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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 4083 of 2012**
**With**
**CRAN 14 of 2023**
**With**
**CRAN 15 of 2023**

**Rajib Rattan and Anr.**
**-Vs-**
**The State of West Bengal and Anr.**

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| For the Petitioners | : Mr. Debangan Bhattacharya<br>Mr. Devanand Mishra<br>Ms. Swarnali Saha<br>Mr. Prashant Tripathi<br>Mr. Mahiul Islam |
| For the O.P. No. 2 | :Mr. Suddhadev Adak<br>Ms. Arpita Mondal<br>Mr. Arup Nath Bhattacharyya |
| For the State | : Mr. Bibaswan Bhattacharya |
| Heard on | : 10.08.2023, 25.09.2023 |
| Judgment on | : 15.12.2023 |

**<u>Ananya Bandyopadhyay, J.:-</u>**

1. The instant revisional application has been filed by petitioners for quashing of the proceeding of Case No. AC-1046 of 2012 under Sections 323/448/384/506(ii)/34 of the Indian Penal Code, pending before the Court of the Learned 2nd Judicial Magistrate, Alipore and order dated 03.09.2012 passed by the Learned 2nd Judicial Magistrate, Alipore, in Case No. AC-1046 of 2012 whereby process was issued under Sections 323 /448 /384 /506(ii) /34 of the Indian Penal Code.

2. The allegations levelled in the said petitioner of complaint in brief are to the effect that –

    a) The complainant is a director of M/s Dagcon (India) Pvt. Ltd. having its office at 2D, 167 Rajdanga Naba Pally, Police Station – Kasba, Kolkata – 700107. That the complainant in his official capacity has obtained a loan to the tune of Rs. 14,53,651/- from Indiabulls Financial Service Ltd. having its office at Kolkata. As per the terms and conditions the complainant paid Rs. 6,04,835/- by 11 installments through account payee cheques but due to poor financial condition of his business, the complainant failed to pay the installments and thereafter securing his capacity approached Indiabulls Financial service for one time full and final settlement to make repayment of the outstanding amount to be paid at a time.
    b) In response of the said approach of the complainant the said loan amount was allegedly settled to a tune of Rs. 3,00,000/- (Three Lakhs) at a time on account of full and final settlement.
    c) On 03.12.2009 an authorized representative of Indiabulls Financial service came to the residence of the complainant and thereafter exhibited one settlement letter dated 03.09.2009 where it was categorically stated to pay Rs. 3,00,000/- as on that date on account of full and final settlement of the said loan amount.
    d) The complainant paid the entire amount of Rs. 3 Lakhs through a demand draft vide no 003610, dated 02.12.2009 in favour of Indiabulls Financial Service Ltd. issued by the India Overseas Bank,

Kolkata and delivered the same to the said representative (accused No. 4)

e) It is alleged on 30.03.2012 at about 1.30 P.M. the accused No. 3 and 4 accompanying with eight unknown persons came and committed trespass into the residence of the complainant by posing themselves as a representative of Indiabulls Financial Service Ltd. The said persons claimed Rs. 10,00,000/- from the complainant by claiming the said amount as a repayment of the loan amount which was closed. When the complainant showed the settlement letter with proper acknowledgement by the accused No. 3 the accused persons abused the complainant with vulgar languages and obtained his signatures on blank papers and judicial stamp paper. Thereafter the accused persons assaulted the complainant with fist and blows and threaten him with dire consequences.

f) The complainant lodged a complaint in Kasba Police Station on 01.04.2012 but as no proper action was taken by the police personals hence the complainant filed a petition of complaint against the accused persons.

3. The Learned Additional Chief Judicial Magistrate, Alipore, upon receiving the said petition of complaint, was pleased by his order dated 18.04.2012 to take cognizance of the offences and transferred the case to the file of the Learned 2nd Judicial Magistrate, Alipore for enquiry and disposal. It is pertinent to mention that the said order of the Learned Magistrate taking cognizance clearly reflects absence of application of mind.

