

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.
C.R.R. No. – 1600 of 2017

IA No. CRAN 6 of 2018 (Old No. 3225 of 2018)

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CRAN 18 OF 2022
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CRAN 20 OF 2022
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CRAN 22 OF 2023
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CRAN 26 OF 2023**

IN THE MATTER OF

**Mahendra Kumar Jalan@ M.K. Jalan
Vs.
Anil Kumar J. Bavishi.**

**For the Petitioner : Mr. Abhrajit Mitra Adv.,
Mr. Somopriyo Choudhury, Adv.
Mr. Satadeep Bhattacharya, Adv.
Ms. Pritha basu, Adv.
Mr. D. Chakraborty, Adv.
Ms. Bhawna Agarwal, Adv.
Ms. Joyshree Ghosh Adv.**

**For the OP : Mr. Ayan Bhattacharjee, Adv.
Mr. Kunal Ganguly, Adv.
Mr. Sharequel Haque, Adv.
Mr. Tirupati Mukherjee Adv.**

Heard On : 29.01.2024

Judgment on : 05.02.2024

Subhendu Samanta, J.

1. This is an application u/s 482 of the Code of Criminal Procedure for quashing of complaint case Being No. CS- 0023522 of 2015 u/s 181/193/199/200/209 of IPC and all orders passed therein including the order dated July 8th, 2015 passed by the Learned Chief Metropolitan Magistrate, Calcutta, thereby taking cognizance and order dated April 5th 2017 passed by the Learned Metropolitan Magistrate 6th Court Calcutta thereby issuing process against the present petitioner.

2. The brief fact of the case is that the present opposite party lodged a petition of complaint before the Learned Chief metropolitan Magistrate Calcutta against the present Petitioner alleging offence punishable u/s 181/193/199/200/209 of IPC committed by the present petitioner. On the basis of such complaint the Learned Magistrate has taken the cognizance and sent the case to the Learned Metropolitan Magistrate 6th Court Calcutta. The Complainant was examined u/s 200 Cr.P.C. on SA and Learned Magistrate directed OC Hare Street, PS to conduct an investigation u/s 202 Cr.P.C.. After the report of police was filed, the Learned Magistrate was pleased to issue process against the present petitioner u/s 181/193/199/200/209 of IPC.

3. Being aggrieved by the said proceeding, the instant criminal revision has preferred for quashing.

4. In a nutshell, the brief allegation of the present OP against the present petitioner is that the parties are the

contested litigants of different proceeding before the Municipal Building Tribunal Calcutta as well as before the Calcutta, High Court. The present petitioner has represented himself as constituted attorney of M/s. Binani Metals Limited in various proceeding before Hon'ble High Court in respect of civil revision and writ petition also before the Municipal Building Tribunal. It is specific allegation against the present petitioner that two power of attorneys in the name of the present petitioner was filed before the tribunal; the said two documents indicated that the present petitioner was appointed by Binani Metal Private Limited as constituted attorney in the capacity of director of Dempo Marketing Limited and not in his individual capacity.

5. It is a positive fact of the complainant that the said Dempo Markentile Limited went into voluntary liquidation on date 06.05.1996. Accordingly, on the aforesaid date, the office directorship of petitioner M.K. Jalan, in Dempo Markentile Limited stood suspended and he was no longer authorise to take any action or exercise his capacity as Director of Dempo Markentile Limited.

6. Automatically, from the aforesaid date the petitioner MK. Jalan, also lost his powers to help Binani Metals Limited as constituted attorney, since the power granted by Binani Metals Limited in favour of the petitioner M.K. Jalan was in capacity of Director Dempo Markentile Limited and not in his individual capacity. It is the further allegation of the complaint that the petitioner MK Jalan, representing himself as

constituted attorney, filed an affidavit in the appeal proceeding being B.P. appeal No. 22 of 2006. It was actually filed by him in his capacity of purported constituted attorney of M/s. Binani Metals Limited and also in various proceeding before the Hon'ble High Court in respect of civil revision and writ petition, though, the attorneyship of M.K. Jalan (present Petitioner) has become void owing to the provision of Section 491 of the Companies Act 1956.

