

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 3625 of 2017****With****IA No. CRAN 3 of 2018 (Old No. CRAN 2056 of 2018)****IN THE MATTER OF****Bosco Sairo@ Bomko Sairo@ Bosco Soeiro.****Vs.****Gour Pan**

**For the Petitioner : Mr. Arindam Jana, Adv.,
Mr. Himadri Chakraborty, Adv.,
Mr. Soumajit Chatterjee, Adv.,
Ms. Mallika Manna, Adv.**

**For the opposite party : Mr. Pinak Kumar Mitra, Adv.,
Ms. Ariba Shahab, Adv.,**

Judgment on : 10.05.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Code of Criminal Procedure for quashing of a proceeding being TR no. 59 of 2016 arising out of CR no. 4 of 2016 u/s 447/323/506/34 of IPC presently pending before the Learned Judicial Magistrate 1st Court Garbeta, Paschim Medinipur.

The brief fact of the case is that the present opposite party lodged a written complaint before the jurisdictional

Magistrate contending inter alia that the father and uncle of the present opposite party have an undivided landed property at the suit mouja. The uncle of the opposite party entered into an agreement with Bharati Airtel Limited for installation of a mobile tower without knowledge of the father of the petitioners the said undivided land. Dispute arose between the father and uncle of the opposite party and one complaint case was registered. On 24/11/2015 at about 2:30 p.m. the complainant came to know that his uncle along with some outsider entered into the above undivided land and caused measurement. At the time the OP reached the spot wherein the present petitioner and other accused abused the petitioner with filthy languages also physically assaulted and threatened him with dire consequences. By such the petitioner sustained injury and was treated at hospital. Consequently he filed the instant complaint case. After receiving the complaint, the court below has examined the complainant as well as the witnesses on S/A. Thereafter the Learned Magistrate has directed the O.C Garbeta P.S. to conduct an investigation u/s 202 Cr.P.C. and to submit a report. The O.C. conducted investigation of the case and submitted a report before the Learned Magistrate on 24.05.2017. After receiving the report the Learned Magistrate

has issued the process against the accused persons u/s 323 of IPC.

Hence this revision.

Learned Advocate for the petitioner submitted before this court that the instant criminal proceeding is palpably illegal in the eye of law. the Learned Magistrate had issued the process without applying his judicial mind. The issuance of process on the strength of the report of O.C. Garbeta, P.S. against the present petitioner is palpably illegal. He further argued that the dispute between the parties are completely civil in nature but the present petitioner was illegally introduced in the private dispute.

It is the positive case of the present petitioner that on the date of instant the present petitioner was not an employee of the Bharati Airtel Limited the petitioner left the Bharati Airtel Limited on 19.05.2014. After being released by Bharati Airtel Limited the petitioner joined Pidilite Industries Limited at Mumbai as Chief Sales Manager on 02/06/2014 till today he is working with Pidilite Industries Limited. It is the further case of the petitioner that he never involved in any of the work of installation of mobile tower of Bharati Airtel Limited and he never involved in such alleged offence.

At a later stage, a supplementary affidavit was filed on behalf of the petitioner annexing the orders passed by this court along with the document of Pidilite Industries Limited wherein the present petitioner is working. Learned Advocate for the petitioner submitted that though, it is a very initial stage of a criminal case but at this stage the Learned Magistrate has power to postpone the process u/s 203 of Cr.P.C. In support of his contention he cited a decision reported in **(1973) 3 SCC 753 Nirmaljit Sing Hoon Vs. State of West Bengal.**

22. Under section 190 of the Code of Criminal Procedure, a magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. Where a complaint is presented before him he can under Section 200 take cognizance of the offence made out therein and has then to examine the complaint and his witnesses. The object of such examination is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding. Under section 202, a Magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry to be made by a Magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under Section 203, he may dismiss the complaint; if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under section 202, there is in his judgment "no sufficient ground for proceeding". The words 'sufficient ground' used also in Section 209 have been construed to mean the satisfaction that a prima facie case is made

out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. (See *R.G. Ruia v. State of Bombay*). In *Vadilal panchal v. Ghadigaonker*, this Court considered the scheme of Sections 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process. The section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment no sufficient ground for proceeding, he may dismiss the complaint. In *Chandra Deo Sing v. Prokash Chandra Bose*, where dismissal of a complaint by the magistrate at the stage of Section 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p. 653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a revision against such a refusal, the High Court also has to apply the same test. The question, therefore, is, whether while applying this test the Chief Presidency Magistrate was right in refusing process and the High Court in revision could confirm such a refusal.