4. The Learned 2nd Judicial Magistrate, Alipore, upon receipt of the case records and upon examining the authorized representative of the opposite party no. 2, was pleased by his order dated 03.09.2012 to find out a prima facie case made out against the petitioners under Sections 323/448/384/506(ii)/34 of the Indian Penal Code and directed issuance of summons to the petitioner and the other accused persons and fixed the next date on 29.12.2012 for S/R and A/D.
5. The petitioner at the outset submits that the impugned complaint is clearly a gross abuse of the process of law as even if all the facts alleged in the complaint are accepted as true, absolutely no offence is made out against the petitioners and hence the complaint is motivated, *mala fide* and wholly devoid of merit. Consequently the impugned complaint is not maintainable in law and is therefore liable to be quashed under Section 482 of the Cr.P.C. Further, the impugned complaint has clearly been filed only wreak vengeance and tantamount to, a malicious prosecution. The petitioner craves the leave of this Hon'ble Court to place certain material facts, before setting out the grounds which would in law clearly establish that this complaint is not maintainable.
6. The opposite party no. 2 in his capacity as Director of M/s. Dagcon India Private Limited had approached Indiabulls Financial Services Limited for availing a loan facility for a sum of Rs. 15,00,000/-. After execution of necessary document(s) viz. Loan Agreement and other related documents, a sum of Rs. 14,53,651/- (after deduction of processing charges & service tax etc) was disbursed in the name of M/s. Dagcon Indian Private Limited vide

cheque number 001639 dated 30.06.2007 drawn on HDFC Bank Limited. The Loan was repayable in 36 equitable monthly installment(s) of Rs. 54,985/-.

7. The respondent had only paid 16 installments and admittedly defaulted in payment of equitable installments. The contention of the Respondent of Indiabulss Financial Services Limited issuing a full and final settlement letter is absolutely incorrect. This is proved from the fact that his cheques for EMI were dishonoured even after the receipt of alleged settlement amount. Admittedly no query was raised nor any objection was ever made. It is pertinent to note that alleged complaint was given after the accused no. 4 discontinued his services of Indiabulls Financial Services Limited. Furthermore the accused no. 4 had not been provided with right or authority by Indiabulls Finance Services Limited to issue any settlement letter and thus the alleged settlement letter is a forged and fabricated document.

8. The opposite party no. 2 is well aware of the fact that Indiabulls Financial Services Limited has instituted several proceedings against the Respondent under Section 138 of Negotiable Instrument Act. In fact the Respondent had made the instant false and motivated complaint only as a counter blast to the said proceedings and to cover up his misdeeds and/or defaults.

9. It is pertinent to mention that from a perusal of the petition of complaint it would transpire that the transaction, which has given rise to the present impugned proceeding, relates to a Loan amount to a sum of Rs. 15,00,000/- and purported non-payment of the said Loan amount. In view of the fact

that the petitioner no. 1 and 2 were not named in the petition of complaint as well as sworn statement, neither any averment has been endorsed in order to show their participation in commission of the offence. It is apparent that the petitioner's no. 1 to 2 had no role to play in the affairs of the said transaction. In such circumstances, it is apparent that the implication of the petitioners in the instant case is bereft of any cogent reason or materials and in such circumstances the proceeding impugned is liable to be quashed.

10. The order of cognizance dated 28.04.2011, which forms the very bastion of the proceeding, has been passed in a mechanical way without application of judicial mind as per Section 190 of the Code of Criminal Procedure, taking cognizance by the Learned Magistrate requires great exercise of judicial mind. Taking of cognizance is not a mechanical process or a delivery system in the post office that simply an approval of the Learned Court would be given on a petition without application of proper judicial mind as the wisdom of the Legislature is quite otherwise and the same is clear from the letter of the enactment itself. Section 190(1)(a) of the Code of Criminal Procedure states that any Magistrate can proceed in a certain direction upon a petition of complaint of facts which constitute such offence. Now in order to determine whether prima facie case exists or not, exercise of a judicial mind is a *sine qua non* and same cannot be surrogated to a mechanical process.

11. From a perusal of the petition of complaint of the instant proceeding as also the statements of the complainant's representative on solemn affirmation it

would appear that the complainant has accepted that a Loan amount was disbursed against the complainant. It appears that there is no denial of the fact that there had been a failure on the part of the opposite party to repay the said Loan amount as per the norms of the agreement. It is thus the contention of the opposite party no. 2 that Indiabulls Financial Service Ltd has already settled the Loan amount and with a malice intention they tried to extort more money from the complainant. However from the petition of complaint it can be inferred that in order to defraud and to cheat the financial company the opposite party has filed the complaint in order to harass the petitioners. And the same cannot in any manner reflect any extortion on the part of the petitioners thus the charge under Section 384 of the Indian Penal Code is clearly misconceived and the proceeding impugned is thus liable to be quashed.

