

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1770 of 2022

With

CRAN 1 of 2022

CRAN 3 of 2022

CRAN 8 of 2024

Santi Sudha Das (Deceased) & Anr.

Vs.

Arindam Das

For the Petitioner : Mr. Tapan Kr. Jana.

**For the Respondent/
Opposite Party-in-person** : Mr. Arindam Das.

Hearing concluded on : 04.11.2024

Judgment on : 06.11.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings pending before the learned Judicial Magistrate, 5th Court, Alipore, South 24 Parganas, being Complaint Case No. 1594 of 2021 under Sections 404/420 IPC.
2. The petitioners herein are the mother (now deceased) and younger brother of the complainant/opposite party herein. During pendency of the revision, the petitioner no. 1 (the mother) expired.
3. **The specific case of the complainant in his petition of complaint is as follows :-**

“.....The father of the complainant expressed his desire in 2012 to give the 3 bedroom apartment situated on the 2nd floor of the premises at 100/16, Alipore Road, P.S. Chetla, Kolkata 700 027 and a 1120 sqft plot of land having a covered garage space of 100 sqft equally to his two sons viz. the complainant and Accused 1.

The late father of complainant had undergone Coronary Artery Bypass Graft Surgery in May 2015 and suffered dementia, memory loss because thereof from 2016 onwards.

Taking advantage of the condition of the ailing father of the complainant, accused no. 1 in connivance with accused no. 2 dishonestly succeeded in persuading said father to execute a Gift deed bearing no. 1160505293/2018 on August 2018 in favour of accused no. 1 and transfer a plot of land having a total area of 1120 sqft including a covered garage space of 100 sqft keeping the complainant completely in the dark on the pretext that accused no. 1 would construct a building thereon.

The complainant came to know about said Gift Deed from a relative after the demise of his father, who died intestate on the 24th May, 2021.

Accused no. 1 did not construct anything in the said plot of land thereafter but after the demise of said father on 24th May, 2021, got the possession of all ATM/Debit Cards, pass books, certificates, deposits of the deceased father in connivance and help of accused no. 2.

The complainant got to know after the demise of his father that, his father had left behind financial deposit(s) without

any joint holder or nominee but, Accused no. 1 did not share the details of such deposits even upon request although, the complainant is a legally entitled to such deposit (s) under section 33(a) of the Indian Successions Act, 1925.

In June 2021, accused no. 2 reported financial irregularities in bank accounts maintained jointly with said deceased father but, failed to show till date any financial document viz. Pass book, etc. of said deceased father in spite of request from the complainant on the ground that they were in the possession of accused no. 1.

The accused no. 1 and accused no. 2 are suppressing the financial documents of the deceased father of the complainant with the dishonest intention to convert and misappropriate, inter alia, the financial account(s), certificate(s), deposit(s), etc. held singly by said deceased father at the time of his death.....”

4. On considering the petition of complaint, the learned Magistrate vide order dated 21.09.2021 in Complaint Case No. 1594 of 2021 was pleased to proceed against the accused persons and issued process against them.
5. Affidavit-in-opposition has been filed by the complainant/opposite party herein denying the case of the petitioners and has submitted in paragraph 12 of the opposition that a **“Title Suit has been filed by him for cancellation of the said Gift Deed and the same is pending before an appropriate Court of law”**.
6. It is further stated that the petitioner no. 2 (younger brother) herein has misappropriated all the bank accounts of late Asim Kumar Das, father of the complainant and the accused no. 2 (mother now deceased). Several other allegations in his opposition have been made which are not connected to the present revision.
7. Affidavit-in-reply has been filed by the petitioners denying the allegations of the opposite party/complainant.