It is the further argument of the petitioner that during the hearing of an application u/s 482 Cr.P.C. the High Court can look into the public document and the documents produced by the parties that has already relied before the Learned Trial Court. In support of his contention he cited the following decisions **(2012) 1 SCC 520 Anita Malhotra Vs.**

Apparel Export Promotion Council and Anr.

20. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse or process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.

21. Inasmuch as the certified copy of the annual return dated 30-9-1999 is a public document, more particularly, in view of the provisions of the Companies Act, 1956 read with Section 74(2) of the Evidence Act, 1872, we hold that the appellant had validly resigned from the Directorship of the Company even in the year 1998 and she cannot be held responsible for the dishonour of the cheques issued in the year 2004.

(2011) 3 SCC 351 Harshendra Kumar D. Vs.

Rebatilata Koley and Ors.

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance or summons or taking cognizance, materials relied upon by the accused

which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents- which are beyond suspicion or doubt- placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

(2015) 1 SCC 103 Gunmala Sales Private

Limited Vs. Anu Mehta and Ors.

34.4 No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director.

Learned Advocate for the opposite party submitted before this court that Learned Magistrate has issued the process in

this case after receiving the evidence of complainant with other two independent witnesses and also after perusing the report of the police. The complaint case was initiated u/s 447/323/506 and 34 of IPC but the process was issued against the accused persons u/s 323 IPC only. He submitted that before exercising the power to quash the criminal proceeding at this initial stage, there are certain issues to be discussed.

Firstly- whether the Hon'ble High Court while exercising its power u/s 482 of the Code of Criminal Procedure- quash a proceeding where a factual disputes are involved?-- He submitted that in the present case it is the contention of the petitioner that at the date of occurrence he was not an employee of Bharati Airtel Limited; on the other hand the complainant and his witnesses stated before the Learned Magistrate that the petitioner was present and assaulted the O.P. at the P.O This is a factual dispute which can only be established during trial but in this stage i.e during this proceeding u/s 482 Cr.P.C the High Court cannot look into the factual disputes of the parties. He cited a decision in **(2008) 17 SCC 147 Malwa Cotton and Spinning Mills Limited Vs. Virsa Sing Sidhu and Ors.**

S. 482 – Quashing of criminal proceeding-- Not justified where disputed questions

of fact involved--Held, factual disputes were involved which were required to established for trial and High Court was not justified in quashing the proceeding while dealing with an application under Section 482.

Secondly-- Whether the Hon'ble High Court while exercising its power u/s 482 of the Code of Criminal procedure can quash a proceeding where the allegations in the complaint prima facie constitute an offence against the accused? It is the submission of the Learned Advocate for the respondent that the allegation made in the complaint prima facie constitute an offence against the present petitioner, in absence of materials on record to show that the continuation of the proceeding would be an abuse of process of the court or would defeat the ends of justice, the High Court would not be justified in quashing such complaint. On a plain perusal of the petition of complaint there disclosed no material to show that the complaint is mala fide frivolous or vexatious. In support of his contention he cited a decision reported in **(1992) 3 SCC 317 Chand Dhan Vs. Jawaharlal and Ors.**

7. The High Court, relying on the decision of this Court in State of Bihar V. Murad Ali Khan pointed out that when the High Court is called upon to exercise the jurisdiction to quash a proceeding at the stage of the magistrate taking cognizance of an offence, the High Court is guided by the allegations

whether those allegations set out in the complaint or the charge-sheet do not in law constitute or spell out any offence and that resort to criminal proceedings within the circumstances amount to an abuse of the process of the court or not. The High Court, has however, in approaching the question misdirected itself in analysing the truth or otherwise of the allegations on the basis of the materials which could not be relied on without legal proof. It is not disputed that the complaint filed by the appellant does disclose an offence under Section 494 IPC. The allegations made by the complainant in law constitute and spell out an offence. If so, the only question that could have been considered at this stage is whether the continuance of the proceedings would be an abuse of the process of the court. This court has in various decisions examined the scope of the power under Section 482 Cr.P.C. and has reiterated the principle that the High Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure the ends of justice. No inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case wherein such power should be exercised. When the allegations in the complaint prima facie constitute the offence against any or all of the respondents in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint.