12. House trespass - No material to show that Petitioners entered into the residence of Opposite Party No. 2 despite being asked not to do so by Opposite Party No. 2. There is no allegation that the Petitioners remain in the resident of Opposite Party No. 2 despite being asked to leave.

13. No allegation of threat of any injury two persons reputation and property of Opposite party No.2 or person or reputation of another in whom the Opposite party No.2 is interested, nature and contents of threat also not disclosed so the possibility of intent to cause alarm to opposite party No. 2 cannot be assessed nor is the same is alleged under Section 506 of Indian Penal Code.

14. The petition of complaint must reflect the facts constituting the offence. Basic facts reflecting the ingredients of alleged offence are not disclosed in the petition of complaint. Taking of cognizance by Magistrate on such complaint deficient of material particulars reflect the non application of judicial mind on the part of the Learned Magistrate.

15. It is now trite law that the principle of vicarious liability has no manner of application in respect of offences under the Indian Penal Code. It is only when an officer of a company is personally liable for commission of an offence done in exercise of his official duties that such officer of the erring company can also be hauled up for commission of such offence. The petition of complaint as also the statement of the representative of the opposite party No. 2 company do not in any manner reveal any part played by the petitioners which justifies their arraignment as accused in the instant case. In such circumstances, the proceeding impugned, so far as it relates to the present petitioners, is liable to be quashed forthwith by this Hon'ble Court.

16. Section 506 of the Indian Penal Code provides punishment for the offence of criminal intimidation.

    In the instant case, the facts clearly disclose existence of loan transaction between the Financial Company and the opposite party No. 2. Payments demanded in respect of the loan amount cannot be construed to be "criminal intimidation" within the meaning of section 503 of the Indian Penal Code. It is to be appreciated that in such a transaction, the complainant has accepted the loan amount to a tune of Rs. 14,53,651/- therefore In such circumstances, the offence defined under Section 506(ii) of the Indian Penal Code cannot be sustained in the eye of law in the instant case and as such, the proceeding impugned is liable to be quashed.

17. Section 384 of the Indian Penal Code provides punishment for the offence of extortion. The ingredient with regard to such offence is to be inferred from the facts as disclosed in the petition of complaint and the statements of the witnesses. However, from a perusal of the petition it would be apparent that there exists no allegation against the petitioners, which would reflect presence of any agreement between the petitioner and the other accused persons in commission of the said offences. In such circumstances, the charge under Section 384 of the Indian Penal Code also is not made out. As such the impugned proceeding is liable to be quashed.

18. It is apparent that in case of the offence under Section 448 of the Indian Penal Code there must exist unlawful entry by the accused to the complainant's house by illegal means. Thus the entry or quitting through any passage in respect of the offence under Section 448 of the Indian Penal Code is not voluntary but is a result of criminal force. However, in case of an offence under Section 323 of the Indian Penal Code, the intention to cause hurt to any person with the knowledge that he is likely thereby to cause hurt and does thereby causes hurt to any person is "voluntarily to cause hurt". It is thus apparent from the petition of complainant that offences as alleged by the opposite party no.2 does not in reflect the vital ingredients of the offences. The Learned Magistrate by taking cognizance of the offences under Sections 448/323 of the Indian Penal Code between the

petitioners and the opposite party No.2 has committed grave error in law for which the impugned proceeding is liable to be quashed.

19. Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. The order of the Learned Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Learned Magistrate also has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and determine as to whether the same would be sufficient for the complainant to succeed in bringing home the charge of the accused. The Learned Magistrate also has to carefully scrutinize the evidence brought on record and then examine if any offence had been committed by any of the accused. In the instant case it is apparent that the allegations made by the opposite party do not make out any contravention of the provisions as alleged and as such the Learned Magistrate by holding that a prima facie case has been made out against the petitioner regarding commission of the offences punishable under Sections 323/448/384/506(ii)/34 of the Indian Penal Code has shown non application of mind to the facts as disclosed in the complaint. In such circumstances the order issuing process against the petitioner needs to be set aside as also the proceeding is liable to quashed.

