each other, the value of the property was fixed to Rs. 4.60 Crores. The OP Company paid the amount of Rs 10 Lakh as advance. There were several correspondence between the parties regarding the taking over the company of the petitioner by the OP no. 2. Ultimately it was not materialised and the petitioner company sale out the landed property in question to other third party. The OP no. 2 filed a civil suit before the appropriate court for specific performance and injunction. OP no. 2 also filed a petition of complaint u/s 156(3) Cr.P.C. before the Concerned Magistrate alleging thereby against the petitioners for commission of offence punishable u/s 420/406/34 of IPC. the Learned Chief Judicial Magistrate sent the said petition to the Officer in charge Shakespeare Sarani Police Station to cause an investigation by treating the complaint petition as FIR. Accordingly Shakespeare Sarani Police Station Case no. 295 dated 04.11.2011 was started against the present petitioners. After investigation, the IO submitted charge sheet in the form of final report with a view that the investigation revealed the matter is civil dispute cropped between the two groups of company over the issue of transfer of directorship in respect of

one property. The complainant has already taken shelter of the Civil Court for enforcing injunction upon the property. In course of investigation of valued opinion of Chief Public Prosecutor was obtained, he opined to close the investigation declaring the case as civil in nature. Thus final report was filed.

The de- facto- complainant/ opposite party no 2 filed one Naraji petition before the Learned Chief Metropolitan Magistrate Calcutta praying for not accepting the final report. On hearing, the Learned Chief Metropolitan Magistrate has been pleased to find that it is not a fit case to sent the same before the Shakespeare Sarani Police Station to investigate, thus, he accepted the final report as true and after perusing the Naraji petition. He ordered to treat the Naraji petition as complaint. Accordingly as per direction concerned office was registered the complaint case No.- C60989 of 2016.

Hence this revision.

Learned Advocate for the petitioner submits that the allegations made in the petition of complaint is absolutely false and fabricated. The dispute and differences between the parties are civil in nature for which the de facto complainant had already approached the Civil Court for proper redress. It is the further argument of the Learned Advocate for the petitioner that the Shakespeare Sarani Police Station investigated the

case and submitted final report; after accepting the final report the Learned Magistrate erroneously treated the Naraji Petition to be a petition of complaint which is palpably illegal in the eye of law. The fact of the complaint and investigation thereof when treated as true by the Magistrate, then nothing is left to proceed. Further criminal proceeding against the present petitioner on the selfsame fact would amount an abuse of process of court. The petitioner tried to return the amount of Rs 10 lakh several time once through the post dated cheques and thereafter through RTGS, but the OP no. 2 did not receive the same. The Learned Magistrate mechanically issued the process against the present petitioner erroneously holding the complaint has made a different prima facie case u/s 420/406/34 IPC. The ingredients of the offence punishable u/s 420 IPC has not been made out in this case. There is no initial deception by the present petitioner. No endorsement of property in whatsoever manner is caused thus, the ingredient of offence punishable u/s 406 of IPC is lacking in this case. The petitioner conducted several times to the opposite party for the purpose of completion of process of transfer of directorship of the company, the petitioner also requested the OP 2 arrange and pay full agreed amount but the OP no. 2 failed to do so finding no other alternative the petitioner disposed of the

property in the name of the third party. It is the further contention of the petitioner that the Naraji Petition filed by the de facto complainant was treated as a petition of complaint in the complaint case. The fact of Naraji petition are not essentially different to the fact of Shakespeare Sarani Police Station case no. 295 dated 04.11.2011. Learned Magistrate has accepted the final report and has considered it to be true thus further criminal proceeding against the present petitioner is baseless. In support of his contention the petitioner has cited some decisions they are-

(2000) 4 SCC 168 Hridaya Ranjan Prasad Verma V. State of Bihar

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out. So far as the offences under Sections 469, 504 and 120-B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in *State of Haryana v. Bhajan Lal* **1992 Supp (1) SCC 335**, **1992 SCC (Cri) 426** and as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint. All that Respondent 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make Respondent 2 part with the property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of the process of the court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same.

(2005) 10 SCC 228 Anil Mahajan Vs. Bhor Industries Ltd.

From mere failure of a person to keep up promise subsequently, a culpable intention

right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence.

(2005) 13 SCC 699 Murarilal Gupta Vs. Gopi Sing.

6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution

under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent.

(2009) 14 SCC 696 Dalip Kaur Vs Jagnar Sing

11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta & Ors. [(2009 (1) SCC 516)] is attracted, which are as under:

(2015) 8 SCC 293 Vesa Holdings Private Limited & Anr. Vs. State of Kerala

12. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code, can be said to have been made out.

