IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1653 of 2013

M/s SAJ Food Products Pvt. Ltd. & Ors.

-Vs-

Sk. Firdos Ur Rahaman

For the Petitioners	: Mr. Sekhar Basu, Mr. Kallol Basu, Mr. Suman Banerjee.
For the Opposite Party	: Mr. Pradip Kumar Roy, Mr. Joydeep Roy, Mr. Tirthajit Roy Chowdhury
Heard on	: 11.04.2023, 17.04.2023, 12.06.2023, 26.06.2023, 01.12.2023
Judgment on	: 12.03.2024

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

1. This instant criminal revisional application is preferred for quashing of proceedings of Complaint Case No. 29C of 2012 under Sections 34(5) and 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of Section 17A of the said Act pending before the Learned Judicial Magistrate, 4th Court at Howrah.

2. The petitioners' case is stated as follows:-

i. The petitioner no. 1 is a Pvt. Ltd Company incorporated under the provisions of the Companies Act, 1956 having its registered office at "Purna Bhavan", 5/1, Acharya Jagadish Chandra Bose Road, Kolkata-700020 and the petitioner no. 2 is a joint managing director of the petitioner no. 1 company.

ii. The petitioners had been engaged in the business of manufacturing, marketing and selling of biscuits and bakery products from its factory/manufacturing unit at Sankrail Food Park, Jaladhulagori Police Station- Sankrail, Post Office- Dhulagarh, District- Howrah.

iii. Petitioners stated that since the petitioners had been a manufacturer of "biscuit and bakery products" which was not an "agricultural produce" within the meaning of Section 2(1)(a) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 and hence such product was not included in the schedule of "agricultural produce" appended to the said Act. As such, the provisions of the said Act, particularly with regard to the liability of submitting fortnightly return to the regulated market committee and paying of market fees to such market committee as envisaged under Section 17 and 17A of the said Act, did not and could not apply in respect of the petitioners being a manufacturer of "biscuit and bakery product" which was not an "agricultural produce" under the said Act. To that effect, the petitioners made a written representation dated October 27, 2007 to the Secretary of Howrah Zilla Market Committee.

iv. The petitioner no. 1 was issued license bearing no. 2820/60 dated 08.11.2007 issued by the Howrah Zilla Regulated Market Committee in its favour to <u>operate as a "purchaser" of "agricultural produce"</u> like flour, sugar, vanaspati and others under the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, the West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982 and the bye-laws made under the provisions of the said Act. The said license was valid up to 07.11.2008 and the said license was subsequently renewed in the following manner:

On 08/11/2009 for the period 08/11/2008 to 07/11/2009

On 08/11/2010 for the period 08/11/2009 to 07/11/2010

On 08/11/2011 for the period 08/11/2010 to 07/11/2011.

v. Meanwhile, the Howrah Zilla Regulated Market Committee issued a notice vide office memo no. 119/L&M dated 23/05/2008 asking the petitioner No.1 to submit fortnightly return as required under Section 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act,1972.

vi. To such, notice, the petitioners sent a written representation dated June 12, 2008 to the addressor of the aforesaid notice reiterating the point taken by the petitioners in its earlier letter dated October 27, 2007 and further pointing out that the petitioners could not have any liability to submit fortnightly return to the regulated market committee and paying of market fees to such market committee as envisaged under Section 17A of the said Act since the same did not and could not apply in respect of the petitioner no.1 being a manufacturer of "biscuit and bakery product" which was not an "agricultural produce under the said Act. Moreover, it was further pointed out that the petitioners could not record their "Turnover" as required to be stated in the said "Return" since their "turnover" was of "biscuits and bakery products" which was not an "agricultural produce" in terms of the said Act. Furthermore, it was also pointed out that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 was not applicable in respect of the petitioner no.1 being a manufacturer of "biscuit and bakery product" which is not an "agricultural produce" under the said Act, and as such, it was requested in the said letter to renew the RMC license without submitting of any return.

vii. The petitioners stated subsequently there was a complete freezing and deceptive silence from the respondent Howrah Zilla Regulated Market Committee with regard to the liability of the petitioners for submission of fortnightly return under Section 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. Furthermore, the license bearing no. 2820/60 dated 08/11/2007 was renewed for three successive occasions without asking the petitioners to submit any return under the aforesaid Act, or requiring the petitioners to pay market fees under the said Act. Moreover, the renewal notice sent to the petitioners also did not mention any liability on the part of the petitioners to submit fortnightly return or to pay market fees under the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. Such acts on the part of the respondent regulated market committee reasonably induced the petitioners to believe that the petitioners were not liable to either submit any return or to pay any market fee under the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 and the rules framed thereunder.

viii. The petitioners stated that after a lapse of nearly two years, the petitioners were served with a hearing notice issued by the respondent authorities concerned under memo number 115/L&M dated 16/08/2010 calling upon the petitioners to appear for a hearing before the Secretary of the Howrah Zilla Regulated Market Committee either personally or through an authorized nominee on 23/08/2010 at 2 p.m. and to produce before the undersigned all oral and/or documentary evidence in support of such reasons as to why the market committee should not initiate assessment proceedings against the petitioners for non-submission of return on the purchase of notified agricultural produce purchased by the petitioners failing which market fees would be determined on suo-moto assessment in accordance with law. It was for the first time pointed in the said letter that the “replies” made by the petitioners in its earlier letters were not acceptable to the respondent authorities concerned.

ix. Subsequently, the petitioners were served with another hearing notice dated 19/08/2011 issued by the respondent authorities concerned calling upon the petitioners for a further hearing on 29/08/2011 along with all documents like notified agricultural produce purchase register, Audit Report since 2007 as a last chance on the contention that the representatives of the petitioner no.1 did not produce any supportive document for non-submission of return on the previous date of hearing fixed on 23/08/2010.

3. The petitioners stated that they attended the hearing on 29.08.2011 by submitting a written representation dated August 29, 2011 stating that:

    i. For the purpose of manufacturing biscuits and bakery products the petitioner procures processed raw materials like flour, sugar, skimmed milk, edible oil, cashew, nut, spice etc. from various suppliers across the State of West Bengal. The aforesaid materials are thereafter used in manufacturing a different kind of 'product', namely, "biscuits and bakery products" which were a totally different kind of product where the "materials" used in its manufacture lost its identity. The "biscuits and bakery product" was a totally different commercial commodity of its own, capable of being sold in the market with its own identity.

    ii. The petitioners are a manufacturer of "biscuit and bakery products" which was not an "agricultural produce" within the meaning of Section 2(1)(a) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 and was not included in the schedule of "agricultural produce" appended to the said Act.

iii. The petitioners could not have any liability to submit fortnightly return to the regulated market committee and paying of market fees to such market committee as envisaged under Section 17A of the said Act since the same do not and could not apply in respect of the petitioners being a manufacturer of “biscuit and bakery product” which was not an “agricultural produce” under the said Act.

iv. Moreover, it was further pointed out that the petitioners could not record their "Turnover" as required to be stated in the said "Return" since their "turnover" was of "biscuits and bakery products" not an "agricultural produce" in terms of the said Act.

v. Furthermore, it was also pointed out that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 was not applicable in respect of the petitioners being a "manufacturer" of "biscuit and bakery product" which was not an "agricultural produce" under the said Act. The petitioners do not sell "agricultural produce" either in the basic form or in the processed form, and hence, the petitioners are not liable to pay any market fee leviable on the basis of "Turnover" which means sale of "agricultural produce" either in the basic form or in the processed form.

vi. It was further pointed out that the company of the petitioners were neither a trader nor a Broker, Commission Agent, licensed trader, weighman, measurer, warehouseman or surveyor as defined in

Section 2 of the said Act. The petitioners had been a "manufacturer" and hence, beyond the purview of the said Act.

vii. It was also pointed out that the existing license of the petitioners was renewed for three times in accordance with Rule 6 of the West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982 which revealed that the market committee was satisfied with the past performance of the petitioners as an applicant/licensee even though the petitioners did not submit any return as per the said Act. Such conduct and action of the market committee proved that they had accepted the non-liability of the petitioners for submitting of any return under Section 17A of the said Act.

viii. Furthermore, the petitioners being a "manufacturer" of "biscuit and bakery product" purchased processed agricultural produce from the regulated market only where the market committee must have collected market fees from the concerned processor of agricultural produce. In terms of the proviso to Section 17A(1) of the said Act, market fees cannot be collected more than once and as such, the respondent authorities concerned cannot demand market fees for the same agricultural produce once from the seller and again from the purchaser (in this case, petitioner) for purchasing the same agricultural produce from such seller.

4. Thereafter, the petitioners were served with an order dated 02/09/2011 passed by the Secretary of the Howrah Zilla Regulated Market Committee, as communicated under memo no. 317/L&M dated 02/09/2011, holding the

petitioners liable to submit fortnightly return under Section 17A of the said Act and calling upon the petitioners to submit all due returns since obtaining of RMC license within 15 days from the date of receipt of the order failing which the authorities concerned will suo-moto assess as per Section 17A(6) of the said Act.

5. In response to the aforesaid order dated 02/09/2011, the petitioners filed a representation dated 03/09/2011 before the respondent authorities concerned reiterating the points raised by it in its previous representations and the written submission dated 29/08/2011 with regard to the non-liability of the petitioners to submit fortnightly return and pay market fees under Section 17A of the Act. Moreover, the following points were further stressed upon in the said representation:

    i. A Case was mentioned wherein the Hon'ble Supreme Court of India has held that "by manufacturing something is produced and brought into existence which is different from that out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties". In terms of the above definition of manufacturing, "agricultural produce" lose their identity as such while being transformed into "biscuit and bakery product" which is itself a different salable commercial commodity. As such, by selling "biscuit and bakery products", the petitioners does not sell "Agricultural produce" either in basic form or in any processed form, and as such, is not liable to either file fortnightly return or to pay market fees under Section 17A of the said Act.

ii. In this context, attention was drawn to the fact that "Turnover" means which has been held by the Hon'ble Supreme Court of India in many a case as 'the aggregate of the amount of sale price received or receivable by a dealer in respect of the sale or supply of goods. Since the petitioners do not sell any “agricultural produce”, there is no question of filing any return or paying any market fees on the “turnover” with regard to sell of “biscuit and bakery products” under the said Act.

iii. Reference was drawn to the case decided by the Hon'ble Supreme Court of India whereby the Hon'ble Supreme Court of India allowed the petition for relieve from payment of "market fees" as the appellant was engaged in the manufacturing of "paper" using "bamboo" which is an agricultural produce as raw material. It was specifically pointed out by the Hon'ble Supreme Court of India that the appeal deserves to be allowed as the manufacturing of "paper" is not processing of "bamboo" alone.

iv. Furthermore, reference was drawn to sub-Section 2(i) of Section 17 of the Act according to which, the petitioner, being a "manufacturer" and not a "licensed trader" by any stretch of imagination, cannot be made liable to pay fees to the Market Committee.