20. Section 202 of Cr.P.C is extremely limited only to the ascertainment of the truth or falsehood of the allegation made in the complaint. In order to see that innocent persons are not harassed by unscrupulous persons the magistrate before issuing process prima facie give reasons to trust the

complainant and the facts constitute an offence under the law. However if no offence is made out it is the duty of the Magistrate to dismiss the complainant. In the instant case the Magistrate without forming an opinion as to whether process should be issued or not has shown non application mind. In such circumstances the order of issuing process against the petitioners is liable to be quashed.

21. The Learned Advocate for the petitioner submitted that :-

   i. The impugned proceeding is a gross abuse of the process of court which if allowed to continue for a single day more beyond the stage it has already reached, will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed for the ends of justice.

   ii. The allegation made in the petition of 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 petitioner and as such the initiation and continuation of the instant proceeding is liable to be quashed for the ends of justice.

   iii. From a perusal of the petition of complaint of the instant proceeding as also the statements of the complainant's representative on solemn affirmation it would appear that the complainant has accepted that a loan amount was disbursed against the complainant. It appears that there is no denial of the fact that there had been a failure on the part of the opposite party to repay the said loan amount as per the norms of the agreement. It is thus the contention of the opposite party No. 2

that Indiabulls Financial Service Ltd has already settled the loan amount and with a malice intention they tried to extort more money from the complainant. However from the petition of complaint it can be inferred that in order to defraud and to cheat the financial company the opposite party has filed the complaint in order to harass the petitioners. And the same cannot in any manner reflect any extortion on the part of the petitioners thus the charge under Section 384 of the Indian Penal Code is clearly misconceived and in such circumstances, the proceeding impugned is liable to be quashed.

iv. The order of cognizance dated 28.04.2011, which forms the very bastion of the proceeding, has been passed in a mechanical way without application of judicial mind As per Section 190 of the Code of Criminal Procedure, taking cognizance by the Learned Magistrate requires great exercise of judicial mind. Taking of cognizance is not a mechanical process or a delivery system in the post office that simply an approval of the Learned Court would be given on a petition without application of proper judicial mind as the wisdom of the Legislature is quite otherwise and the same is clear from the letter of the enactment itself. Section 190(1)(a) of the Code of Criminal Procedure states that any Magistrate can proceed in a certain direction upon a petition of complaint of facts which constitute such offence. Now in order to determine whether prima facie case exists or not, exercise of a judicial mind is a sine qua non and the same cannot be surrogated to a mechanical process.

v. It is now trite law that the principle of vicarious liability has no manner of application in respect of offences under the Indian Penal Code. It is only when an officer of a company is personally liable for commission of an offence done in exercise of his official duties that such officer of the erring company can also be hauled up for commission of such offence. The petition of complaint as also the statement of the representative of the opposite party no. 2 company do not in any manner reveal any part played by the petitioners which justifies his arraignment as accused in the instant case. In such circumstances, the proceeding impugned is thus liable to be quashed.

vi. Section 506 of the Indian Penal Code provides punishment for the offence of criminal intimidation. In the instant case, the facts clearly disclose existence of loan transaction between the Financial Company and the opposite party No. 2. Payments demanded in respect of the loan amount cannot be construed to be "criminal intimidation" within the meaning of section 503 of the Indian Penal Code. It is to be appreciated that in such a transaction, the complainant has accepted the loan amount to a tune of Rs.14,53,651/- therefore in such circumstances, the offence defined under Section 506(ii) of the Indian Penal Code cannot be sustained in the eye of law in the instant case and as such, the proceeding impugned is liable to be quashed.

vii. Section 384 of the Indian Penal Code provides punishment for the offence of extortion.. The ingredient with regard to such offence is to be inferred from the facts as disclosed in the petition of complaint and the statements of the witnesses. However, from a perusal of the petition it would be apparent that there exists no allegation against the petitioners, which would reflect presence of any agreement between the petitioner and the other accused persons in commission of the said offences. In such circumstances, the charge under Sections 384 of the Indian Penal Code also is not made out. As such the impugned proceeding is liable to be quashed.