7. It is further fact of the complaint that the complaint has preferred of proceeding u/s 340 of Cr.P.C. against the present petitioner before the Learned Tribunal alleging the said accused had made false statement of oath regarding his status of constituted attorney when such status had ceased to exist. It is further allegation that the present petitioner M.K. Jalan has filed similar applications before the Hon'ble High Court both in civil revisional jurisdiction and constitutional writ jurisdiction where similarly false and forgerious statements were made by the said M.K. Jalan. However, upon withdrawal of the writ petition Hon'ble Court has made an observation- "kept open to be agitated in any other proceeding, in accordance with law". Though allegation against the present petitioner was framed in the petition of complaint that the accused MK Jalan acted mala fide and with fraudulent intention along with full knowledge of the fact that he was making a false statement, wilfully and deliberately and made such false statements in order to obtain favourable orders from Hon'ble High Court while proceedings

were pending before the Hon'ble High Court and in the process also withheld the joint measurement programme to ascertain what is actual area of land and confirmed sanctioned a plaint was obtained by M/s. Binani Metals Limited by fraudulent misrepresentation of fact and thus helped abatement crime of fraudulent misrepresentation of area of land of M/s. Binani Metals with the nexus of constant functionaries of KMC Building Department.

8. So, on plain perusal of a petition of complaint it appears that the allegation of the complaint against the present petitioner before the Learned magistrate is offence of **perjury**.

9. Petitioner filed this criminal revision for quashing mainly on two grounds;

Firstly, the order of taking cognizance by the Magistrate on the basis of the petition of complaint is a complete bar u/s 195 (1) (a) (i) and Section 195 (1) (b) (i) of the Cr.P.C.

Secondly- present proceeding is bar under the principle of res judicata, as the present opposite party earlier initiated an application U/s 340 Cr.P.C. before the Municipal Building Tribunal and the order of such Learned Municipal Building Tribunal has attained finality on 7th December, 2011.

10. During the argument several issues have been raised by the parties and the legality of power of attorney standing in the name of the present petitioner and its effect thereof has also been agitated. However it appears to me that only point is required to decide by this court, as to whether, the instant

criminal proceeding is liable to be quashed by virtue of bar under the provision u/s 195 of the Code of Criminal Procedure.

11. Learned Advocate for the petitioner Mr. Abhrajit Mitra submits as follows:

*a) Paragraphs 26 to 34 [impugned petition of complaint starting from page no. 27 relevant pages being pages 38 to 40] of the impugned petition of complaint clearly reflect that the principal grievance of the opposite party is, inter alia, that the statements which were made by the petitioner on affidavit before this Hon'ble Court [representing to be the Constituted Attorney of Binani Metals Limited], were perjurious and attracts offences under **Section 193, 199, 200 and 209** of the **Indian Penal Code**.*

*b) To the extent the offences are punishable under **Sections 193, 199, 200 and 209** of the **Indian Penal Code**, cognizance thereof cannot be taken "except on the complaint in writing by that Court", in this case, the High Court, in view of the bar under **Section 195(1)(b)(i)**, of the code of Criminal Procedure.*

*c) On the other hand paragraph 20 to 24 [pages 35 to 38] of the impugned complaint are allegedly perjurious statements made by the petitioner on oath before the Learned Municipal Building Tribunal [hereinafter referred to as "Learned MBT"] constituted under **Section 415** of the **Kolkata municipal Corporation Act, 1980**.*