6. Instead of responding to the aforesaid representation dated 03/09/2011, the petitioners were served with an assessment order issued by the respondent authorities concerned under memo no. 339/L & M dated 12.09.2011 whereby and where under a suo-moto assessment was sought to be made by the respondent Howrah Zilla Regulated Market Committee under the provisions of Section 17A(6) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, assessing the liability of the petitioners to the tune of Rs.50,00,000/- (rupees fifty lacs) for the period from 08/11/2007 to 23/08/2011 without any basis and/or reason thereof.

7. The petitioners stated that against the aforesaid assessment order dated 12/09/2011 passed by the respondent Howrah Zilla Regulated Market Committee, the petitioners preferred an appeal before the Secretary of the Howrah Zilla Regulated Market Committee on 20/09/2011 stating all the grounds mentioned hereinabove annexing all documents showing payment of market fees by the "seller" of "processed agricultural produces" purchased by the petitioner.

8. However, the petitioners were aghast to receive a communication issued under memo no. 353/L&M dated 22/09/2011 by the Secretary of the Howrah Zilla Regulated Market Committee which suggested that whereby

and where under the appeal preferred by the petitioners against an order dated 12/09/2011 was not admitted without showing any reasonable cause and, even without giving any opportunity of hearing to the petitioners in complete violation of the principles of natural justice.

9. The petitioners stated that the petitioners, by a letter dated 24/09/2011, reiterated the fact that the petitioners possessed relevant Certificates from their suppliers towards their purchase of "agricultural produce" using as 'raw materials' in the manufacturing of "biscuit and bakery products" and the said certificates confirmed that the suppliers had been paying market fees regularly against the agricultural produce sold to the petitioner no.1. In terms of the proviso to Section 17A(1) of the said Act, market fees could not be collected more than once and as such, the respondent authorities concerned could not demand market fees for the same agricultural produce once from the seller and again from the purchaser (in this case, the petitioner no.1) for purchasing the same agricultural produce from such seller. The certificates were enclosed with the said letter.

10. The petitioners further stated that the petitioners already submitted license no. 2820/60 to the office of the Howrah Zilla Regulated Market Committee on 04/11/2011 for renewal, but no step was taken by the respondent authorities concerned to that effect. As such, the petitioners, by a letter dated November 28, 2011, requested the respondent authorities concerned to inform the amount of renewal fees the petitioners required to deposit for renewal of the said license so that the same may be deposited immediately.

11. The petitioners stated that for the purpose of manufacturing biscuits and bakery products procures processed raw materials like flour, sugar, skimmed milk, edible oil, cashew, nut, spice etc. from various suppliers across the state of West Bengal and also from various other states. Using these raw materials, the petitioners manufacture new and distinct articles having a distinct name, character, use and marketable individuality and also articles which are totally changed in form, contour, physical appearance or chemical combination.
12. The petitioners stated that the aforesaid materials are thereafter used in manufacturing a different kind of 'productt', namely, "biscuits and bakery products" which was a totally different kind of product where the "materials" used in its manufacture loses their identity. This "biscuits and bakery product" was a totally different commercial commodity of its own and capable of being sold in the market in its own identity.
13. The petitioners stated that they procure raw materials some of which are 'agricultural produce' not for the purpose of dealing with them in the market as such. The petitioners procure the materials and putting them together in appropriate combination they manufacture biscuits and other bakery products which are not 'agricultural produce'. The said 'biscuits and bakery products' are not 'agricultural produce' within the meaning of this Act. Section 13 of the said Act contemplates and deals with licenses required to be taken by them who undertake the activities referred to therein for trading purpose and not for manufacturing purpose. A manufacturer procuring raw materials some of which are ‘agricultural produce’ cannot come within the

purview of the Act. In order to come within the purview of the Act, the purpose and the end product must be within the purview of the Act and only then the liability arises.

14. The petitioners stated that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 had been enacted “to provide for the regulation of marketing of agricultural produce in West Bengal and whereas it was expedient to provide for the regulation of marketing of agricultural produce in West Bengal and for matters connected.
15. The petitioners stated that the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 stipulates the liability of submitting fortnightly return to the Regulated Market Committee and paying of market fee to such market Committee as envisaged in Section 17 and 17A of the said Act, did not and could not apply in respect of the petitioners as they had been in the business of manufacturing, marketing and selling of biscuits and bakery products which in no way could be equated with the ‘agricultural produce’ as defined in Section 2(1)(a) of the said Act.
16. The petitioner stated that under Section 17(1) of the said Act, Howrah Zilla Regulated Market Committee shall levy fees on any ‘agricultural produce’ sold in the market area. The proviso to Section 17(1) of the said Act provided that no fee shall be levied in the same market area more than once, in relation to the same 'agricultural produce' irrespective of the number of transactions.
17. The petitioners stated that as provided in Section 17(2) of the said Act only, a 'licensed trader' would deposit the fees imposed by the Market Committee.

As provided in the said Act, a licensed trader is a person who is ordinarily engaged in the business of purchasing and selling 'agricultural produce as a principal or as a duly authorized agent of one or more principals and includes a person ordinarily engaged in the business of processing or preservation of 'agricultural produce'.

18. The petitioners state that "processing" cannot be equated to "manufacture" as those two are distinctively different concept. "Processing", as normally understood, retain its character but for "manufacture", something more is necessary and that there must be transformation and a new and distinct article must emerge having a distinct name, character and use.

19. The petitioners state that unlikely as alleged, Section 17A has also no application in relation to the business of the petitioner as it will appear from the very language of Section 17A(1) that "Every licensed trader shall submit to the Secretary returns of turnover in such manner for such period and by such dates as may be prescribed". As the petitioners cannot in no way be termed as "licensed trader", the question of filing of return of turnover does not arise.

20. The petitioners stated that the term "fee" presupposes the existence of some service rendered to the payer of the fee. The levy of fees should be quid pro quo for the service rendered. The levy of fees should be correlated to the expenses incurred by the agency in rendering the service individually. The payment of fee is like a reimbursement for the quantifiable benefit provided or to be provided to its payer. There has been no expenditure to have been incurred for the infrastructural facilities attached with the market and on

any issue related with the purpose of implementation of the scheme of the Act.

21. The petitioners stated that on enquiry the petitioners came to know that there was no principal market area as defined in the said Act. They have not intended or proposed to set up any such under the Scheme of the Act and even there is no budgetary allocation for such.

22. The petitioners state that the market committee has not given any service to the petitioners. The petitioners have also come to know that the Market Committee has not spent or invested any amount of money for the betterment of the infrastructure of the markets in that area. So they cannot claim fee out of nothing. Therefore, without rendering any service, the respondents cannot claim any fee as demanded.

23. The petitioners state that there is an object and purpose of the said Act. The steps ostensibly taken under the said Act must be for achieving the purpose. It is submitted that the purpose of the Act is not to collect tax. The amount as demanded by the respondent is a fee and not a tax. It is pertinent to mention that the Act is regulatory in nature and such regulatory mechanism is provided in the Act. Without providing a Committee, meaning thereby that the Regulatory Market and/or any establishment cannot claim fees as demanded.

24. The petitioners submit that the petitioners have not dealt with any "agricultural produce" in any Principal Market Yard or Sub-Market Yard and further the petitioners did not purchase from any agriculturalist. The

petitioners purchased different items from different traders situated in different areas.

25. The petitioners came to know that no Market Committee has yet been constituted so as to be functional and proceed under the said Act. The alleged Secretary of the Committee cannot take any step unless the Market Committee is properly set up and constituted under the Act.

26. The petitioners intend to refer the Notification dated February 20, 1982 and November 23, 2006 as well as Gazette Notification dated December 21, 2010 and also a Gazette Notification dated January 11, 2011, and point out that:

    a) The former Notification dated February 20, 1982 declares, inter alia, the names of the members of the Uluberia Regulated Market Committee established by the Notification dated February 20, 1982. On enquiry the petitioner came to know that the person against serial no. 7, Kanailal Jasu in the list of names of members has already passed away on March, 1992. There was no reconstruction of Howrah Zilla Regulated Market Committee till date in an appropriate manner.

    b) The Notification dated January 11, 2011 speaks about the appointment of Sk Firdous UR Rahaman as Secretary of Howrah Regulated Market Committee. It further appears from the Notification dated September 21, 2010 that District Magistrate, Howrah has been appointed as authorized person to discharge the duties and functions of Howrah Zilla Regulated Market Committee. It is submitted that the Uluberia Regulated Market

Committee as that existed earlier has been ceased to exist, the members of that market committee were adopted to constitute Howrah Zilla Regulated Market Committee.

c) In view of the above statements the dissolved Uluberia Market Committee has become the Market Committee for the Howrah District and the said Committee is functioning. There cannot be any appointment of District Magistrate under Section 22(1) of the Act of 1972. Such appointment is illegal and without jurisdiction.

d) In view of such circumstances it is submitted that there is no appropriate authority under the law to execute the reasonableness of the scheme of the Act namely the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. The petitioner further submits that Constitutions of a Committee with a dead person is not a valid committee.

27. The petitioners stated that under Section 17A (6) of the said Act, if any trader fails to submit any return of turnover, the Secretary of a Regulated Market Committee shall make the assessment of the fees payable to the best of his judgment and determine the sum payable after giving an opportunity of hearing to that trader. Although the petitioners are not liable to pay the fees under the provisions of the statute. Even then assuming not admitting the liability, the Secretary in this instant case, has made the prior assessment and determined the fees payable without giving the petitioners opportunity of hearing which was in clear violation of the mandatory

provisions of the statute. The order of assessment does not disclose any basis.

28. The petitioners submitted that the opinion and/or conclusion must be based on materials and/or reasonable basis. Absence of materials and/or basis which are conspicuously missing in the impugned order renders the entire process void ab initio and the whole was liable to be set aside.

29. The petitioners stated that the company procures raw materials like flour, sugar, skimmed milk, edible oil, cashew nuts, nuts, spices etc. from various suppliers across the State of West Bengal and also from various other States including the Howrah Zilla Regulated Market Committee area. The petitioners have the receipts of the fee paid for those goods. The Market Committee cannot ask for payment twice in the same area.