viii. It is apparent that in case of the offence under Section 448 of the Indian Penal Code there must exist unlawful entry by the accused to the complainant's house by illegal means. Thus the entry or quitting through any passage in respect of the offence under Section 448 of the Indian Penal Code is not voluntary but is a result of criminal force. However, in case of an offence under Section 323 of the Indian Penal Code, the intention to cause hurt to any person with the knowledge that he is likely thereby to cause hurt and does thereby causes hurt to any person is "voluntarily to cause hurt". It is thus apparent that offences as alleged by the opposite party does not in reflect the vital ingredients of the offences. The Learned Magistrate by taking cognizance of the offences under Sections 448/323 of the Indian Penal Code between the petitioners and the opposite party no. 2 has committed grave error in law for which the impugned proceeding is liable to be quashed.

ix. House trespass - No material to show that Petitioners entered into the residence of Opposite Party No. 2 despite being asked not to do so by

Opposite Party No.2. There is no allegation that the Petitioners remain in the resident of Opposite Party No.2 despite being asked to leave.

x. No allegation of threat of any injury two persons reputation and property of Opposite party No. 2 or person or reputation of another in whom the Opposite party No. 2 is interested, nature and contents of threat also not disclosed so the possibility of intent to cause alarm to opposite party No. 2 cannot be assessed nor is the same is alleged under Section 506 of Indian Penal Code.

xi. The petition of complaint must reflect the facts constituting the offence. Basic facts reflecting the ingredients of alleged offence are not disclosed in the petition of complaint. Taking of cognizance by Magistrate on such complaint deficient of material particulars reflect the non application of judicial mind on the part of the Learned Magistrate.

xii. Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. The order of the learned Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The learned Magistrate also has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and determine as to whether the same would be sufficient for the complainant to succeed in bringing home the charge of the accused. The learned Magistrate also has to carefully scrutinize the evidence brought on record and then examine if any offence had been committed by any of the accused. In the instant case it is apparent that the allegations made by the opposite party do not make out any contravention of the provisions as alleged and as such the learned Magistrate by holding that a prima facie case has been made out against the petitioner regarding commission of the offences punishable under Sections 323/448/384/506(ii)/34 of the Indian Penal Code has shown non-application of mind to the facts as disclosed in the complaint. In such circumstances the order issuing process against the petitioner needs to be set aside as also the proceeding is liable to be quashed.

xiii. Even otherwise, a bare perusal of the Impugned Complaint and the sworn statement submitted in support thereof reveals that the sworn statement has been furnished by the power of attorney holder of the Respondent. In that regard, it is relevant to note that it is settled law that a general power of attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party and no one can delegate the power to appear in witness box on behalf of himself. Pertinently, the Power of Attorney Holder has no personal or primary knowledge of the facts surrounding the transaction and documents. As such, the issuance of the summons in utter disregard of settled law was not permissible and the summoning order and the Impugned Complaint are liable to be quashed, amongst others, for this ground as well.

a) The Learned Magistrate has also failed to consider the fact that the complaint must necessarily spell out how and in what manner the Accused was in charge of or responsible to the Accused Company for the conduct of its business and accordingly in the absence of a specific averment to the role of a accused, the Impugned Complaint and the order of the Magistrate summoning such Person(s) arrayed as accused deserves to be quashed. Further, the Supreme Court has held in R. Kalyani v. Janak C Mehta [(2009) 1 SCC 516] that specific allegations must be made in the complaint with regard to the role of each of the accused and in the event that such specific allegations do not exist then the complaint deserves to quashed with respect to those accused against whom no specific allegations are made. The same has also been held in Chunduru Siva Ramkrishna and another v. Peddi Ravindra Babu and another [2009 (11) SCC 203]. The Impugned Complaint makes absolutely no averments as to the role of the Petitioner(s) and accordingly Impugned Complaint and the consequential orders deserve to be quashed with respect to the Petitioner.

b) Further, a bare perusal of the Impugned Complaint and the sworn statement reveals that the Respondent has purposely and dishonestly concealed the material facts with regard to the dishonour of Cheque(s) issued by him towards his obligation. It is settled law that one who comes to the court, must come with clean- hands. The Impugned Complaint is an evident and blatant example of how the Respondent has abused the process of Court with an intention of using the Impugned Complaint as a convenient lever to arm-twist the Petitioner Company and circumvent the judicial process. It is also trite that a person, whose case is based on falsehood, has no right to approach the court and ought to be summarily thrown out at any stage of the litigation. On this ground also, the Impugned Complaint and the consequential orders ought to be quashed.