13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal

proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.

**(2021) SCC Online SC 942 Randheer Sing Vs. State of U.P.
& Ors.**

33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court.

There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

Learned Advocate for the opposite party submitted before this court that the ingredients of cheating enumerated u/s 415 of IPC has sufficiently made out in the petition of complaint. The investigating of the police of Shakespeare Sarani Police Station is perfunctory. During the course of investigation the IO has neither recorded the statement of the de facto complainant, nor receives the e-mail transaction of de facto complainant with the petitioners. The conduct of the present petitioner was doubtful from the inception. They have agreed to transfer the property in the name of the OP no. 2 for which it was agreed that the directorship of the company of the petitioner shall be transferred under the directorship of the OP no. 2 company. The petitioners wilfully received the huge amount of money but did not prepared the documents of transfer of directorship. The petitioners had given no notice or information regarding the transfer of the said property to third party thus they have been cheated the present de facto complainant vehemently. The Magistrate himself perused the

petition of complaint and the Naraji petition and correctly registered the case as a complaint case., there is no illegality in issuing the process against the present petitioner. This a very initial stage of a criminal proceeding, at this juncture. The criminal proceeding cannot be quashed. He further argued that the pendency on civil case between the parties cannot be a ground for quashing of a criminal case. The nature of civil dispute is totally different to the allegation of criminal liability against the present petitioner. He further argued that the several judgment of Hon'ble Supreme Court has discussed the power of the Hon'ble High Court to quash a petition of complaint u/s 482 of the Cr.P.C. In this particular case it is not desirable for this court to quash the complaint in which the magistrate has already taken cognizance against the present petitioner and process has been issued. In support of his contention he cited two decisions reported in **(1982) 3 SCC 510 Gopal Vijay Verma vs Bhuneshwar Prasad Sinha And Ors.** wherein it has held that-

“Criminal Procedure Code, 1973—sections 190(1)—Magistrate is not debarred from taking cognizance on a complaint merely on the ground that he had earlier declared to take cognizance of earlier report”.

(2014) CRILJ 4195 (Supreme Court) Rakesh and Anr. Vs. State of U.P.

‘Criminal Procedure Code S. 190—cognizance—FIR lodged against appellants—final report of investigation showing no case made out—magistrate even though accepted final report can take cognizance on protest/complaint petition’

He further argued that the opinion of Public Prosecutor taken by the IO during the course of investigation is absurd procedure in the eye of law. He again argued that the conduct of the IO proved itself the perfunctory way which vitiate the entire investigation. In support of his contention he cited a decision reported in **(2000) CRILJ 2453 R. Sarala Vs. T.s.**

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Investigation and prosecution are two different facets in the administration of criminal justice. The role of Public Prosecutor is inside the court, whereas investigation is outside the Court. Normally the role of Public Prosecutor commences after investigating agency presents the case in the court on culmination of investigation. Involving the Public Prosecutor in investigation is unjudicious as well as pernicious in law. At any rate no investigating agency can be compelled to seek opinion of a Public Prosecutor under the orders of Court. The Investigation Officer cannot be directed to consult the Public Prosecutor and submit a charge-sheet in tune with the opinion of the Public Prosecutor. Section 173(3) casts an obligation for completing the investigation without unnecessary delay and sub-section (2) enjoins on the officer-in-charge of the police station to forward to the Magistrate a report in the form prescribed by the State Government, on completion of such investigation. The aforesaid power of the Officer-in-charge of the police station is subjected only to the supervision of superior police officers in rank as envisaged in Section 36 of the Code. There is no stage during which the Investigation officer is

legally obliged to take the opinion of a Public Prosecutor or any authority except the aforesaid superior Police officer in rank. Under the Code the formation of the opinion, whether or not there is a case to place the accused on trial has to be that of the officer-in-charge of the police station and none else. Public Prosecutor is appointed, for conducting any prosecution appeal or other proceedings in the Court. He is the officer of the Court. Thus Public Prosecutor is to deal with a different field in the administration of justice and he is not involved in investigation. It is not in the scheme of the Code for supporting or sponsoring any combined operation between the Investigating Officer and the Public Prosecutor for filing the report in the Court.

Learned Advocate for the OP also cited some decisions regarding the power of the High Court for quashing a criminal proceeding while a specific civil case is pending they are-

(2001) 8 SCC 645 M. Krishnan Vs. Vijay Singh & Anr.

5. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits

with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe :

"In my view, unless and until the civil court decides the question whether the document are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."

(2014) 3 SCC 389 Vijyander Kumar and Ors Vs. State of Rajasthan & Anr.