Thirdly-- Whether the Hon'ble High Court while exercising its power u/s 482 of the Code of Criminal Procedure if the dispute appears civil in nature? It is the submission of the petitioner that the instant dispute between the parties is civil in nature. The complaint case

was filed only to cloak the civil dispute. It is the settled proposition of law that even though the dispute appears civil in nature the contents of the petition of complaint- prima facie disclosed the commission of offence it is criminal in nature. Both criminal law and civil law remedy can be perused in diverse situation. It is of anathema to suppose that when civil remedies available a criminal prosecution is completely barred. In support of his contention he cited a decision passed in **Jagdish Chandra Pal and Ors. Vs. State of West Bengal and Ors. of CRR 1967 of 2016.**

10. In the case in hand, on a careful reading of the petition of complaint in its entirety, in my view, it cannot be said that it does not disclose the commission of an offence nor can it be said that the complaint is bereft of even the basic facts which are absolutely necessary for constitution a prima facie case for the offence alleged. Simply put, the factual foundation for the offence alleged has been laid in the complaint. Whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial. Disputed questions of fact canvassed herein are matters to be decided by evidence during the trial. In my view, the present case certainly does not fall within any of the categories of cases calling for the exercise of the power of this Court under Section 482 Cr.P.C.

Fourthly-- Whether the Learned Magistrate erred in a fact and law by issuing a process against the petitioner and other co-accused?

Learned Advocate for the OP submitted that Learned Magistrate has applied his judicial mind in view to take cognizance of the offence and after being satisfied about the prima facie case made out in the complaint issued summoned to the accused persons. Learned Magistrate is not required to evaluate the merits of the materials or evidences in support to the complaint case the learned Magistrate must not undertake the exercise to see whether materials would lead to conviction or not. In support of his contention he cited a decision reported in **AIR (2019) SC 847 Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and Ors.**

4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the Accused Persons. The Learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal 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. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a

reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not.

Fifthly-- Whether the Hon'ble High Court while exercising its power u/s 482 of the Code of Criminal Procedure can quash a proceeding on the basis of additional documents produced at the revisional stage? It is the submission of the Learned Advocate for the OP that in a revisional petition, documents produced by the accused for the first time cannot be entertained and made a basis for setting aside an order passed by the trial court and dismissing a complaint. Which is otherwise made out the commission of an offence. The accused is doubt for entitled to set up his defence before the trial court at the proper stage, confront the witnesses appearing before the court with any document relevant to the controversy and have the documents brought on record as evidence to enable the trial court to take a proper view regarding the effect thereof. Such document cannot be introduced which were not specifically admitted by the parties. In support

of his contention he has cited a decision reported in **(2012) 1 SCC 699 Helios and Matheson Information Technology Vs. Rajeev Sawhney-- Section 397/ 401-- issuance of process-- complaint for offence under Sections 417,420,465 and 471 r/w Sec-120B IPC-- complaint does make specifically allegations-- calling for proper inquiry and trial-- Magistrate had indeed recorded prima facie conclusion to that effect-- Grounds for interference of Sessions Judge-- untenable and rightly upturned by High Court-- no reason to interfere with order of Hon'ble High Court.**