*d) It is an undisputed position that the Learned Municipal Building Tribunal (MBT) is constituted of "Public servants" within the meaning of **Section 195(1) (a) (i) of the Code of Criminal procedure**. The term public servants is different under **Section 21** (12th para Indian Penal Code. The Chairman and other members of the Municipal Building Tribunal members being in the service and pay of the 'State government/Kolkata Municipal Corporation [Re: **Section 415(3), (4) and 5 of the Kolkata Municipal Corporation Act, 1980**] are public servants.*

e) To the extent the offences alleged in the complaint are punishable under **Section 181** of the **Indian Penal Code** [paras 20 to 24 of the impugned petition of complaint, relevant pages being 35 to 38], cognizance thereof cannot be taken “except on the complaint in writing of the public servant/servants” concerned, in this case the Chiarmen or members of the MBT; in view of the bar under **Section 195 (1) (a) (i)** of the Code of Criminal Procedure. **Section 195 (3) has no application to Section 195 (1) (a).**

f) In the circumstances, cognizance of the complaint in question could not have been taken by virtue of the bar under **Sections 195(1) (a) and 195 (1) (b)** of the code of criminal procedure. This is so irrespective of whether the Learned MBT or the Hon’ble High Court had jurisdiction to entertain the Opposite Party’s **Section 340** application.

g) The opposite party had itself filed a Section 340 Code of Criminal Procedure perjury petition alleging same offences and facts before the Learned MBT [page 37, para 24 of the impugned petition of complaint.]. This application was dismissed “on contest” by the Learned MBT’s order dated December 7, 2011 [Internal page No. 17 of the order dated December 7, 2011, passed by the Municipal Building Tribunal]. This order has two aspects, one dealing with the appeal filed by the opposite party from the order of the Learned Special Officer (Building) dated December 12, 2005. The other part of the said order dated December 7, 2011 deals with the opposite party’s petition under Section 340 application under the Code of Criminal procedure. From the former i.e. disposal of the BT appeal, the opposite party by way of a challenge filed an Article 227 petition being CO No. 174 of 2012. However, from the latter part of the order dated December 7, 2011 dismissing the **Section 340** application, there was no challenge by way of an appeal under Section 341 of the Code of Criminal Procedure or for that matter criminal revision of the like. Thus, the rejection of the **Section 340 Cr.P.C.** petition by the Learned MBT by the said order dated December 7, 2011 had attained finality.

*h) The order of December 7, 2011 since unchallenged is binding on both sides and the opposite party is stopped from arguing before the court that the Learned MBT had no jurisdiction to entertain the **Section 340 application.***

i) First, the Opposite party having filed the Section 340 petition before the Learned MBT and contesting the case till the very end cannot now just because the order has gone against him, turn around and contend that the order should be ignored having been passed without jurisdiction. Secondly, even an order without jurisdiction or an order per in curium inter se parties is binding between them. Learned Advocate for petitioner cited the following judgment of Supreme Court.

(i) Mohammad Ali Vs State of West Bengal & Ors. 2012 (3) CHN 110/2012 SCC Online Cal 2684 paras 17 to 22;

(ii) S. Nagaraj (DEAD) by LRS. And Others Vs. B.R. Vasudeva Murthy & Ors. 2010 (3) SCC 353, para 60.

12. Refuting contentions of the Learned Advocate for the petitioner, Learned Advocate Mr. Ayan Bhattacharya, appearing for the respondent argued as follows:

From a reading of the complaint particularly from paragraphs 15 to 25 thereof, it would be evident that the petitioner had consciously participated with such invalid Powers of Attorney in different proceedings before different fora. The factum of liquidation of Dempo was surreptitiously brushed under the carpet by the petitioner. It was not only before this Hon'ble Court in WP. No. 1140 of 2007, but even before the learned Tribunal as well, the petitioner had used the said purported Powers of Attorney. The said Powers of Attorney were used by the petitioner in defending the appeal being B.T. Appeal No. 9 of 2006 by the respondent and while filing and contesting B.T. Appeal No. 22 of 2006 by the petitioner. On the strength of such invalid document, the petitioner participated both the proceedings on subsequent occasions camouflaging as the authorized representative of Binani.