c) It is also to be noted that the Petitioner No.1 & 2 are based outside the jurisdiction of the Learned Criminal Court and it is settled law that when the Accused are based in distant places outside the jurisdiction of the Court, there is an added onus on the Magistrate to ensure the veracity of the Impugned Complaint before the issue of process. The Learned Magistrate has, prior to issuing of process against the Accused, failed to enquire, either himself or direct an investigation to be made by a Police Officer for the purpose of deciding whether or not there is sufficient ground for proceeding with the Impugned Complaint. Since this is a mandatory provision and the same not having been complied with by the Learned Magistrate, it is submitted that the Impugned Complaint ought not to have been taken on file by him and consequently, the same is liable to be quashed.

xiv. Section 202 of Cr.P.C. is limited to the ascertainment of the truth or falsehood of the allegation made in the complaint. In order to see that innocent persons are not harassed by unscrupulous persons, the Magistrate before issuing process prima facie give reasons to trust the complainant and the facts constitute an offence under the law, However if no offence is made out it is the duty of the Magistrate to dismiss the complainant. In the instant case the Magistrate without forming an opinion as to whether process should be issued or not has shown non application of mind in such circumstances the order of Issuing process against the petitioners is liable to be quashed.

xv. The impugned proceeding is otherwise bad in law and as such the same are liable to be quashed.

22. The complaint petition filed by the opposite party no. 2 before the Learned Additional Chief Judicial Magistrate at Alipore reveals as follows:

*i. "The complainant is the Director of M/S Dagcon (India) Pvt. Ltd having its office at 2D, 167 Rajdanga Naba Pally Police Station-Kasba, Kolkata 700107. The complainant with his official capacity obtained a loan from Indiabulls Financial Service Ltd* *having its office at Kolkata of Rs. 14,53,651/- as per the terms and condition of the said company the complainant paid the sum of Rs. 6,04,835/- by 11 (Eleven) installments through account payee cheque on account of part payment of installments out of the total loan amount of Rs. 14,53, 651/- paid by the said company. But due to poor financial condition of his business, the complainant failed to pay the installment and thereafter securing his capability approached Indiabulls Financial Service Ltd. for one time full and final settlement to make repayment of the out of standing amount to be paid at a time as to be settled by the said company.*

ii. *In response of the said approach of the complaint, the accused person settled the said loan account no. S000196603 with the complainant asking him to pay Rs. 3,00,000/- at a time on account of Full and final settlement of payment to the com any of the accused person and the said proposal was accepted the complainant.*

iii. *On the basis of the said full and final settlement, the accused persons being the executive of Indiabulls Financial Service Ltd. sent their authorized representative, Mr. S. R Chowdhery, who producing his identity card on 3.12.2009 came the residence of the complainant i.e. the place of occurrence produced his identity card represented himself as the authorized collector of the said company exhibited one settlement letter dated 3.12.2009 whereby it has categorically stated direction to pay Rs. 3,00,000/- as on that day on account of full and final settlement of the settled amount. In connection with the said loan amount in the said settlement letter it has categorical stated "...which is as requested by you aforementioned Pl-account stand settled and full and final and nothing shall be due and payable". The accused No.4 also represented the complainant that after making payment of Rs. 3,00,000/- the payment of entire amount would be settled* *as treated as full payment and Indiabulls Financial Service Ltd. shall have no further claim over the said loan account from the complainant.*

iv. *Believing upon the said representation and treating the said document produced by the accused No.4 the complainant paid the entire amount of Rs. 3,00,000/- through demand draft vide No. 003610 dated 2.12.2009 prepared in favor of Indiabulls Financial Service Ltd. issued by the India Overseas Bank, Kolkata- Central CLG Office, delivered the same to the accused No.4 who receiving the said demand draft acknowledge the same over the said settlement letter dated 3.12.2009 and the said demand draft duly encashed in favor of the said company.*