8. The opposite party/complainant has filed his written note and relied upon a judgment of the Hon'ble Supreme Court passed in ***Ranjit Singh Vs. State of Punjab*** reported in **1959 AIR 843**. On perusal of the said judgment it appears that the case relates to a habeas corpus application and it also relates to affirmation of affidavit.
9. The petitioners have relied upon the judgment of the Hon'ble Apex Court in ***Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.*** reported in **(2000) 4 SCC 168** wherein criminal proceedings were quashed which was an abuse of process of law. In the said case, the dispute between the parties was regarding the transaction of sale of land.
10. **In the present case**, the petitioners have filed copies of bank fixed deposits and accounts, from which it appears that the deceased Asim Kumar Das had joint accounts with his wife, the petitioner no. 1 herein (now deceased) and nominations were duly registered with the bank. **Thus, it is the bank, which shall act as per the said nominations and proceed in accordance with law.**
11. The opposite party's further contention is that there are several accounts and fixed deposits in which no nomination has been registered.
12. In such cases, it is the duty of the bank to ask for a succession certificate and/or other relevant documents from the legal heirs of the deceased persons.

13. Admittedly, the complainant has challenged the Gift Deed in a Civil Court (as stated by the opposite party/complainant in his affidavit-in-opposition).
14. It appears that there is a family dispute between the complainant and the petitioners (who are his mother and younger brother) and late Asim Kumar Das, (father of the petitioner no. 2) and the complainant.
15. From the said materials on record it prima facie appears to be a family property dispute. **A civil suit is also pending, as stated in the affidavit-in-opposition.**
16. Considering the facts as stated by the complainant, it is open to the complainant to pursue his case for cancellation of the said alleged deeds, if deemed fit. The dispute is prima facie civil in nature and clearly a family dispute.
17. The Supreme Court in ***Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021)*** while considering an appeal against an judgment and order of the High Court of Karnataka in an application under Section 482 of the Cr.P.C. wherein the prayer of the petitioners for quashing of proceedings of offence punishable under Section 406, 419, 420 read with Section 34 of the IPC was dismissed, held:-

“.....26. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered opinion, the following three key issues require determination in the instant case:

- Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?

- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?

- **Whether the dispute is one of entirely civil nature and therefore liable to be quashed?**

Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are *prima facie* made out?

37. Although, there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case could be pursued in the presence of a civil suit, but whether the relevant ingredients for a criminal case are even *prima facie* made out. Relying on the facts as discussed in previous paragraphs, clearly no cogent case regarding a criminal breach of trust or cheating is made out.

40.Whether the dispute is one of entirely civil nature and therefore liable to be quashed?

41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of **M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.**, as under :-

“14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

42. It was also observed:-

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely

civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

43. On an earlier occasion, in case of **G. Sagar Suri and Anr. Vs. State of UP and Ors.**, this Court has also observed:-

“8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

44. Furthermore, in the landmark judgment of **State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors.** regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-

“(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do

not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

45. Applying this dictum to the instant factual matrix, it can be safely concluded that the present case clearly falls within the ambit of first, third and fifth category of the seven categories enlisted in the above said judgment. The case therefore warrants intervention by this Court, and the High Court has erred in dismissing the petition filed by the Appellants under section 482 CrPC. We find that there has been attempt to stretch the contours of a civil dispute and thereby essentially impart a criminal color to it.

46. Recently, this Court in case of **Randheer Singh Vs. The State of U.P. & Ors.**, has again reiterated the long

standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-

“33.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

10. Criminal Appeal No. 932 of 2021 (decided on 02.09.2021) 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.”

47. *Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.*

48. *In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No. 20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section 34 IPC stands quashed.....”*

- 18.** This Court relies upon the judgment of the Supreme Court in ***Birla Corporation Ltd. vs. Adventz Investments and holdings, Criminal Appeal No. 875 of 2019 with Criminal Appeal No. 877 of 2019***, wherein the Court held:-

“.....86. In Indian Oil Corpn. v. NEPC India Ltd. and Others (2006) 6 SCC 736, the Supreme Court after observing that there is a growing tendency in business circles to convert powerful civil disputes in criminal cases held as under:-

“14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.....”

(Medmeme LLC & Ors. vs. M/s. Ihorse BPO Solutions Pvt. Ltd. (2018)13 SCC 374).

19. In the present case, the nature of act is a dispute between the parties relating to their family property which is clearly a civil dispute and there is no prima facie evidence of any overt act on the part of the petitioners.