Sixthly-- Whether parties can bring on records additional documents by way of supplementary affidavit? Learned Advocate for the opposite party submitted that the petitioner filed a supplementary affidavit in this case in a belated stage and the supplementary affidavit contends not only the orders of the Learned Magistrate but also some documents which are not public document or are not at all admitted by the parties. He further argued that the petitioner cannot be permitted to travel beyond his pleadings to make out a case after a prolonged delay on the basis of supplementary affidavit. The petitioner has adopted the procedure by which value of pleadings will

have no meaning and such conduct shall prejudice the opposite party. The supplementary affidavit filed by the petitioner cannot be taken into consideration. In support of his contention he cited decision reported in **Bharat Bhari Udyog Nigam Limited and Ors. Vs. Jessop and Company Ltd. Staff Association and Ors. (2003) 4 Company Law Journal 333 Cal.**

At the outset, we would like to mention that the parties cannot be permitted to travel beyond their pleadings and make out a new case on the basis of supplementary affidavits. if this kind of procedure is adopted, then the value of pleadings will have no meaning; and it is likely to prejudice the parties as they may be misled because of the Piecemeal presentation of facts by supplementary affidavits filed in the proceedings. Normally, whenever a major issue arises during the proceedings and there are no proper pleadings—then parties have to be restricted to their pleadings and they should not travel beyond that.

Learned Advocate for the opposite party finally submits that by virtue of judgment of Hon'ble Supreme Court comprising of a three Judges Bench in **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors. AIR (2021) SC 1918** has held that-

- *Court would not thwart any investigation into the cognizable offence;*

- *The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'.*
- *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;*
- *Criminal proceedings ought not to be scuttled at the initial stage;*
- *Quashing of a complaint/FIR should be an exception and rarity than an ordinary rule;*
- *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;*
- *When a prayer for quashing the FIR is made by the alleged Accused, the court when it exercise the power Under Section 482 Code of Criminal Procedure, 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.*

So, he prayed for dismissal of the instant revisional application.

Heard the Learned Advocates. Perused the petition along with connected documents. The present petitioner was arrayed

as an accused in the case who allegedly involved the commission of a criminal offence while he was acting as a General Manager of in Bharati Airtel Limited. It has been alleged in the petition of complaint that on the date of incident the petitioner has rebuked the complainant with filthy languages and also assaulted him.

The instant criminal proceeding was set in motion chronologically-- by filing complaint, the complainant and his witnesses were examined on S/A before the Learned Magistrate, Learned Magistrate directed the concerned OC to conduct investigation--concerned OC submitted a report; thereafter process was issued against the present petitioner and others.

On perusing the overall conduct of the Learned Magistrate and the procedure of issuing of process appears to be correct. The matter of concerned before this court is whether the instant criminal proceeding initiated against the present petitioner is based on sufficient materials on record.

The petitioner submits that he left the Bharati Airtel Limited prior to the date of alleged occurrence and he was never present at the P.O. At the time of filing of instant petition some documents relating his last date of service at Bharati Airtel Limited was annexed. It is the specifical contention of the petitioner that the dispute between the parties are civil in nature and the present petitioner was frivolously introduced into the

alleged offence. The criminal proceeding against the present petitioner is harassive purposive and fraudulent.

It is true that the roving inquiry at the time of hearing u/s 482 of the Code of Criminal Procedure is not permissible at the same time it is the sole duty of this court to examine whether the criminal proceeding is mala fide or instituted with an ulterior evidence on the accused.

Let me see the first criteria of the initiation of a criminal case that whether any prima facie case is made out in the petition of complaint against the present petitioner or whether the Magistrate is justified to issue process against the present petitioner on the basis of the prima facie materials. The prima facie material is generally the prima facie satisfaction of the Magistrate of a fact that an alleged offence has been committed and the petitioner was reasonably involved of such offence.