v. *Thereafter said episode of loan account was closed and there was no further transaction and relation by and between the complaint and the accused persons. But in furtherance of their common intention in order to extort lump sum amount from the complaint all on sudden on 30.03.2012 at about 1.30 P.M. (noon), the accused No.3 & 4 accompanying with eight unknown persons came and committed trespass in to the residence of the complainant posing themselves as the representative of Indiabulls Financial Service Ltd. Illegally demanded the sum of Rs. 10,00,000/- from the complainant by way extortion illegally claiming the said amount alleging against repayment of said closed loan account. As the complainant and other P.Ws who were present there produced the original settlement letter with paper proper acknowledgement by accused no.3 the accused persons accompanying with those unknown persons abused the complainant with vulgar languages put pressure upon him with fear of murder to obtain his signatures over blank papers and non judicial stamp paper. As the complainant refused to put his signature over the documents the accused No.3, 4 and one unknown persons assaulted the complaint with fist blows and* *kicks, they also threatened the complainant by saying if the complainant would not put his signature over the blank document produced by them, he would be murdered by their hired antisocials. The complaint and other PWs raised hue and cry and the accused persons fled away. The complainant apprehends he would be murdered by the hired antisocials of the accused persons.*

*vi. That the complainant lodged a complaint at Kasba Polic Station on 01.04.2012 narrating the entire occurrences. But though assured the complainant, no action has taken yet against the accused persons by the Kasba P.S hence the delay in lodging this complaint."*

23. The authorized representative of the opposite party no. 2 in her examination under Section 200 of Cr.P.C. stated as follows:

> *"I filed this case against Rajib Rattan, Amit Jain, Sanjib Paul, S. Roy Chowdhury as authorized representative of Arunendu Sarkar. The incident took place. On 30.03.12 at 183 Rajdanga Main Road. The complainant obtain the loan of Rs. 1453651/- from Indiabulls Financial & Service Ltd. He paid Rs. 6.04,835/- by 11 installments. After that he failed to pay the installments and proposed to settle the matter finally. Accordingly settlement paper was prepared on condition of payment of Rs. 3,000,00/-. The complainant paid Rs. 3,00,000/- On 30.03.12 Accd. No.3 and 4 with 8 unknown persons wanted trespass in the house of complainant and demanded Rs. 10,000,00/- They abuse the complainant pressurized the complainant put his signature on blank document assaulted the complainant lodged a complaint before Kasba P.S. No action was taken. So the complainant filed this case."*

24. Section 323 of the Indian Penal Code states as follows :-

> *"**Punishment for voluntarily causing hurt**- Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall*

*be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."*

25. Section 448 of the Indian Penal Code states as follows :-

"***Punishment for house-trespass**.- Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."*

26. Section 38 of the Indian Penal Code states as follows :-

"***Persons concerned in criminal act may be guilty of different offences** - Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.*

*Illustration*

*A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide."*

27. Section 506 of the Indian Penal Code states as follows :-

"***Punishment for criminal intimidation.** - Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*

***If threat be to cause death or grievous hurt, etc**. and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [1][imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman,* *shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”*

28. In the case of ***Paramjeet Batra v. State of Uttarakhand***[1], the Hon’ble Supreme Court held as follows:-

> *“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.*
>
> *13. As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise.”*

[1](2013) 11 SCC 673

29. In ***Jaswant Singh vs State of Punjab and Another***[2]**,** the Hon'ble Supreme Court held as follows:

> *"17. A three-Judge Bench of this Court in Gian Singh v. State of Punjab5 again summarized the legal position which emerged regarding powers of the High Court in quashing criminal proceedings in exercise of power under Section 482 Cr.P.C. R.M. Lodha, J., (as he then was) speaking for the Bench, clearly observed in paragraph 61 of the report that criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. The relevant extract from paragraph 61 is reproduced below:*
>
> *"61. The position that emerges from the above discussion can be summarisedthus : the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz. : (i) to secure the ends of justice, or (in) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime.*

[2] 2021 SCC OnLine SC 1007

*Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its View, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."*

*18. A three-Judge Bench of this Court in Parbatbhai Aahir Alias ParbatbhaiBhimsinhbhaiKarmur v. State Gujarat6 laid down the broad principles for exercising the inherent powers of the High Court under section 482 Cr.P.C. Dr. D.Y. Chandrachud, J., speaking for the bench, enumerated the principles in paragraph 16 and in sub paragraphs. The same are reproduced below:*

*"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:*

*16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*

*16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Criminal Procedure Code, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*

*16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.*

*16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (0) to secure the ends of justice, or) to prevent an abuse of the process of any court.*