30. The petitioners stated that being aggrieved by and dissatisfied with purported the order issued under memo no. 353/L&M dated 22/09/2011 by the Secretary of the Howrah Zilla Regulated Market Committee confirming his earlier order issued under memo no. 317/L&M dated 02/09/2011 as also the assessment made by the respondent Howrah Zilla Regulated Market Committee under memo no. 339/L & M dated 12.09.2011 under the provisions of Section 17A(6) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, the petitioners preferred two writ petitions under Article 226 of the Constitution of India before the Hon'ble High Court at Calcutta being W.P. no. 20456 (w) of 2012 on the grounds mentioned in the said petition for the following amongst other relief:

“(a) An order or orders and/or direction or directions declaring that "biscuits and bakery products" which are being manufactured by the petitioners from processed agricultural produce do not fall within the meaning of 'agricultural produce' as defined under Section 2(1)(a) of the said Act, 1972;

(b) A writ and/or order or orders and/or directions in the nature of mandamus directing the respondents and each of them to forbear from collecting levy fees on "biscuits and bakery products" which are being manufactured by the petitioners from processed agricultural produce in purview of the provision of the said Act, 1972;

(c) A writ and/or order or orders and/or directions in the nature of mandamus directing the respondents and each of them to forbear from giving effect to and/or further effect to and/or cancel, rescind, recall, set aside the impugned the order issued under memo no. 353/L&M dated 22/09/2011 by the Secretary of the Howrah Zilla Regulated Market Committee confirming his earlier order issued under memo no. 317/L&M dated 02/09/2011 as also the assessment made by the respondent Howrah Zilla Regulated Market Committee under memo no. 339/L & M dated 12.09.2011 under the provisions of Section 17A(6) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 or any subsequent action in relation thereto;

(d) A Writ of and/or in the nature of Certiorari directing and/or commanding the respondent authorities concerned and/or their men, servants, agents, subordinates and/or assigns to forthwith produce all documents and files connected with the instant case before this Hon'ble Court so that conscionable justice may be administered after perusal of the same;

(e) A Writ of and/or in the nature of Prohibition prohibiting the respondent concerned from taking any step or further step on the basis of the order issued under memo no. 353/L&M dated 22/09/2011 by the Secretary of the Howrah Zilla Regulated Market Committee confirming his earlier order issued under memo no. 317/L&M dated 02/09/2011 as also the assessment made by the respondent Howrah Zilla Regulated Market Committee under memo no. 339/L & M dated 12.09.2011 under the provisions of Section 17A(6) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972;

(f) Rule NISI in terms of prayers (a) to (e) above.

(g) Injunction restraining the respondent concerned from taking any step or further step on the basis of the order issued under memo no. 353/L&M dated 22/09/2011 by the Secretary of the Howrah Zilla Regulated Market Committee confirming his earlier order issued under memo no. 317/L&M dated 02/09/2011 as also the assessment made by the respondent Howrah Zilla Regulated Market Committee under memo no. 339/L & M dated 12.09.2011 under the provisions of Section 17A(6) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972;

(h) Ad-interim orders in terms of prayer (g) above;

(i) Costs and other incidentals to this application;

(j) Such other or further order or orders, direction or directions as Your Lordships may deem fit and proper;"

31. The petitioners stated that the aforesaid writ petition has been heard by the Hon'ble High Court at Calcutta on several occasions and during the course of hearing and more precisely in response to a premise of an argument as advanced on behalf of the Writ Petitioner with regard to the absence of a valid market committee, the Learned Counsel appearing for the Respondents handed over the copy of a Notification dated February 20, 1982 as well as a Gazette Notification dated December 21, 2010 respectively. Consequently, your petitioners, by filing a supplementary affidavit in the aforesaid writ petition, has dealt with the notification stating that the former Notification dated February 20, 1982 speaks, inter alia, the names of the members of the Uluberia Regulated Market Committee established by the Notification dated February 20, 1982. On enquiry, the petitioners have come to know that the name featured in serial no. 4 in the list of names of members has already passed away. The names as appeared in the said notification suggest that the members of the said committee are not persona designate rather those members find their places in the committee and hold the post in an individual capacity. The Notification dated December 21, 2010 speaks about the SkFirdous Ur Rahaman as Secretary of Howrah Zilla Regulated Market Committee. It further appears from the Notification dated September 21, 2010 that District Magistrate, Howrah has been appointed as authorized person to discharge the duties and functions of Howrah Zilla Regulated Market Committee. It is submitted that the Uluberia Regulated Market

Committee as that was existed earlier has been ceased to exist by operation of law and the same has been taken over by and/or merged with the Howrah Zilla Regulated Market Committee. In view of such circumstances it is submitted that there is no appropriate authority under the law to execute the reasonableness of the scheme of the Act namely The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. I further submit that by reason of death of any one of the members of the said committee referred to above the Government has not come up with any notification thereby appointing a new person in place of the deceased member. Accordingly all arguments as advanced by the Respondents substantiating the action of the Market Committee under the Act is nonest and untenable.

32. The petitioners stated that meanwhile the respondent authorities concerned proceeded against M/s SAJ Industries Pvt. Ltd. (which however does not have existence after its merger with M/s SAJ Food Products Pvt. Ltd.) and its Chairman under Section 34(5) and Section 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of Section 17A of the said Act by filing a complaint case in the Court of the Learned 4th Judicial Magistrate at Howrah in Complaint Case no. 29 of 2012. Your petitioners are the accused persons in the aforesaid complaint case.

33. The petitioners stated that the aforesaid complaint case was filed before the Learned Chief Judicial Magistrate at Howrah on 16.01.2012, who, by an order dated 16.01.2012, took cognizance of the matter and transferred the

same to the court of the Learned 4th Court of Judicial Magistrate at Howrah for disposal.

34. The petitioners stated that in connection with the aforesaid complaint case, on 12.10.2012, all the accused persons appeared through their learned advocate namely Achutananda Pathak and the accused nos. 2 to 6 filed their respective petitions under Section 205 of the Code of Criminal Procedure for dispensing with their personal appearances and the accused Arpan Pal, the accused/petitioner no. 3 herein, surrendered and applied for bail along with a letter of authorization and prayed for representing the accused no. 1 company under Section 205 of the Code of Criminal Procedure. The Learned Magistrate was pleased to allow the petition under Section 205 of the Cr.P.C. regarding representation of the accused no. 1 company through their Joint Managing Director namely Arpan Pal, the accused petitioner no. 3 herein. The Learned Magistrate also allowed the prayer for Bail of the accused persons on bond of Rs.500/- each with one surety each of like amount, in default, Judicial Custody. The Learned Magistrate was also pleased to allow the prayer of the accused persons under Section 205 of the Code of Criminal Procedure for dispensing with their personal appearances for the interest of justice with the following conditions: (1) They will not challenge their identity during their trial; (2) They will be represented through their Learned Advocate; (3) They should remain present on the dates of their plea, examination under Section 313 Cr.P.C., judgment and other dates as and when called for regarding the case till further order. However, the Learned Magistrate was pleased to reject the prayer for dispensation of the personal

appearance of the Joint Managing Director Sri Arpan Paul having already allowed his prayer for representing the accused no.1 company under section 205 of the Cr. P.C. The Learned Magistrate was pleased to fix the matter next on 01.04.2013 for plea.

35. The petitioners stated that on the next date, i.e., on 01.04.2013, the accused petitioners moved an application praying for time on the ground of pendency of the aforesaid writ petition being W.P. no. 20456 (w) of 2012 before the Hon'ble High Court at Calcutta on the self same issue which was appearing in the monthly list of April, 2013. However, the Learned Magistrate was pleased to allow the time petition of the accused persons on the personal ground of the learned advocate for the accused persons.

36. The petitioners stated when the very basis of the applicability of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 to levy fees on "biscuits and bakery products" manufactured by the petitioners from processed agricultural produce, as also the very basis of the order passed under section 17A of the said Act are under challenge in the aforesaid writ petition pending before the Hon'ble High Court at Calcutta, under the said circumstances, the instant proceedings under section 34(5) and section 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 for violation of section 17A of the said Act ought to have been stayed awaiting the final decision of the aforesaid writ petition. Otherwise the entire premise and purpose of the aforesaid writ petition would become infructuous.

37. Moreover, the petitioners submitted that if the instant proceedings under Section 34(5) and Section 34(7) of the West Bengal Agricultural Produce

Marketing (Regulation) Act, 1972 for violation of Section 17A of the said Act are allowed to continue and any penal order is passed therein, then the same would also render the aforesaid pending writ petition infructuous thereby occasioning a severe loss and injury to the petitioners for no fault on their part.

38. The Learned Advocate for the petitioners submitted that:-

    i. The Learned Magistrate, while taking cognizance of the matter, has failed to appreciate that for the purpose of manufacturing biscuits and bakery products produces processed raw materials like flour, sugar, skimmed milk, edible oil, cashew, nut, spice etc. from various suppliers across the State of West Bengal. The aforesaid materials are thereafter under in manufacturing a different kind of 'product', namely "biscuits and bakery products" which is a totally different kind of product where "materials" used in its manufacture loses their identity. This "biscuits and bakery product" is a totally different commercial commodity of its own and capable of being sold in the market in its own identity.

    ii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that since the petitioners are a manufacturer of "biscuits and bakery products" which is not an "agricultural produce" within the meaning of Section 2(1)(a) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 and hence such product is not included in the schedule of "agricultural produce" appended to the said Act. As such, the provisions of the said Act, particularly with regard to the liability of submitting fortnightly return to the regulated market committee and paying of market fees to such market committee as envisaged under Section 17 and 17A of the said Act, do not and cannot apply in respect of the petitioners being a manufacturer of “biscuit and bakery product” which is not an “agricultural produce” under the said Act.

iii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners cannot have any liability to submit fortnightly return to the regulated market committee and paying of market fees to such market committee as envisaged under Section 17A of the said Act since the same do not and cannot apply in respect of the petitioner no. 1 being a manufacturer of “biscuit and bakery product” which is not an “agricultural produce” under the said Act. Moreover, it was further pointed out that the petitioners cannot record their “Turnover” as required to be stated in the “Return” since their “turnover” is of “biscuits and bakery products” which is not an “agricultural produce” in terms of the said Act. Furthermore, it was also pointed out that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 is not applicable in respect of the petitioner no. 1 being a manufacturer of “biscuit and bakery product” which is not an “agricultural produce” under the said Act, and as such, it was required in the said letter to renew the RMC license without submitting of any “Return”.

iv. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners cannot record their “Turnover” as required to be stated in the said “Return” since their “turnover” is of “biscuits and bakery products” which is not an “agricultural produce” in terms of the said Act.

v. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 is not applicable in respect of the petitioners being a “manufacturer” of “biscuit and bakery product” which is not an “agricultural produce” under the said Act. The petitioners do not sell “agricultural produce” either in the basis form or in the processed form, and hence, the petitioners is not liable to pay any market fee leviable on the basis of “Turnover” which means sale of “agricultural produce” either in the basic form or in the processed form.

vi. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the company of the petitioners is neither a trader nor a Broker, Commission Agent, licensed trader, weighman, measurer, warehouseman or surveyor as defined in Section 2 of the said Act. The petitioners is a “manufacturer” and hence, beyond the purview of the said Act.