To assess the prima facie satisfaction of Magistrate let me consider the orders of the Learned Magistrate. The alleged date of occurrence in 24th of November 2015 at 3:00 p.m. The complaint was lodged before the Learned ACJM Garbeta, on 3rd February 2016 i.e., after more than 02 months from the date of occurrence. The explanation in the petition of complaint regarding such delay is not appears to be satisfactory. After receiving the complaint Learned ACJM Garbeta had taken

cognizance and transfers the case to file of the Learned ACJM 1st Court Garbeta. The complainant appeared before the Learned Magistrate along with one witness and they were examined on S/A. On the next day another witnesses were examined and his statement was recorded. After recording their statement and perusing thereof Learned Magistrate had passed an order on 19.04.2016 that she has doubt in mind to proceed further, thus he directed the OC Garbeta P.S to conduct investigation u/s 202 Cr.P.C to submit a report. On three occasions the OC, Garbeta, PS submitted a report praying for further time for a conclusion of investigation and also mentioned how far he has conduct investigation in that mater. I have perused the three initial reports. He could not collect any satisfactory evidences in that matter and finally a report was filed dated 24.05.2017 to the court. The report dated 24.05.2017 is very clear that the complainant was beaten by fists and blow by his uncle. The presence of manager of Airtel Company Limited was indicated in the report at the time of occurrence, but the identity of the manager was doubtful. More specifically it is doubtful that the present petitioner was present at the time of occurrence at the P.O.

Considering the materials, it appears to me that while Learned Magistrate was not satisfied to issue and process after

recording the statement of complainant and other witnesses. How he satisfied himself in issuance of process against the present petitioner only on the basis of the report of the OC dated 24.05.2017. The report of the police dated 24.05.2017 does not disclose any commission of offence by the present petitioner.

Section 190 of the Cr.P.C empowers a Magistrate to take cognizance of an offence either on receiving a complaint or on a police report or on information otherwise received. Section 200 empowers a Magistrate to examine the complainant and his witnesses, the object of such examination is to ascertain whether there is a prima facie case against the accused persons in the alleged offence stated in the complaint. The other purpose is to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass a person. To further strengthen the hand of Magistrate to examine the veracity of a petition of complaint the power u/s 202 was given by which a Magistrate on receipt of a complaint made postpone the issue of process either inquired into the case himself or directed an enquiry to be made by a Magistrate subordinate to him or by police officers for ascertained its truth or falsehood. Section 203 Cr.P.C. enable the Magistrate to dismiss the complaint; if, after taking the statement of the complaint and his witness and the result of investigation, if he has any opinion that there is no

sufficient ground for proceeding. Sufficient ground means the satisfaction of the Magistrate that a prima facie case is made out against the accused person by the evidence of witnesses and by the report of the police.

In this present case the Learned Magistrate has opted the procedure enumerated u/s 200 and 202 of the Cr.P.C. After recording the statement of complainant and his witnesses it is the specific finding of the Magistrate that he has any doubt in issuing the process thus, he proceeded u/s 202 Cr.P.C. and directed concerned OC to conduct an investigation and submit a report. The report is regarding the involvement of alleged offence (u/s 323 IPC) with the uncle of the complainant is involved in the commission of alleged offence. The presence of Manager of Bharati Airtel Limited was mentioned in the report at the time of occurrence but the report specifically stated that the complainant was assaulted by his uncle. It is crystal clear that the Manager of Bharati Airtel Limited is not involved in the alleged commission of offence, though, it is doubtful that the present petitioner was at all present at the time of occurrence in the P.O. It is true that the criminal proceeding is at its very initial stage and at this time roving enquiry is not permissible by this court in exercising jurisdiction u/s 482 of the code, but when it appears that the process was issued on the basis of

wrong foundation and appreciation of evidence by the Learned Magistrate, at this stage, on the basis of acceptable circumstances, nothing can prevent this court to pass an appropriate order to prevent the abuse of process of court. In this particular case it appears to me that the Learned Magistrate has misguided himself in calculating the prima facie case to issue the process against the present petitioner. The foundation of order of Learned Magistrate for issuance of process against the petitioner is not based on proper justification and understanding of the report of the OC Garbeta, P.S. Considering the entire materials on record and on considering the documents advanced by both the parties and also considering the principle laid down by the Hon'ble Supreme Court in several cited judgments, I am of a view that if the instant criminal proceeding is allowed to be continued against the present petitioner that would tantamount to be an abuse of process of court. I find merit to entertain the instant criminal revision .

CRR is allowed.

The order of issuance of process as well as the criminal proceeding against the present petitioner is hereby quashed.

Connected CRAN Applications if pending are also disposed of.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

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.)