*16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.*

*16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.*

*16.7. distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.*

*16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

*16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

*16.10. There is yet an exception to the principle set out in propositions 16.8, and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

*19. From the above discussion on the settled legal principles, it is clear from the facts of the present case that there was a clear abuse of the process of the Court and further that the Court had a duty to secure the ends of justice. We say so for the following reasons:*

*a) The allegations made in the FIR had an overwhelmingly and predominatingly a civil flavour inasmuch as the complainant alleged that he had paid money to Gurmeet Singh, the main accused to get employment for his son abroad. If Gurmeet Singh failed the complainant could have filed a suit for recovery of the amount paid for not fulfilling the promise.*

*b) Initially, the investigating officer and two superior officers of the economic wing has found that there is no substance in the complaint making out even a prima facie triable case and had therefore, recommended for closure. However, on the orders of the Senior Superintendent of Police, the FIR was registered and the matter was investigated. No criminal breach of trust was found and the charge sheet was submitted only against Gurmeet Singh under section 420 I.P.C.*

*c) The complainant Nasib Singh had clearly deposed that he had paid Rs. 4 lacs cash to Gurmeet Singh and had also given a cheque of Rs. 2 lacs favouring Gurmeet Singh which he had encashed.*

*d) During trial the present appellant as also the other co-accused Gurpreet Singh were summoned in April 2014 invoking powers of Section 319 Cr.P.C., for being tried under Section 420 I.P.C. It may be noted that no specific allegations of cheating are made against these two accused as they were both settled abroad in Italy.*

*e) The complainant Nasib Singh entered into a compromise with the main accused Gurmeet Singh which was filed before the learned Magistrate and the same was accepted vide order dated*

*26.09.2014 and the alleged offence being of financial transaction stood compounded. Proceedings against Gurmeet Singh were closed.*

*f) Right from 2014, the present appellant and other co-accused Gurpreet Singh who were in Italy were being summoned by the Court. The appellant was declared proclaimed offender. The appellant applied before the High Court challenging the order declaring him proclaimed offender and also filed a 482 Cr.P.C. petition for quashing of the proceedings wherein, he also filed the compounding order of 26.09.2014.*

*g) The High Court merely perused the FIR and noting the fact that the name of the appellant was mentioned in the FIR, declined to exercise the inherent power under Section 482 Cr.P.C.*

*20. In our considered view, the High Court erred in firstly not considering the entire material on record and further in not appreciating the fact that the dispute, if any, was civil in nature and that the complainant had already settled his score with the main accused Gurmeet Singh against whom the proceedings have been closed as far back as 26.09.2014. In this scenario, there remains no justification to continue with the proceedings against the appellant."*

30. The Learned Trial Court has issued process without following the procedure enumerated in Section 202 of the Cr.P.C. which is the mandate of the statute to abrogate the possibility of harassment and false indictment of the accused persons and a grave error has been committed accordingly.

31. A conjoint consideration of the content of the complaint and the statement of the complainant on examination under Section 200 of the Cr.P.C. indubitably registers the improbability of the alleged incidents to have occurred to implicate the present petitioners and the same is a mechanism to masquerade the truth to evade the liability of clearing the dues pressurizing the petitioners to succumb to threat and criminal proceedings.

32. Admittedly the complainant/opposite party no. 2 was the defaulter in payment of EMI (Equated Monthly Installment) and to circumvent his own fault had instituted the complaint case based on prevaricated and absurd facts. To allow the proceeding to continue will result in the abuse of process of law.
33. In view of the above discussions, the impugned proceeding of Case No. AC-1046 of 2012 under Sections 323/448/384/506(ii)/34 of the Indian Penal Code, pending before the Court of the Learned 2$^{nd}$ Judicial Magistrate, Alipore and order dated 03.09.2012 passed by the Learned 2$^{nd}$ Judicial Magistrate, Alipore, in Case No. AC-1046 of 2012 whereby process was issued under Sections 323/448/384/506(ii)/34 of the Indian Penal Code is quashed.
34. Under such circumstances, the instant criminal revisional application being CRR 4083 of 2012 is allowed.
35. Accordingly, CRR 4083 of 2012 along with CRAN 14 of 2023 and CRAN 15 of 2023 stand disposed of.
36. There is no order as to cost.
37. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
38. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**