vii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the existing license of the petitioners was renewed for three times in accordance with Rule 6 of the West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982 which shows that the market committee is satisfied with the past performance of the petitioners as an applicant/licensee even though the petitioners did not submit any return as per the said Act. Such conduct and action of the market committee proves that they have accepted the non-liability of the petitioners for submitting of any return under Section 17A of the said Act.

viii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners being a "manufacturer" of "biscuit and bakery product" purchases processed agricultural produce from the regulated market only where the market committee must have collected market fees from the concerned processor of agricultural produce. In terms of the proviso to Section 17A(1) of the said Act, market fees cannot be collected more than once and as such, the respondent authorities concerned cannot demand market fees for the same agricultural produce once from the seller and again from the purchaser (in this case, the petitioner) for purchasing the same agricultural produce from such seller.

ix. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the Hon'ble Supreme Court of India has held that "by manufacturing something is produced and brought into existence which is different from that out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties". In terms of the above definition of manufacturing, "agricultural produce" lose their identity as such while being transformed into "biscuit and bakery product" which is itself a different salable commercial commodity. As such, by selling "biscuit and bakery products", the petitioners does not sell "agricultural produce" either in basic form or in any processed form, and as such, is not liable to either file fortnightly return or to pay market fees under Section 17A of the said Act.

x. The Learned Magistrate, while taking cognizance of the matter, has failed to appreciate that "Turnover" means which has been held by the Hon'ble Supreme Court of India in many a case as 'the aggregate of the amount of sale price received or receivable by a dealer in respect of the sale or supply of goods'. Since the petitioners do not sell any "agricultural produce", there is no question of filing any return or paying any market fees on the "turnover" with regard to sell of "biscuit and bakery products" under the said Act.

xi. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that reference was drawn to the case decided by the Hon'ble Supreme Court of India whereby the Hon'ble Supreme Court allowed the petition for relieve from payment of "market fees" as the appellant was engaged in the manufacturing of "paper" using "bamboo" which is an agricultural produce as raw material. It was specifically pointed out by the Hon'ble Supreme Court that the appeal deserves to be allowed as the manufacturing of "paper" is not processing of "bamboo" alone.

xii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that reference was drawn to Sub-Section 2(i) of Section 17 of the Act 17 of the Act according to which, the petitioner, being a "manufacturer" and not a "licensed trader" by any stretch of imagination, cannot be made liable to pay fees to the Market Committee.

xiii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners were served with an assessment order issued by the respondent authorities concerned under memo no. 339/L & M dated 12.09.2011 whereby and where under a suo-moto assessment was sought to be made by the respondent Howrah Zilla Regulated Market Committee under the provisions of Section 17A(6) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, assessing the liability of the petitioners to the tune of Rs.50,00,000/- (rupees fifty lacs) for the period from 08.11.2007 to 23.08.2011 without any basis and/or reason thereof.

xiv. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners, by a letter dated 24.09.2011, reiterated the fact that the petitioners possess relevant certificates from their suppliers towards their purchase of "agricultural produce" using as 'raw materials' in the manufacturing of "biscuits and bakery products" and the said certificates confirms that the suppliers have been paying market fees regularly against the agricultural produce sold to the petitioner no. 1. In terms of the proviso to Section 17A(1) of the said Act, market fees cannot be collected more than once and as such, the respondent authorities concerned cannot demand market fees for the same agricultural produce once from the seller and again from the purchaser (in this case, the petitioner no. 1) for purchasing the same agricultural produce from such seller.

xv. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that for the purpose of manufacturing biscuits and bakery products procures processed raw materials like flour, sugar, skimmed milk, edible oil, cashew, nut, spice etc. from various suppliers across the State of West Bengal and also from various other States. Using these raw materials, the petitioners manufacture new and distinct articles having a distinct name, character, use and marketable individually and also articles which are totally changed in form, contour, physical appearance or chemical combination.

xvi. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the aforesaid materials are thereafter used in manufacturing a different kind of 'product', namely, "biscuits and bakery products" which is a totally different kind of product where the "materials" used in its manufacture loses their identity. This "biscuits and bakery product" is a totally different commercial commodity of its own and capable of being sold in the market in its own identity.

xvii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners procure raw materials some of which are 'agricultural produce' not for the purpose of dealing with them in the market as such. The petitioners procure the materials and putting them together in appropriate combination they manufacture biscuits and other bakery products which are not 'agricultural produce'. The said "biscuit and bakery products" are not 'agricultural produce' within the meaning of this Act. Section 13 of the said Act contemplates and deals with licenses required to be taken by them who undertake the activities referred to therein for trading purpose and not for manufacturing purpose. A manufacturer procuring raw materials some of which are 'agricultural produce' cannot come within the purview of the Act. In order to come within the purview of the Act, the purpose and the end product must be within the purview of the Act, and only then the liability arises.

xviii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 has been enacted "to provide for the regulation of marketing of agricultural produce in West Bengal; whereas it is expedient to provide for the regulation of marketing of agricultural produce in West Bengal and for matters connected.

xix. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 speak of the liability of submitting fortnightly return to the Regulated Market Committee and paying of market fee to such Market Committee as envisaged in Section 17 and 17A of the said Act, do not and cannot apply in respect of the petitioners as they are in the business of manufacturing, marketing and selling of biscuits and bakery products which in no way can be equated with the 'agricultural produce' as defined in Section 2(1)(a) of the said Act.

xx. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that under Section 17(1) of the said Act, Howrah Zilla Regulated Market Committee shall levy fees on any 'agricultural produce' sold in the market area. The proviso to Section 17(1) provides that no fee shall be levied in the same market area more than once, in relation to the same 'agricultural produce' irrespective of the number of transactions.

xxi. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that as provided in Section 17(2) only, a 'licensed trader' will deposit the fees imposed by the Market Committee. As provided in the Act, a licensed trader is a person who is ordinarily engaged in the business of purchasing and selling 'agricultural produce' as a principal or as a duly authorized agent of one or more principals and includes a person ordinarily engaged in the business of processing or preservation of 'agricultural produce'.

xxii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners are neither engaged in the business of purchasing and selling ‘agricultural produce’ nor engaged in the business of processing or preservation of ‘agricultural produce’. They are in the business of manufacturing, marketing and selling of “biscuits and bakery products” which are distinctively different in name, use quality from the raw materials used therein. They purchase those raw materials not to sell them but to manufacture ‘biscuits and bakery products’.

xxiii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that “processing” cannot be equated to “manufacture” as those two are distinctively different concept. “Processing”, as normally understood, retain its character but for “manufacture”, something more is necessary and that there must be transformation and a new and distinct article must emerge having a distinct name, character and use.

xxiv. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that Section 17A has also no application in relation to the business of the petitioner as it will appear from the very language of Section 17A(1) that “Every licensed trader shall submit to the Secretary returns of turnover in such manner for such period and by such dates as may be prescribed”. As the petitioners cannot in no way be termed as “licensed trader”, the question of filing of return of turnover does not arise.

xxv. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the term “fee” presupposes the existence of some service rendered to the payer of the fee. The levy fees should be quid pro quo for the service rendered. The levy of fees should be correlated to the expenses incurred by the agency in rendering the service individually. The payment of fee is like a reimbursement for the quantifiable benefit provided or to be provided to its prayer. There has been no expenditure as have been incurred for the infrastructural facilities attached with the market and on any issued related with the purpose of implementation of the scheme of the Act.

xxvi. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that on enquiry the petitioners came to know that there is no principal market area as defined in the said Act. They have not intended or proposed to set up any such under the Scheme of the Act and even there is no budgetary allocation for such.

xxvii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the Market Committee has given no service to the petitioners. The petitioners have also come to know that the Market Committee has not spent or invested anything for the betterment of the infrastructure of the markets in that area. So they cannot claim fee out of nothing. Therefore, without rendering any service, the respondents cannot claim any fee as demanded.

xxviii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that there is an object and purpose of the said Act. The steps ostensibly taken under the said Act must be really for achieving the purpose. It is submitted that the purpose of the Act is not to collect tax. The amount as demanded by the respondent is a fee and not a tax. It is pertinent to mention that the Act is regulatory in nature and such regulatory mechanism is provided in the Act. This is also very surprising to note that without providing a Committee, meaning thereby that the Regulatory Market and/or any establishment cannot claim fees as demanded.

xxix. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the petitioners have not dealt with any “agricultural produce” in any Principal Market Yard or Sub-Market Yard and further the petitioners did not purchase from any agriculturalist. The petitioners purchased different items from different traders situated in different areas.

xxx. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that no Market Committee has yet been constituted so as to be functional and proceed under the said Act. The alleged Secretary of the Committee cannot take any step unless the Market Committee is properly set up and constituted under the Act.

xxxi. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate thereunder Section 17A(6) of the said Act, if any trader fails to submit any return of turnover, the Secretary of a Regulated Market Committee shall make the assessment of the fees payable to the best of his judgment and determine the sum payable after giving an opportunity of hearing to the trader. Although the petitioners are not liable to pay the fees under the provisions of the statute, even then assuming not admitting the liability, the Secretary in this instant case, has made the prior assessment and determined the fees payable without giving the petitioners opportunity of hearing which is in clear violation of the mandatory provisions of the statute. The order of assessment does not disclose any basis.

xxxii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the opinion and/or conclusion must be based on materials and/or reasonable basis. Absence of materials and/or basis which are conspicuously missing in the impugned order renders the entire process void ab initio and the whole is liable to be set aside.

xxxiii. The Learned Magistrate, while taking cognizance of the matter, failed to appreciate that the company procures raw materials like flour, sugar, skimmed milk, edible oil, cashew nuts, nuts, spices etc. from various suppliers across the State of West Bengal And also from various other States including Howrah Zilla Regulated Market Committee area. The petitioners have the receipts of the fee paid for those goods. The Market Committee cannot ask for payment twice in the same area.