20. In M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006, the Supreme Court considered the following point among the two points decided.

“.....8. The High Court by common judgment dated 23.3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival

contentions urged, the following points arise for consideration :

(i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?

(ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?

Re : Point No. (i) :

9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre* [1988 (1) SCC 692], *State of Haryana vs. Bhajanlal* [1992 Supp (1) SCC 335], *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* [1995 (6) SCC 194], *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, [1996 (5) SCC 591], *State of Bihar vs. Rajendra Agrawalla* [1996 (8) SCC 164], *Rajesh Bajaj v. State NCT of Delhi*, [1999 (3) SCC 259], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [2000 (3) SCC 269], *Hridaya Ranjan Prasad Verma v. State of Bihar* [2000 (4) SCC 168], *M. Krishnan vs Vijay Kumar* [2001 (8) SCC 645], and *Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque* [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to

cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. **Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G.**

**Sagar Suri vs. State of UP [2000 (2) SCC 636],
this Court observed :**

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may....."

21. Offence alleged in the present case is under Sections 404/420 IPC.
22. The ingredients required to constitute the said offences are prima facie not present, considering nature of dispute, facts and circumstances of the case and the relationship between the parties.
23. In **Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)**, the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The

compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under*

Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis

of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**”*

24. In the present case, clause 1, 2, 3 and 7 of paragraph 102 in the case of **State of Haryana vs Bhajan Lal and Ors., (Supra)** is applicable.

25. The Supreme Court in several judgments has discouraged such proceedings initiated by the complainant only to harass the other party. Some of them are noted here for convenience:-

- a) *M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).*
- b) *Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).*
- c) *Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).*

- d) *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).*
- e) *Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).*
- f) *Paramjeet Batra vs State of Uttarakhand & Ors., (2013) 11 SCC 673.*

26. The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626***, held:-

“.....18. The only question is whether there is any criminal offence disclosed in the FIR so far as the Appellant is concerned. When the High Court passed its order dated 5th October, 2017, Rajan Kumar (since deceased), the executant of the sale deed and the Power of Attorney holder was also an applicant before the Court. Today, there has been a change in situation, in that, criminal proceedings against Rajan Kumar have abated since Rajan Kumar is no longer alive. It is the case of the private respondent that the private respondent purchased property. In the meantime, Rajan Kumar, who is no longer alive, on the basis of a false Power of Attorney of Bela Rani, executed a sale deed in favour of Randheer Singh, i.e., the Appellant herein. There is only a vague averment “by connivance”. The next part of the sentence reads “Bela Rani had no right to sell the aforesaid plot.”

23. Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. *It is the case of the Private Respondents that Bela Rani has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged document.*

24. *A fraudulent, fabricated or forged deed could mean a deed which was not actually*

executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a Power of Attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the Power of Attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness.....”

On noting several precedents the Court finally held:-

“.....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.

34. The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died.....”

27. From the materials on record, it is clear that no criminal act or intent of the petitioners has been prima facie made out in respect of the offences alleged. The dispute is clearly a civil family property dispute, with no materials on record to prima facie show that the essential ingredients required to constitute the offences alleged are present against the petitioners. The proceedings in this case before the Trial Court is thus clearly an abuse of the process of law.

28. Thus, there being no prima facie materials on record against the petitioners in respect of the offences alleged, the proceedings being Complaint Case No. 1594 of 2021, under Sections 404/420 of the Indian Penal Code, pending before the learned Judicial Magistrate, 5th Court, Alipore, South 24 Parganas, **is liable to quashed.**

29. CRR 1770 of 2022 is allowed.

30. The proceedings pending before the learned Judicial Magistrate, 5th Court, Alipore, South 24 Parganas, being Complaint Case No. 1594 of 2021 under Sections 404/420 IPC, **is hereby quashed,** in respect of the petitioners namely Santi Sudha Das (deceased) and Arunava Das.

31. All connected applications, if any, stand disposed of.

32. Interim order, if any, stands vacated.

- 33.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 34.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)