11. No doubt, the views of the High Court in respect of averments and allegations in the FIR were in the context of a prayer to quash the FIR itself but in the facts of this case those findings and observations are still relevant and they do not support the contentions on behalf of the appellants. At the present stage when the informant and witnesses have supported the allegations made in the FIR, it would not be proper for this Court to evaluate the merit of the allegations on the basis of documents annexed with the memo of appeal. Such materials can be produced by the appellants in their defence in accordance with law for due consideration at appropriate stage.

12. Learned counsel for the respondents is correct in contending that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the informant/complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the

complaint discloses a criminal offence or not. This proposition is supported by several judgments of this Court as noted in paragraph 16 of judgment in the case of Ravindra Kumar Madhanlal Goenka and Another vs. Rugmini Ram Raghav Spinners (P) Limited

AIR 2017 SC 289 Prabhu Dutt Tiwari Vs. State of U.P.

5. Having gone through the order passed by the Magistrate, it is fairly clear that there has been the required satisfaction. The discussion by the High Court would give an indication that the Magistrate had to appreciate the evidence and then enter a finding as to whether the accused are guilty or not. At the stage of summoning, as already stated above, the satisfaction required for the Magistrate is only to see whether there is sufficient ground to proceed against the accused.

6. Such a satisfaction for summoning an accused having been made out, the High Court went wrong in interfering with the summoning order. It was too early for the High Court to enter a finding otherwise. The impugned order is, hence, set aside. The appeal is allowed.

(2011) 15 SCC 513 Kishore Kumar Gyanchandani Vs. G. D. Mehorotra and Anr.

6. It is too well settled that when police after investigation files a final form under section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201 of the Code and takes cognizance if the materials produced by the complainant

make out an offence. This question has been raised and answered by this Court in the case of Gopal Vijay Verma v. Bhuneswar Prasad Sinha whereunder the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding.

Finally Learned Advocate for the opposite party assailed a judgment cited for the petitioner of **Murarilal Gupta Vs. Gopi Singh**. Learned Advocate for the petitioner cited this judgment to prove that the Hon'ble Supreme Court has taken view that when there is an agreement of sale between the parties the criminal proceeding u/s 420 IPC is not maintainable. Learned Advocate for the OP submitted that the judgment of Hon'ble Supreme Court passed in **Murarilal Gupta** is per-incuriam. The judgment of **Murarilal Gupta** not relief or contradicted the earlier judgment of Apex Court of same category. This judgment also not followed in judgment passed by the Apex Court thus this judgment cannot be considered as a precedent. In support of his contention of the principle of per- in- curium he cited some decisions reported in **(2003) 5 SCC 448 State of Bihar Vs. Kalika Kuer Alias Kalika Sing & Ors.**

10. Looking at the matter, in view of what has been held to mean by per incuriam,

we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that decision in the case of Ramkrit Singh (supra) was rendered per incuriam. On the other hand, it was observed that in the case of Ramkrit Singh (supra) the Court did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the Court or more aspects should have been gone into by the Court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the latter bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.

(2016) 3 SCC 762 Vishal N. Kalsaria Vs. Bank of India and Ors.

33. It is a well settled position of law that a word or sentence cannot be picked up from a judgment to construe that it is the ratio decidendi on the relevant aspects of the case. It is also a well-settled position of law that a judgment cannot be read as a statute and interpreted and applied to fact situations. An eleven- Judge bench of this Court in Madhav

Rao Jivaji Rao Scindia v. Union of India held as under: (SCC p. 165, para 141)

On the other hand Learned Advocate for the petitioner submitted that the judgment of Hon'ble Apex Court passed in **Murarilal Gupta** is passed by the Hon'ble three Judges Bench and which has a binding effect upon the High Courts. The judgment of **Murarilal Gupta** was not declared as a bad law by any judgment passed by the Hon'ble Larger bench of Hon'ble Apex Court. He again argued that the judgment of **Murarilal Gupta** passed by the Hon'ble Supreme Court is to be treated as Sub-silantio which cannot be determined by the Single Bench of a High Court.

Heard the learned Advocate perused the citations advanced by the parties before this court the judgment passed by the Honble High Court and Supreme Court is the production of the facts in question. The principle laid down in the judgment of Apex Court is only passed on the merits of each and every particular case.

It is true that the High Court has very specific and limited power for quashing a complaint u/s 482 of the Cr.P.C. the guideline of quashing a complaint or FIR by

the High Court has enumerated in the case of **Ch. Bhjanlal** as well as **R. Kalyani v. Janak C. Mehta**.