39. The Learned Advocate for the opposite party submitted that:-

i. Once a trade license was obtained by any person under the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Act 1972, the licensee was bound to produce returns for products purchased or sold to the appropriate authorities within a week from such transaction.

ii. It had been a settled provision that a trade licensee was mandatory for the purpose of conducting business. As such there was no dispute as to whether a manufacturing company such as the Petitioners could be classified as a trader within the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Act 1972 or not. The petitioner no. 1 company had been a trader having obtained a trade license from the concerned authorities.

iii. It was further submitted that, in the said license it was clearly stated that the licensee should abide by the provisions of West Bengal Agricultural Produce Marketing(Regulations) Act 1972, the West Bengal Agricultural Produce Marketing(Regulations) Rules 1982 and the bye-laws made by the Howrah Zilla Regulated Market Committee.

iv. In clause 4 of the of the issued license it was clearly mentioned that the licensee was to abide by the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Rules 1982, particularly Rule 7, i.e. terms and conditions of the license.

v. Under Section 17(1) and 17(2)i) of the above mentioned Act of 1972 it was clearly stated that a licensee was to pay fees for the agricultural produce purchased or sold within a week from the date of transaction.

vi. Under 17A of the Act of 1972 it was clearly stated that a licensed trader should submit return to the concerned authorities in a timely manner. If any licensee failed to comply with the same the concerned authority should give the licensee an opportunity to be heard. If the said licensee failed to attend the hearing or was unable show sufficient cause the concerned authority shall direct the licensee to pay a penalty in addition to the market fee.

vii. The market fees or returns sought for by the Opposite parties were not on the finished product of the petitioner but the purchased agricultural product.

viii. In accordance with the provision as laid down in Section 17(1) of the act of 1972 all licensees were liable to pay market fee or furnish return for all agricultural product bought or sold. As such the payment of market fees and submission of returns to the concerned authorities by the licensee was not just limited to sell of agricultural products as defined under Section 2(1) of the said Act but also upon the purchase of agricultural products.

ix. The petitioners were aware of their rights under the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Act 1972 and the West Bengal Agricultural Produce Marketing (Regulations) Rules 1982, to be directed to furnish return and pay market fee for the agricultural produce purchased by the petitioner.

x. It had been an admitted fact that the petitioner had been purchasing agricultural produce from several market areas, as such the Petitioners were liable to pay market fees for the Agricultural Produce purchase.

xi. The petitioner had obtained trade license as mentioned above from the concerned authorities for trading and marketing agricultural produce.

xii. The opposite party i.e. the concerned authority did not claim market fees for the sale of agricultural produce but for payment of market fees for the agricultural produce purchased.

xiii. The Learned Advocate for the opposite party/respondent further relied on the decision in the State Of Haryana And Ors. vs Ch. BhajanLal And Ors 1992 AIR 604 emphasizing on the following parameters in which the High Court can quash criminal proceeding.

   a. Whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

   b. Whether the material relied upon by the accused is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

   c. Whether the material relied upon by the accused, has not been refuted by the prosecution / complainant; and / or the material is such, that it cannot be justifiably refuted by the prosecution / complainant?

   d. Whether proceeding with the trial would result in an abuse of process of the court and hence, would not serve the ends of justice?

xiv. Furthering mentioning this instant criminal revision does not attract any of the above mentioned parameters.

xv. Similarly reference was drawn to the R P Kapur v. State of Punjab, reported in 1960 AIR 862, the Hon'ble Supreme Court of India held that criminal proceedings against a person can be quashed if the case being dealt with belongs to any one of the following three classes of cases:

   a. Where there is a legal bar against institution or continuance of the criminal proceedings.
   b. Where the allegations in the FIR do not constitute an offence, even if taken at face value and in their entirety.
   c. Where the allegations made constitute an offence, but there is no evidence which can prove them.

xvi. The Petitioners' case do not attract any one of the parameters stated above to warrant interference of this Hon'ble Court under Section 482 of the Code of Criminal Procedure as such the Revision Application is devoid of any merit and liable to be dismissed.

xvii. Moreover, evasion of market fee i.e. Government revenue is also under the preview of the economic offences involving financial & economic wellbeing of the state and have implications which lie beyond the domain of meager dispute between private disputants and the High Court should decline to quash where the offenders is involved in any activity of financial or economic fraud or misdemeanor.

xviii. According the Complainant prayed that the instant Criminal Revision be dismissed and the petitioners be directed to pay the outstanding market fee along with penalty in accordance with the provisions of the West Bengal Agricultural Produce Marketing (Regulations) Act 1972 and the West Bengal Agricultural Produce Marketing (Regulations) Rules 1982.

40. Pertinently the following provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 are to be elucidated at the inception viz. Section 2(1) of the said Act:-

*"**2.** (1) In this Act, unless the context otherwise requires,—*

(a) "agricultural produce" means any produce of agriculture, horticulture, pisciculture, '[sericulture,] forestry or animal husbandry or [and includes any related product] specified in the Schedule to this Act:"

...

(e) "licensed trader" means a trader licensed under Section 13;"

...

(p) "Secretary" means a person appointed as such under Section 14 and includes an officiating or acting secretary;"

...

(t) "trader" means a person ordinarily engaged in the business of purchasing and selling agricultural produce as a principal or a duly authorized agent of one or more principals and includes a person ordinarily engaged in the business or processing or preservation of agricultural produce;"

(ii) Section 13 of the said Act states as follows :-

"13. Licence. - *(1) After six months from the declaration of any area as a market ucc nee. area, no person shall, within the [market area], carry on business or act as a trader, commission agent, broker, weighman, measurer, warehouseman or surveyor, or sell or purchase agricultural produce, or engage in processing or preservation] of agricultural produce, or set up, establish or continue a '[place] for storage, sale or purchase of any agricultural produce, except, under and in accordance with Ihe prescribed terms and conditions of a licence issued in this behalf by the market committee 2, notwithstanding anything contained in any other law for the lime being in force and] '[irrespective of any licence required and issued under any law for ihe time being in force."*

"Provided that nothing in his sub-section shall apply to any sale by a producer of his own produce, to retail sale and to purchase by an individual for his own consumption."

…

16. Duties of the Secretary and other officers and employees. - *The Secretary and the other officers and employees of the market committee shall discharge such duties as may be entrusted to them by the market committee."*

17. Levy of fee by market committee. - *(1) Notwithstanding anything contained in any other law relating to taxation of agricultural produce in force, the market committee shall levy fees on any agricultural produce purchased or sold in the market area –*

(a) for an item of agricultural produce as specified in Part A of the Schedule, at such rate or rates not exceeding two per centum of the amount for which such agricultural produce is purchased or sold,

whether for cash or for deferred payment or for other valuable consideration;

(b) for an item of agricultural produce as specified in Part B of the Schedule, at such rate or rates not exceeding six per centum of the amount for which such agricultural produce is purchased or sold in bulk, and which does not constitute a retail sale or purchase, whether for cash or for deferred payment or for other valuable consideration, as the State Government may by notification specify.

irrespective of the fact that the buyer of the produce is the Central Government or the State Government or an agent or undertaking of either of them or a corporation constituted under any law for the time being in force.

'Provided that no fee shall be levied in the same market area, more than once, in relation to the same agricultural produce irrespective of the number of transactions.

Provided further that the market fees shall be collected by the Board in respect of licencees having single licencee issued by the Board which is valid for more than one market areas, or for sale of agricultural produce in bulk, or for such other transactions under such conditions, and in such manner, as may be prescribed, and the Board shall periodically remit market fees so levied to the market committees after deducting such amount of transaction cost as may be prescribed.

Explanation I.—For the purpose of this sub-section all agricultural produce taken out, or proposed to be taken out, of a market area shall, unless the contrary is proved, be presumed to have been sold within such area.

Explanation II.—In the determination of the amount of the fees payable3 [under this sub-section], any fraction of ten paise less than *five paise shall be disregarded and any fraction of ten paise equal to or exceeding five paise shall be regarded as len paise.*

Explanation III.—For the purpose of this sub-section all agricultural produce stored in the cold storages within the market area shall, unless the con tarry is proved, be presumed to have been stored for the purpose of sale.

(2) The fees referred to in sub-section (1) shall be paid by the purchaser of the agricultural produce concerned in the following manner, namely:—

(i) when a licensed trader is the buyer of any agricultural produce, he shall pay the fees to the market committee in the prescribed manner within a week from the day of the transaction,

(ii) when a licensed trader is the seller of any agricultural produce r., and the buyer is not licensed, the trader shall recover the fees from the buyer and deposit the same in the prescribed manner with the market committee within a week from the day of the transaction,

(iii) the market committee may authorize its officers or staff or '[any other person] to realise the fees directly from the buyer.

17A. Submission of returns. - *(1) Every licensed trader shall submit to the Secretary returns of returns. 0f turnover in such manner, for such period and by such dales as may be prescribed.*

(2) The trader shall before submitting any return of turnover referred to in sub-section (1) pay in to the market committee fund the amount of fees due under this Act according to such return; and for such payment a receipt in duplicate shall be issued to the payee. One of the duplicate receipts issued to the payee shall be attached to the

return of the turnover to be submitted to the market committee. In case of failure LO submit return within the prescribed period, the market committee shall initiate assessment proceedings for that return period soon after the expiry of die time.

(3) If the Secretary is satisfied [hat the return of turnover submitted by a trader is correct and complete, he may, without requiring the presence of the trader or the production of evidence by him, determine the amount of fees due from the trader.

(4) I f the Secretary is not satisfied with the return of turn over submitted by a trader and requires the presence of the trader or the production of evidence by him, he may serve on such a trader a notice in the prescribed form requiring him or his nominee on a date to be specified therein to attend before him and produce or cause to be produced before him in, any evidence in support of the return.

(5) On the day specified in the notice issued under sub-section (4) or as soon thereafter as may be, the Secretary, after considering such evidence, oral or documentary, as the trader or his nominee may produce and such other evidence as the Secretary may require on specified points, shall, by an order in writing, assess and determine the fees payable by him.

(6) If a trader fails to submit any return of turnover as required under subsection (1) or fails to comply with the terms of a notice issued under subsection (4), the Secretary shall, after giving the trader an opportunity of being heard, make, in the prescribed manner, the assessment of fees payable under this Act to the best of his judgement and determine the sum payable by the trader on the basis of such assessment. The Secretary may, in such a case, and in a case where a trader has failed to comply with the provisions of sub-section (2), direct that the trader shall in addition pay, by way

of penalty, a sum not exceeding the amount of the fees assessed, if he is satisfied that the failure was unjustified or willful.

…

***31. Members and employees of a market committee to be public servants.** - Every member of a market committee and every officer and employee of a market committee shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860."*

41. Section 34(5) and Section 34(7) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 states as follows:

> *"Section 34: Penalty- …*
>
> *(5) Whoever fails to pay any fee or other sum due to the market committee under the provisions of this Act or the rules or bye-laws made thereunder or evades the payment due towards remuneration to any weighman or palladar, or demands remuneration without authority of the seller or buyer for his employment or demands remuneration otherwise than in accordance with the provisions of the rules and bye-laws made under this Act shall, on conviction, be punishable with fine which may extend to five hundred rupees and in case of a continuing offence with a further fine which may extend to fifty rupees for every day during which such offence continues after the first conviction.*
>
> *…*
>
> *(7) All offences punishable under this Act or the rules made hereunder shall be cognisable and bailable."*

42. The primary conundrum between the disputants relates to the confounding status of the petitioner claiming to be a manufacturer of 'Biscuits' purchasing the agricultural products from certain suppliers thereby relieving

itself from the liability to pay fees for the agricultural produce purchased or sold within a week from the date of transaction and to submit return to the concerned authority in accordance with the provisions under Section 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. Contrarily, the opposite party claimed the petitioners to be a licensed trader on the basis of the licence issued to the petitioner company and liable to pay the aforesaid fees and to submit returns with regard to the purchase of agricultural produce and not on the 'Biscuits" manufactured by the petitioners.