In view of Section 195(1)(b)(i) of the Cr P C, no court shall take cognizance of any offence punishable under

certain specified provisions of IPC including Sections 193, 199, 200, and 209 of IPC in case such offence is alleged to have been committed in, or in relation to, any proceeding in any Court except on the complaint in writing of that Court.

According to sub-section (3) of Section 195 of the Cr P C, "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal "If declared by the Act to be a Court for the purposes of this section." From the aforesaid enactment, the following things emerge:-

i) Section 195 of Cr P C deals with the mode and manner of initiation of a prosecution but not with culmination of an offence. Each act of appearance and participation in a judicial proceeding with such power of attorney constitutes a distinct offence. Therefore, the participation of the petitioner in judicial proceeding before this Hon'ble Court is one offence whereas the participation of the petitioner before the tribunal is a separate and independent offence.

ii) Therefore, the actions of the petitioner using such Powers of Attorney before this Hon'ble Court and before the learned Tribunal would constitute different offences but no private complaint can be entertained so far as the commission of offence in connection with the proceeding before this Hon'ble Court only in view of the bar engrafted under Section 195 (1)(b)(i) of the Cr P C. However, for Tribunal the bar will not operate as the learned Tribunal was constituted under the KMC Act and the same has not been declared to be a Court till date. The complaint in present form will be maintainable for such misdeeds of the petitioner relating to his participation in proceedings before the learned Tribunal.

iii) Colloquially, a court is a place where justice is administered. To be a Court, it is to derive its powers from the State, more particularly from the judicial wing of the State.

iv) A court is a part of ordinary hierarchy of courts which are vested with State Judicial Power.

v) A tribunal in an administrative wing. It may have all the attributes and/or trappings of a court. It is described as a quasi judicial body because all the trappings of a court does not necessarily make a tribunal a court.

vi) A court administers justice in course of exercise of sovereign judicial power transferred to it by the State.

It is therefore, evident that a tribunal is not a court in the context of Indian Law, Furthermore, a tribunal can attract the embargo under Section 195(1) of the Cr P C in case the same is declared to be a court for the purpose of Section 195 of the Cr P C by the constituting Act. Unless a tribunal is declared to be so by the Act by virtue of which it was created, the same cannot attract the provision under Section 195 of the Cr P C. For example, by virtue of Section

13(5) of the Protection of Human Rights Act, 1993, the Human Rights Commission is a court with the meaning of Section 195 of the Cr P C. Similarly, the National Green Tribunal is also a court by virtue of Section 19(5) of the National Green Tribunal Act, 2010. A tribunal constituted under the provisions of the Maintenance and Welfare of Senior Citizens Act, 2007 is also a court by virtue of Section 8(2) thereof. No such declaration is found in case of the tribunal constituted under the KMC Act.

In interpreting the aforesaid terminology, it cannot be lost sight of that it is a settled position of law that Legislature is deemed not to waste its words. In other words, not to say anything in vein. It is not a sound principle of a construction to brush aside words in a statute as supererogatory. (**Vide Quebec Railway, Light, Heat and Power Company Limited v. Vandry & Ors., AIR 1920 PC 181 [at page 187]**)

In this connection, reliance may be placed in **Iqbal Singh Narang & Ors. vs. Veeran Narang reported in (2012) 2 SCC 60 [Para 1 to 4, 6 and 9 to 14]** wherein the Hon'ble Supreme Court of India had declined to quash a proceeding at the behest of a complainant who had initially approached before the learned Rent controller with a complaint Under Sections 193,420,425 of the IPC and being unsuccessful therein filed a complaint before the jurisdictional Magistrate under Sections 193,420,120B of the IPC. It was also held therein that a Rent Controller was not a court and therefore dismissal of similar application by the learned Rent Controller would not preclude a party to file a substantive complaint under Section 200 of the Cr.P.C before the concerned criminal court.