In **Ch. Bhjanlal** the Hon'ble Apex Court has formulated the circumstances wherein the High Court can exercise its inherent power to quash a complaint case or FIR they are:-

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations 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 whether 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.

In **R. Kalyani Vs. Janak C. Mehta** the Hon'ble Supreme Court has laid down the circumstances where the High Court

should not exercise its inherent jurisdiction to quash a criminal proceeding they are:-

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

The High Court in exercising its revisional jurisdiction, which is a supervisory power upon the supportive court, if it is found that there causes some irregularity or illegality by which the process of court is used abusively; at that situation it is obligatory for the High Court to pass an appropriate order.

In considering this particular case it appears to me that admittedly there are agreements between the parties initially to transfer a landed property; subsequently the proposal was not finally materialised and the petitioner company has transferred the landed property to the third party. This is being the gamut of whole situation; it is to be looked into whether any criminal intention is purported by petitioner or not. The petition of complaint disclosed that several e-mails were forwarded by the opposite party no. 2 company in making preparation of transfer of directorship. It is also alleged in the petition of complaint that the petitioners company has delayed the matter without any valid reason; on the other hand it further appears that during the course of investigation by Shakespeare Sarani Police Station the police has alleged some detail correspondence that the petitioner several times propose the OP 2 for making preparation of arrangement of fund. Finally the report of investigation of the police was accepted by the Magistrate to be true. When the Magistrate has considered the report of the police to be true then the fact of investigation was considered by the Magistrate also to be true.

It is the basic principles of law that when there is a breach of contract there may have two remedies either to claim for the damages or claiming for particular order from court for

specific performance of the contract. The opposite party no.2 herein has adopted the civil procedure to direct the present petitioner company to execute a specific document for transfer the land in question through the order of a Civil court. It further appears that the present petitioner had tried several times to return the money to the opposite party through post dated cheques and through RTGS 198 but they have denied to received the same. It again appears that finally the OP 2 was initiated the civil proceeding before the appropriate civil court and as they failed to obtain an order of injunction, they have preferred this instant criminal proceeding. It further appears that the conduct of the Learned Magistrate in treating the Naraji petition to be the petition of complaint is unwanted in the eye of law. The Naraji petition filed by the opposite party is on the basis of the fact of his petition of complaint and on the basis of which a specific police case was started. The police case ended in FRT which was accepted to be true by the magistrate. Thus the magistrate again cannot attach the same set of facts by registering the fact of Naraji petition to be a complaint case.

It is true that Magistrate has the option to not accept the report and the de facto complainant may be allowed to adduce his evidence and witnesses for the purposes of treating the said

petition of complaint by registering the same as complaint case; but the magistrate has no authority to register a complaint case on the basis of Naraji petition after accepting the FRT to be true. He is not permitted to blow hot and cold at the same time.

It is true that the judgment of **Murarilal Gupta** passed by the Hon'ble Apex Court (Three Judges Bench) is very much identical to the instant case. The ingredients of cheating enumerated u/s 415 IPC i.e. the initial deception, fraudulent or dishonest inducement, or mensrea at the very beginning of the transaction is missing in the petition of complaint. It is also identical with the case of **Murarilal Gupta** that some money was transacted in view of the agreement between the parties. Considering the entire argument Learned Advocate for the opposite party it appears to me that the judgment of **Murarilal Gupta** is not at all per- in- curium. The judgment of Hon'ble Apex Court is very much binding and it is a law of the land which must be followed by this court.

The Hon'ble Apex Court in **R. Kalyani** (supra) has specifically formulated that “ (4) if the allegations disclosed a civil dispute, the same by itself can not be a ground to hold the criminal procedure should not be allowed to continue. The view

of the Hon'ble Apex Court has indicated above is very much correct but the petition of complaint of the instant case does not make out the ingredients of offence punishable u/s 420 of 406 IPC thus at this juncture after considering the entire materials on record, I am of a view that if the criminal proceeding is allowed to be continued that would amount the abuse of process of court. The pendency of a civil case between the parties is not a ground to quash the criminal proceeding but on merit the criminal proceeding pending before the Learned Judicial Magistrate, particularly, the complaint case registered on the basis of the Naraji petition of the opposite party no. 2 is missing the ingredients of the offence punishable u/s 420 and 406 IPC.

Accordingly, I find merit to entertain. In result thereof the instant criminal revision is allowed. The criminal proceeding being C/60989 of 2016 pending before the Learned Metropolitan Magistrate 16th Court Calcutta, against the present petitioners is hereby quashed.

Any interim order passed by this court during the continuation of the instant criminal revision is vacated. Pending applications if any are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)