43. The Learned Advocate for the petitioners was emphatic of the fact that the opposite party could not claim the aforesaid fees twice with regard to the same agricultural produce; once from the suppliers of agricultural produce to the petitioners and thereafter from the petitioners concerning the same agricultural produce.

44. The petitioners have annexed certain documents to the revisional application being P-1 to P-14. Certain excepts of the aforesaid annexures are replicated as follows in seriation:-

45. Annexure- P-1: A communication dated October 27, 2007 from SAJ Food Products Pvt. Ltd. (Petitioner) to the Howrah Zilla Regulated Market Committee (Opposite Party) states:

"*We would, therefore, like to submit that The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 does not and cannot apply to us being the Manufacturer of Biscuit which is admittedly not an Agricultural produce.*

Furthermore, we like to submit that Section 13 of the said Act which deals in Licence requires obtaining Licence from the Market Committee by the Traders only who purchase, sell, process and/or store the Agricultural Produce and not by a Manufacturer like us.

That Licence is required by a Trader only for trading in Agricultural produce as enumerated in details in the said Kolkata Gazette is evident from Section 17(2) of the said Act wherein the Purchaser or seller or processor of Agricultural Produce who is liable to pay Market Fees has been provided. Section 17 of the said Act relates to a Licenced Trader only and not a Manufacturer.

Moreover, Section 17A of the said Act wherein the procedure of submission of Returns has been dealt with on the basis of which Market Fees are to be paid also speaks of Licenced Trader and of his Turnover which affirms that Licensee should be a Trader only and his sales should be in Agricultural produce which is his Turnover.

We like to submit that we are neither a Trader nor is our Turnover in Agricultural produce. We are a Manufacturer and our Turnover is in Biscuits which is admittedly not an Agricultural produce. We like to state that purchase of some Agricultural produce and using the same as inputs of Biscuit which is not an Agricultural produce cannot extend the applicability of the said Act to a Manufacturer whose Turnover is in Biscuit which is admittedly not an Agricultural produce. Section 13 of the said Act, if interpreted in relation to Section 17 of the said Act shall also indicate that purchase of Agricultural produce has to be for Trading purposes only by a Trader and not otherwise in order to attract liability of obtaining Licence.

In view of the above, we are of the opinion that The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 is not at all applicable to us.

However, as we have been requested and/or advised by you in the said meeting to obtain the Licence under Section 13(1) whereafter you assured to consider non-imposition of Market Fees on our Turnover for not being a Turnover of Agricultural produce, we are submitting the Application in Form 1 duly filled in and signed by us for getting a Licence in our name with the aforesaid objection/protest in this behalf.

We would, therefore, request you to kindly issue us a Licence under Section 13(1) of the said Act keeping in record our aforesaid objections and submissions."

46. Annexure – P-2- Licence in Form-4 issued by The Howrah Zilla Regulated Market Committee to SAJ Food Products Pvt. Ltd. (Petitioner) states as follows:

"THE HOWRAH ZILLA REGULATED MARKET COMMITTEE

Licence No. 2819 Book No. 60

Licence is hereby granted to M/S. Saj Industries Pvt. Ltd., of Village/Town Moheshpur, Police Station Uluberia, Post Office: Birshibpur, District- Howrah (hereinafter referred to as the licencesee) on payment of fee of Rs. 200/- (Rupees Two Hundred Only) to operate as Purchaser of Agril. Produce, marketing of Flour, Sugar, Vanaspati & Others in the premises/place specified below subject to the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, the West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982 and the *bye-laws made under the provisions of the Act and the following conditions, namely:-*

1. *The licence takes effect from 08/11/2007*
2. *The licence shall be valid up to 07/11/2008"*

47. Annexure – P-3- A communication dated 23.05.08 from Howrah Zilla Regulated Market Committee to M/S. SAJ Food Products Pvt. Ltd. states as follows:

"Dear Sir,

It reveals from our office record that you have been running your business within the notified market area of Howrah Zilla Regulated Market Committee with valid R.M.C license, being No. 2820 Book-60 Dated 08/11/07.

As per section 17A of the W.B.A.P.M(R) Act 1972, It is obligatory on your part to submit fortnight return to this Market Committee.

Thus you are requested to submit return on total purchase volume of various notified Agril. Commodities, viz. Sugar, Flour, Atta, Kaju nut, Skimmed Milk, Vegetable oil ete, along with relevant document within 15 (Fifteen) days from the date of receipt of this letter.

A line of confirmation as to this action taken on your part is highly appreciated."

48. Annexure – P-4- A communication dated June 12, 2008 from M/S. SAJ Food Products Pvt. Ltd. (Petitioner) to the Howrah Zilla Regulated Market Committee (Opposite Party) states as follows:

"We acknowledge with thanks the receipt of your letter dated 23.05.2008 bearing Memo No. 119/LXM(1) on the captioned subject.

We have gone through the contents of your said letter very carefully and would like to state that Sec 17A of W.B.A.P.M.(R) Act 1972 is not at all applicable to us. In this connection we refer to our earlier letter dated 27th October, 2007, a copy of which is enclosed herewith for your ready reference.

You would kindly find from the said letter dated 27th October, 2007 that we are not liable to submit fortnight Return under Section 17A of the said Act as we do not deal in Agricultural Produce but we deal in Biscuit only which is not an Agricultural Produce.

Moreover, we cannot record our Turnover in the said Return as our Turnover is of Biscuits and not of any Agricultural Produce. It is true that we purchase some of the Agricultural Produce for manufacturing of our Biscuits but our purchase is not our Turnover. As such, we do not have any Turnover in Agricultural Produce but we do have in Biscuit only which is not an Agricultural Produce.

We like to reiterate that we are a Manufacturer and not a Trader. As such, West Bengal Agricultural Produce Marketing (Regulation) Act 1972 is not at all applicable to us. We have explained in details our position in our earlier letter dated 27th October, 2007 on the captioned subject.

We are ready and willing to renew our RMC License 2820 Book-60 dated 08.11.2007 on hearing from you without submitting any Return."

49. Annexure – P-6- A hearing notice dated 16.08.2010 from Howrah Zilla Regulated Market Committee to M/S. SAJ Food Products Pvt. Ltd. stated as follows:

"It is transpired from the office record that inspite of several notices as to the submission of return under sec 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act 1972 through your several letters you have replied showing several reasons in support of your non-submission of return, but such contention for non submission of return does not sustain under the purview of the West Bengal Agricultural Produce Marketing (Regulation) Act 1972.

Now, therefore, you are hereby directed under the provision of the West Bengal Agricultural Produce Marketing (Regulation) Act 1972, to appear before the secretary either personally or through an authorized nominee, on 23/08/2010 at 2 p.m. and produce or cause to be produced before the undersigned all oral and/or documentary evidence in support of your such reasons, as to why the Market committee shall not initiate assessment proceeding against you for non- submission of return on the purchase of notified Agricultural Produce purchased by you, failing which Market fees will be determined on suo-moto assessment in accordance with law."

50. Annexure – P-7- A hearing notice dated 19.08.2011 from Howrah Zilla Regulated Market Committee to M/S. SAJ Food Products Pvt. Ltd. stated as follows:

"A 'hearing' was taken on 23/8/010 at 2 p.m. by the under signed for submission of return on the purchase of notified Agricultural Produce u/s 17A of the West Bengal Agricultural Producing Marketing (Regulation) Act, 1972 but at the time of hearing you did not produce any supportive documents for non-submission of return.

Now, therefore, you are once again directed under the provision of section 17A (4) of the west Bengal Agricultural Produce Marketing (Regulation) Act, 1972, to appear before the under signed on 29/8/011 at 2 p.m with all documents like notified Agriculture Produce purchase register, Audit report since 2007 positively, failing which the market fees will be determined in accordance with law."

51. Annexure – P-8- A communication dated August 29, 2011 from M/S. SAJ Food Products Pvt. Ltd. to Howrah Zilla Regulated Market Committee stated as follows:

"We append below our submission during the said hearing for your kind consideration -

1. We had taken license as per Sec 13 of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, as we are Purchasing Agricultural Produce in the notified market area.

2. As per Sec 17 of the said Act, Market Committee can't levy fees on any Purchase of agricultural produce but can do so on Sale of Agricultural Produce.

3. As per Sec 17A of the said Act, Return has to be submitted on the basis of Turnover means Sales of Agricultural Produce. We don't sell any agricultural produce but sell "Biscuit" which is a converted value added Item and not covered in the Schedule related to the said Act.

4. We are using Processed agricultural produce and not the Basic agricultural produce. We convert the said Processed agricultural produce after adding values into a different produce called "Biscuit" when the

Processed agricultural produce loses its identity and character. So, we do not Sell agricultural produce either in Basic Form or in Processed Form. Hence, we are not liable to pay any market fee leviable on the basis of Turnover means Sales of the agricultural produce either in Basic Form or in Processed Form.

5. We are neither a trader nor a broker, commission Agent licensed trader, weighman, measurer, warehouseman or surveyor as defined in Section 2 of the said Act. We are Manufacturer and as such beyond the preview of the said Act in which Manufacturer has been defined U/S 2 of the said Act.

6. Our existing license has been renewed for three times in accordance with the Rule 6 of the said Act which proves that the market committee is satisfied with the past performance of us as an applicant / a licensee eventhough we did not submit any return as per the said Act.

So, the conduct and action of the market committee proves that they have accepted our non-liability of submitting of any return u/s 17A of the said Act.

7. We being Manufacturer have Purchase Processed agricultural produce from the regulated market only where the market committee must have collected market fees from the concerned Processor of the agricultural produce.

Market fees cannot be collected more than once as per Sec 17 of the said Act. So, we are exempted from submitting any Return and Paying any Market Fee.

In view of the above, we do hereby request yourself to drop the instant proceedings against us and cancel the said notice."

52. Annexure – P-9- A hearing order dated 02.09.2011 issued by the Howrah Zilla Regulated Market Committee states as follows:

"The Secretary, Howrah Zilla Regulated Market Committee has taken the 'Hearing' from M/s Saj Food Products Pvt. Ltd., Sankrail Food Park (Sudharas) JL02, P.O.- Dhulagor, P.S.-Sankrail, Dist.-Howrah, at his chamber on 29/8/2011 at 2 P.M. regarding submission of Return to this office under section 17A of the West Bengal Agril. Produce Marketing (Regulation) Act, 1972.