The Supreme Court of India in Keshab Narayan Banerjee & Ors. Vs. State of Bihar reported in (200) 1 SCC 607 [Para 1, 3 7] has also held in similar tune wherein the difference between court and a tribunal was succinctly laid down by the Hon'ble Supreme Court of India.

In Gopalkrishna Iyer Vs. Ramchandra Iyer, 1980 SCC OnLine Ker 171[para 6 to 9], the Hon'ble Kerala High Court had held that a land tribunal constituted under the Land Act at Kerala is not a court within the meaning of Section 195 of the Cr.P.C. Therefore, a substantive complaint is maintainable.

Issue of the order dated December 07, 2011 passed by the learned Tribunal operating as res judicata.

The argument of res judicata is misconceived one as it is trite law that the principles res judicata and/or constructive re judicata do not apply in respect of a criminal proceeding unlike a civil proceeding. Therefore, the attempt of the petitioner implanting the provision under Section 11 of the Code of Civil Procedure, 1908 in

connection with proceeding which is governed by the Cr.P.C is not tenable.(**vide Devendra & Ors. v. State of UP & Anr., (2009) 7 SCC 495[para25]**).

Issue of the respondent stopped from filling complaint under Section 340 of the Cr.P.C before a court of law in view of the Order dated December 07,2011.

The reliance on Mohammad Ali v. WB, reported in (2012) 3 CHN 110 by the petitioner is a misplaced one as in the present case it was nowhere held by the learned Tribunal that the offences as contended by the respondent were not disclosed. The application under Section 340 of the Cr.P.C. filed by the respondent was not entertained by the learned Tribunal as the said learned Tribunal was not a court within the meaning of Section 195(3) of the Cr.P.C. in view of its incapacity, the said application was not entertained by the learned Tribunal which would be evident from the Order itself as extracted hereinabove.

Apart from that the Hon'ble Supreme Court of India in **Municipal Corporation of Greater Mumbai v. Pankaj Arora (Secretary) & Ors. reported in(2018) 3 SCC 699 [para 16,17,19]** has succinctly laid down the law to the effect that the observation of a court/authority without any jurisdiction is inconsequential and do not operate as estoppels. In view of the law laid down in **Municipal Corporation of Greater Mumbai (supra)**, it is not prudent to rely on the judgment of Md. Ali(supra)

Issue of the operation of the bar under Section 195 (1) (b) of the Cr.PC is in-operative.

The Aforesaid argument of the petitioner is again misconceived in view of the fact that no embargo under Section 195 (1) (a) (i) of the Cr.P.C. will operate in respect of offences under Sections 193,199,200,209 of the IPC. therefore, the argument of the petitioner that the present complaint could have been filed by a public servant is erroneous. That apart, it is settled law that a complaint has to be read as a whole and therefore, scaling down and part quashing of the charges is not entertainable at this stage when any offence has been disclosed.

Further more, the reliance of the petitioner on Iqbal Sing Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 [para 5] is misplaced as in the said report the issue which fell for consideration was the provision under Section 195(1) (b) (i) of the Cr. P.C. and therefore, the same has no bearing in the present case.

13. Mr. Mitra contradicted the ratio of the judgment of Hon'ble Apex Court in **Iqbal Singh Narang (supra)**, and submits that it would be evident in the cited case that a complaint was made for the offence u/s 193/420 and 120B of IPC. Accordingly the case u/s 195(i)(b) and Section 195 (3) got permitted. Thus, in **Iqbal Singh Narang (supra)**, the Hon'ble Supreme Court was not considering a case like the present case where the complaint is made u/s 181 IPC, thus the observation of **Iqbal Singh Narang** is not applicable in this case.