Two representatives 1. Sri Debasis Bhattacharje, General Manager, commercial 2.Sri Tamesh Das, HR-Executive of the said company appeared before the Secretary for hearing and under noted discussion was taken place at the time of hearing.

1. *At first the Secretary asks the representatives if they have any authorization letter to appear before the hearing. And they submit an authorization letter to the Secretary.*
2. *The Secretary asks if they have obtained R.M.C. license under Section 13(1) of the West Bengal Agricultural Produce Marketing (Regulation) Act 1972, issued by this R.M.C., they agree that the said company has obtained license from this office on 08/11/07. And in this context the Secretary explains Section -17(1) Explanation III (2) (i) of the said Act and*

accordingly submission of return is an obligatory on your part on the purchase of Agricultural Produce @ 1% or 0.50% as applicable.

3. Sri Debasis Bhattacharjee submits a letter regarding non-submission of return where in the said company has tried to clarify that why the said company can not come under the per view of Section-17 of the said Act. But the Secretary repeats section-17 A and requests them to obey the Act. And in this question of turn-over the secretary tells them that the said company has to submit return as purchaser of Agril. Produce.

4. In point no.4 of the said letter the said company admitted that they only purchase processed Agricultural produce and not the basic Agricultural produce. The Secretary informs them that all the Agricultural produces purchased by the said company are notified commodity according to the said Act. And the Secretary also reads Section 2(1) (a) of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 where in what is Agricultural produces mean clearly mentioned.

5. The secretary agrees that market fees must be paid one time in West Bengal on the particular produce and from where you purchase if that company has already paid market fees to this office, you no need to pay further market fees to this office on that particular product but if you purchase some Agricultural produce and market fees is not paid then your company has to pay due market fees to this office. And over all as an Agriculture produce purchaser your company has to submit return to this office every fortnightly as per section 17A of the said Act. Other wise your act will be deemed as intentional violation of the said Act.

At last the Secretary directed the said company to submit all due returns since you obtained R.M.C. license within 15 (fifteen) days from the date of receipt of this order, in default this office will be compelled to do suo-moto assessment as per section -17A (6) of the said Act."

53. Annexure – P-10- A communication dated 03.09.2011 from M/S. SAJ Food Products Pvt. Ltd. to the Howrah Zilla Regulated Market Committee states as follows:

"1. We are being Manufacturer, purchase processed agricultural produce from the regulated market only where the market committee must have collected market fees from the concerned processor of the agricultural produce.

We have been provided with Certificate of your Regulated Market Committee admitting collection of Market Fees from our Suppliers which we like to produce at the time of hearing, if required. We are enclosing herewith photocopy of a few such certificates.

Market fees cannot be collected more than once as per Sec 17 of the said Act.

2. We are using processed agricultural produce as raw material for the purpose of manufacturing "Biscuit". We convert the said processed agricultural produce after adding values into a different Product called "Biscuits" when the processed agricultural produce loses its identity and character.

We refer to the case CST vs. Coco Fibers, 1992 Supp (1) SCC 290, where it has been mentioned that "by manufacturing something is produced and brought into existence which is different from that out of which it is made in *the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties"*

In view of the above, we do not sell agricultural produce either in Basic Form or in Processed Form.

Hence, we don't not attract levy of market fee.

3. As per Sec 17A of the said Act, every licensed trader has to submit returns of turnover.

a) We are neither a trader nor a broker or commission agent or weighman or measurer or warehouseman or surveyor.

We are Manufacturer and as such beyond the preview of the Act in which we have not been defined u/s 2 of the said Act and every where in the said Act, Traders and Licensed Traders have been mentioned.

b) You are asking us to submit the Return of turnover on the basis of our purchase of agricultural produce.

In this context we would like to draw your kind attention to the fact that, "Turnover" means the aggregate of the amount of sale prices received or receivable by a dealer in respect of the sale or supply of goods. [Hindustan Sugar Mills vs. state of Rajasthan AIR 1978 SC 1496: (1978)4 SCC 271: (1979)43 STC 13: (1979)1 SCR 276].

We don't sell any agricultural produce but sell "Biscuits" which is a converted value added item and is not covered in the Schedule related to the said Act.

Hence, we are not liable to submit return of its Turnover.

4. We renewed the existing license for three times in accordance with the Rule 6 of the said Act, which proves that the Market Committee is satisfied with the past performance of us as an Applicant / a Licensee even though we did not submit any return as per the said Act.

So the conduct of the Market Committee proves that they have accepted our non- liability of submitting of any return u/s 17A of the said Act.

As regards your reference to Section 17 Sub-Section 2(i), we like to submit that we are Manufacturer and not Licensed Trader in any stretch of imagination and as such we are not liable to pay the fees to the Market Committee as per the Act.

We submitted mentioned this point also during the hearing. But you have not responded on this nor have you mentioned our said submission in your instant Hearing Order.

5. We refer case no. 468 (2006) 12 SCC where The Honb'le Supreme Court allowed the Petition for relief from payment of market fees as the Appellant was engaged in manufacturing of "Paper" using bamboo which is agricultural produce, as raw material. It has been mentioned in the verdict that the appeal deserves to be allowed as the manufacturing of Paper is not processing of Bamboo alone.

6. For that the Levy of market fee in the instant case is arbitrary, improper, and untenable in law and would give rise to unjustified case of "Double Payment" of Market Fees as we are purchasing the Agricultural Produce from the Regulated Market only."

54. Annexure – P-11- A communication dated 12.09.2011 from Howrah Zilla Regulated Market Committee to M/S. SAJ Food Products Pvt. Ltd. states as follows:

"Dear Sir,

You were asked to appear before the under signed on 29th August, 2011 at 2 p.m. for hearing with all documents regarding purchase of Agricultural Produce like atta, flour, rice oil, ghee, sugar, skimmed milk, kazu, pesta, nut and other Agril. Produce, for submission of return u/s 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 and two representatives Mr. Debasish Bhattacharjee, GM, Comercial & Mr. Tamesh Das, HR-Executive of the said company appeared before the hearing.

In the above connection you have submitted a letter on 29th August, 2011 at 2 a.m. where in you have tried to clarify in various way that why the said company does not fall under the per view of section 17A of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 and further you have submitted another letter on 05/9/011 repeating the same things which obviously appear to this office that you have intentionally violated Section 17A of the West Bengal Agril. Produce Marketing (Regulation) Act, 1972 and under this situation the under signed has determined to do suo-moto assessment of market fees under section 17A (6) of the said Act is as following :

1. Period from 08/11/2007 to 23/8/011

2. Assessment amount Rs. 50, 00000/- (fifty lacks) approx.

Thus you are directed to submit return and pay market fees of Rs. 50, 00000/-(fifty lacks) to this office within 7 (seven) days from the date of receipt *of this order, failing which this office will be compelled to take necessary legal action against you as per section 34 of the said Act and you will have to bear all the cost of prosecution."*

55. Annexure – P-12- A communication dated 20.09.2011 from M/S. SAJ Food Products Pvt. Ltd. to the Howrah Zilla Regulated Market Committee states as follows:

"Dear Sir,

The humble petition of the above named Appellant Dealer begs to submit the following for your kind and sympathetic consideration:-

That the Dealer has bonafide and reasonable and lawful grounds to get full relief in the appeal.

That from the facts and of the case, it is seen that the Learned of Howrah Zilla Regulated Market have assessed and directed the to submit Return and pay Market Fee which is not justified.

That from the Grounds of Appeal it is crystal clear that no liability of of Market Fees and of returns of turnover develop upon the Appellant and therefore the may please be.

That in the Appellant Dealer herewith submits the following:

Annexure – I : Statement of Facts

Annexure – II : Grounds of Appeal.

Under the circumstances, you are earnestly requested to admit the instant Appeal."

56. Annexure – I-Statement of Facts for the period of 08.11.2007-23.08.2011 from M/S SAJ Food Products Pvt. Ltd. states as follows:

"The Petitioner, a Pvt. Ltd. Company having its factory at Sankrail Food Park, Dhulagarh, Howrah, is engaged in manufacturing, marketing and selling of Biscuit. The Petitioner is a registered under Howrah Zilla Regulated Market and holding valid license on and from 08/11/2007.

That the Petitioner has been Suo-Moto assessed and directed to submit Return and pay Market Fee of Rs.50,00,000/- for the period 08/11/07 to 23/08/11 within 7 days from receipt of the notice issued by the Office of The Howrah Zilla Regulated Market Committee .

That the Petitioner is very much by the said order allegedly issued U/S 17A as the said Suo-Moto assessment order does not disclose any facts and figures on the basis of which the said SUO-MOTO has been completed.

That the Petitioner is making this Appeal against the said order on the grounds stated in - II.

That from the Grounds of Appeal it is crystal clear that no liability of Market Fee would upon the Petitioner and, therefore the Appeal may kindly be allowed.

Being aggrieved, the Petitioner has filed this Appeal before your Honour for obtaining proper relief."

57. Annexure – 14- A communication dated 24.09.2011 from M/S SAJ Food Products Pvt. Ltd. to Howrah Zilla Regulated Market Committee states as follows:

"Dear Sir,

We are in receipt of your above-mentioned memo through which unfortunately you had not accepted the appeal petition filled by us w.r.t your Memo no. 339/L&M dtd12.09.11.

We find that you have not considered and/or dealt with our grounds of appeal in seriatim. On the contrary, you have decided arbitrarily not to accept our Appeal Petition nor had you given us an opportunity to be heard. Moreover in our appeal we had clearly stated that we possess relevant Certificate from our Suppliers towards our purchase of Agricultural Produce using as Raw materials in manufacturing of "Biscuit" and the said Certificates confirms that the Suppliers have been paying Market Fees regularly against the Agricultural Produce sold to us.

We are herewith enclosing a few such Certificates for your kind perusal.

When, once the Suppliers are paying the Market Fees to the respective Regulated Market Committee, then Levy of Market Fee on us would give rise to unjustified case of "Double Payment" of Market Fees which is not permissible as per Section 17 of the West Bengal Agricultural Marketing (Regulation) Act, 1972.

And because of that, you also virtually accepted our non-liability of submitting of any return u/s 17A of the said Act. You allowed us to renew our existing license for three consecutive years in accordance with the Rule 6 of the said Act, which proves that the market committee is satisfied with the past performance of us as a licensee even though we had not submitted any return as per the said Act.

We are now shocked at the unfair and arbitrary treatment we are getting from you and would request once more you to make justice to us by considering our non-liability of paying any Market Fee because of the fact that the same have already been paid by our suppliers."