14. Heard the Learned Advocates.

15. Perused the written arguments placed on behalf of the opposite parties also perused the observation of Hon'ble Supreme Court. To discuss the legal issue involves in their case, it is required to go through the provision of law enumerated u/s 195 of Cr.P.C.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents in evidence.---- (1) No court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, or attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit such offence,

Except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is administratively subordinate;

(b) (i) or any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199,200,205 to 211 (both Inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or
(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, of the abetment of, any offence specified in sub-clause(i) or sub-clause(ii),

[except on the complaint in writing or that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause 9a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court, and, upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1) , the term “court” means a civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of Sub- section (1), a Court shall be deemed to be subordinate to the /court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decree no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provide that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) Where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

16. It is true that court shall take cognizance of an offence punishable u/s 172 to 188 both inclusive only upon complaint in writing of the public servant concern or on some other public servant to whom he is administratively subordinate. Thus, it is clear that to initiate a complaint u/s 181/193/199/200 and 209 IPC of complaint must have to be lodged by a public servant.

17. Learned Advocate for the opposite party argued that the Municipal Building Tribunal is not a 'court' as discussed in section 195 (3) Cr.P.C. Thus the alleged "perjurious" statement before the Municipal Building can be very well challenged before the Magistrate by a private person. Thus the instant criminal proceeding is not barred by the provisions of Section 195 (1) (b) (i) of Cr.P.C.

18. It is true that the Municipal Building Tribunal is not defined as a court by the said legislation but it has also been alleged in the petition of complaint that the present petitioner has also made allegedly perjurious statements before the Hon'ble High Court in different proceeding. In my view the instant criminal complaint, the equities as required by the present OP before the Magistrate is not possible to be offered.

19. Hon'ble Apex Court in **Shib Kumar Sharma Vs. Santosh Kumari** as held that:

26 In England, the court of equity exercises jurisdiction in equity. The courts of India do not possess any such exclusive jurisdiction. The courts in India exercise jurisdiction both in equity as well as law but exercise of equity jurisdiction is always subject to the provisions of law. If exercise of equity jurisdiction would violate the express provisions contained in law, the same cannot be done. Equity jurisdiction can be exercised only when no law operates in the field

27. A court of law cannot exercise its discretionary jurisdiction de hors the statutory law. Its discretion must be exercised in terms of the existing statute.

20. In this case the Magistrate cannot exercise its discretionary jurisdiction de hors the statutory law; the

discretion must be exercised in terms of existing statute. The statute does not permit the Magistrate to take cognizance of an offence punishable u/s 181/193/199/200/209 through a petition of complaint filed by a private person

21. The leave granted by this Hon'ble Court in **WP No. 1140 of 2007** [to be agitated in any other proceeding in accordance with the law] does not permit the OP to initiate the instant criminal proceeding which is "not in accordance with law". Thus this legal point decided in favour of the present petitioner.

22. This court refrain itself on commenting other argument in respect of bar on the principal of res judicata or the merits of the power of attorney and its implication thereof.

23. In exercising the jurisdiction u/s 482 of the Code of Criminal Procedure for quashing a criminal complaint, Hon'ble Apex Court has laid down the guidelines in **State of Hariyana Vs. Ch. Bhajanlal Ors.**

"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 channelized and inflexible guidelines or rigid formulae and to give an

exhaustive list of myriad kinds of cases wherein such power should be exercised.

1) Where the allegations 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 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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mal 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.

24. According to the above guidelines [P-102(6)] of the Hon'ble Apex Court, the criminal complaint which is an

express legal bar engrafted in any of the provisions of the Code, is liable to be quashed. The instant criminal complaint and order of taking cognizance by the Learned Magistrate is expressly bar u/s 195 (1) (b) (i) of Cr.P.C.; accordingly the instant criminal proceeding is liable to be quashed.

25. On the basis of the above discussion it appears to me that the instant criminal proceeding being No. CS- 0023522 of 2015 u/s 181/193/199/200/209 of IPC pending before the Learned MM, 6th Court against the present petitioner is barred by law and hence it is quashed.

26. Connected CRAN Applications if pending are also disposed of.

27. 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.)