58. In Annexure P-1, the petitioners stated that "*purchase of some agricultural produce and using the same as inputs of 'Biscuits' which is not an agricultural produce cannot extend the applicability of the said Act to a manufacturer whose turnover is in 'Biscuit' which is admittedly not an agricultural produce. Section 13 of the said Act, if interpreted in relation to Section 17 of the said Act, shall also indicate that purchase of agricultural produce has to be for trading purposes only by a trader and not otherwise in order to attract liability of obtaining licence.*"

59. The Chairman of the Saj Food Products Pvt. Ltd. had also submitted the application in Form-1 for obtaining a licence in their favour with objection/protest on the assurance of consideration of non-imposition of market fees on the turnover for not being a turnover of agricultural produce under Section 13(1) of the said Act. It appeared that the petitioner no. 1 indicated purchase of agricultural produce and using the same as an ingredient for preparing 'Biscuits'. It further appeared that the petitioner no. 1 obtained licence from the opposite party, i.e., Howrah Zilla Regulated Market Committee on 8/11/2007 to be effective till 7/11/2008 to operate as purchaser of agricultural produce for marketing of flour, sugar, vanaspati etc in Form-4, the said licence was renewed from 8/11/2009 to 7/11/2010 and thereafter from 8/11/2010 to 7/11/2011. The Annexure P-3 revealed that

the opposite party had intimated the petitioner no. 1 to submit fortnight return to the aforesaid market committee under Section 17A of the W.B.A.P.M(R) Act, 1972 on total purchase volume of notified agricultural commodities namely sugar, flour, atta, kaju nut, skimmed milk, vegetable oil etc. along with relevant document within 15 days from the date of receipt of the letter as the petitioner no. 1 had been running its business within the notified market area of Howrah Zilla Regulated Market Committee with valid R.M.C. licence being no. 2820 Book-60 dated 8/11/2007. The petitioner no.1 vide Annexure P-4 acknowledged the receipt of the document being Annexure P-3 and precisely denied its purchase of agricultural produce since petitioner no. 1 dealt in 'Biscuit' entirely which was not an agricultural produce and refused to record its turnover in filing return being a turnover of 'Biscuits' and not an agricultural produce.

60. However, the petitioner no. 1 did state that "*it is true that we purchase some of the agricultural produce for manufacturing of our biscuits but our purchase is not our turnover as such we do not have any turnover in agricultural produce but we do have in biscuit only which is not an agricultural produce.*"

61. The petitioner no. 1 further denied to be a trader and reiterated itself to be a manufacturer. The petitioner no. 1 further desired to renew the R.M.C. licence being no. 2820 Book-60 dated 08/11/2007.

62. A hearing notice was issued to the petitioner no. 1 by the opposite party dated 16.08.2010 succinctly stating despite several notices issued to the petitioner no. 1 for submission of return under Section 17A of the aforesaid Act, the petitioner no. 1-company refused to submit the return citing several

reasons which were considered to be beyond the purview of the aforesaid Act. The opposite party further directed the petitioner-company and the chairman and directors of the said company to appear before the Secretary either personally or through an authorized nominee on 23/08/2010 at 2 P.M. to answer as to why the opposite party market committee should not initiate assessment proceedings for non-submission of return on the purchase of notified agricultural produce purchased by the aforesaid company failing which market fees would be determined on suo moto assessment in accordance with law. A further hearing notice was issued to the company and its chairman and directors dated 19/08/2011 by the opposite party regulated market committee as aforesaid stating that the representatives of the petitioner-company no. 1 failed to produce supporting documents for non-submission of return during the hearing conducted on 23/08/2010 at 2 P.M.

63. The petitioner-company was further directed to appear before the Secretary, Howrah Zilla Regulated Market Committee on 29/08/2011 at 2 P.M. with all documents like notified agricultural produce, purchase register, audit report since 2007 as last chance positively failing which market fees would be determined on suo moto assessment in accordance with law. In reply to the aforesaid notice issued by the opposite party dated 19/8/2011 the petitioner no. 1-company reiterated its previous stance vide a reply dated 29/8/2011 to the Secretary of the aforesaid market committee stating "*as per Section 17A of the said Act, Return has to be submitted on the basis of turnover means sales of agricultural produce. We do not sell any agricultural produce*

but sell 'Biscuit' which is a converted value added item are not covered in the schedule related to the said Act. In Clause IV of the said communication dated August 29, 2011, the petitioner no. 1 company further reiterated that we are using processed agricultural produce and not the basic agricultural produce. We converted the said processed agricultural produce after adding values into different produce called 'Biscuit' when the processed agricultural produce loses its identity and character.

So, we do not sell agricultural produce either in basic form or in processed form.

Hence, we are not liable to pay any market fee leviable on the purpose of turnover means sales of agricultural produce either in basic form or in processed form.

We being manufacturer purchase processed agricultural produce from the regulated market only where the market committee must have collected market fees from the concerned purchaser of the agricultural produce. Market fees cannot be collected more than once as per Section 17 of the said Act. So, we are exempted from submitting any Return and paying any market fee. However, in Clause I of the aforesaid communication dated August 29, 2011 the petitioner no. 1 company admitted to have taken licence as per Section 13 of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 as it was purchasing agricultural produce in the notified market area."

64. Finally a suo moto assessment order was issued by the opposite party market committee dated 12/9/2011 on the failure of the petitioner no. 1 company to pay the market fees and to submit the returns under the

provisions of the aforesaid Act having their liability for payment of the market fees and submission of return vide letter dated 3/9/2011 in reply to the hearing order dated 2/9/2011. The petitioner no. 1 company had filed an appeal before the Secretary Howrah Zilla Regulated Market Committee on September 20, 2011 against the suo moto assessment order as aforesaid for payment of an assessment amount of Rs.50,00,000/- within 7 days from the date of receipt of this order failing which the concerned authority would be compelled to initiate legal action against the petitioner no. 1 company under Section 34 of the said Act. Vide a communication dated September 24, 2011, the petitioner no. 1 company stated that the Secretary of the opposite party regulated market committee as aforesaid did not accept the appeal petition or had provided an opportunity to be heard and had enclosed few certificates claiming that the petitioner no. 1 company had purchased agricultural produce from certain suppliers and used the same as raw materials for manufacturing biscuit. The petitioner no. 1 company further stated that the suppliers had issued certain certificates depicting supply of various ingredients like flour, vegetable oil, sugar etc. to the petitioner no. 1 company. The petitioner no. 1 company stated that the suppliers were paying market fees to the respective regulated market committee and, therefore, to levy market fee on the petitioner no. 1 company would unjustifiably create “double payment” of market fees not permissible under Section 17 of the aforesaid Act 1972. Subsequently on November 28, 2011, the Joint Managing Director of the petitioner no. 1 company sought renewal of their licence being no. 2820 as aforesaid desiring to deposit the amount of renewal fees to that effect.

65. The definition of ‘trader’ under the aforesaid Act included a person who purchased the agricultural produce within the precincts of the aforesaid regulated market committee. The licence issued under Section 13(1) of the aforesaid Act included the persons carrying on business or acting as trader etc. The petitioner no. 1 company has admitted to purchase certain ingredients for preparation of the biscuits manufactured by the said petitioner company which are specifically agricultural produce. The annexures to the documents appended to the revisional application included the licence granted to the petitioner company as a purchaser of agricultural goods for marketing the same. The petitioner company obtained and renewed the licence issued to it as aforesaid from time to time which cannot be considered to be on protest or on objection. The act of the petitioner no. 1 and the other petitioners shall have to be assessed through trial as the documents are required to be tested with regard to its veracity and proper implications. The High Court exercising its power under Section 482 of the Cr.P.C. could not conclusively determine the status of the petitioner no. 1 company to be a manufacturer and not a trader under the aforesaid Act where at its own initiation the licence was granted to it by the opposite party for the purposes stipulated therein and renewed the same from time to time. The liability of the petitioners to pay the market fees and submit the returns under Section 17(1) of the said Act whether can be abrogated on the plea of being a manufacturer with turnover to be assessed on the production of

biscuits irrespective of the purchase of agricultural produce utilized for the purpose of preparation of biscuits requires further investigation.

66. The petitioner no. 1 company claimed to have purchased the agricultural produce from certain suppliers at one hand and also claimed to have purchased certain agricultural produce from the market. Such contradiction needs to be proved with regard to its authenticity to establish the role and status of the petitioners.
67. The Learned Advocate for the petitioners has raised the issue that the Secretary had no power to issue the hearing notices as the market committee was not in functional existence in accordance to law being operated by a group of people constituting a different Market Committee in Uluberia being defunct as per the Notification cited above.
68. It further appears that the petitioner no. 1 company prima facie has failed to justify sufficient cause to the satisfaction of the opposite party in order to be precluded or exempted from payment of market fees and submit return as aforesaid, which both the parties have to prove upon adducing evidence.
69. The Learned Advocate for the petitioner has raised certain ancillary issues with regard to the constitution of Howrah Zilla Regulated Market Committee challenging its functional capacity. It has been submitted that the members of the Uluberia Regulated Market Committee ceasing to have existed were adopted to constitute Howrah Zilla Regulated Market Committee in violation of the statutory provisions whereby the said regulated market committee was devoid of jurisdiction to claim market fees and demand submission of returns to be filed under the provisions of the said Act as aforesaid.

Moreover, the secretary of the aforesaid committee without affording an opportunity of hearing to the petitioners assessed the fees to be payable by the petitioners in utter violation of the mandatory provisions of the aforesaid Act arbitrarily. Without considering the aforesaid contentions of the petitioners, the Learned Magistrate has erred in taking cognizance of the alleged offence enumerated in the complaint solely without basis and accordingly prayed for quashing of the complaint case in question.

70. The High Court in exercising its power under Section 482 of the Criminal Procedure Code cannot act as a trial court and consider the documents relied upon by the accused petitioners exclusively repudiating allegations in the complaint and absolving the petitioners of the alleged offences based on the averments in the revisional application and the annexed documents considering the same to be sacrosanct and unimpeachable.

71. In the instant case, there are apparent contradictions in the statement of the petitioners delineated in the revisional application as well as depicted in the annexures. The status of the petitioner to be a manufacturer of biscuits and bakery products within the jurisdiction of the functional capacity of the opposite party respondent irrespective of being a trader, purchaser, seller of an agricultural produce cannot be denied to conduct business under Section 13 of the aforesaid Act for the purpose of obtaining a licence from the concerned authority.

72. The petitioners have to prove their liability for payment or non-payment of the market fees and to submit the returns as stipulated in the provisions of the said Act by adducing oral as well as documentary evidence. Whether the

merger of the petitioners to form a new entity namely M/s. Saj Food Products Pvt. Ltd. has created a distinct entity in comparison to M/s. Saj Industries Pvt. Ltd. in terms of its ownership and managing authority can be a ground for being exculpated can be taken before the Trial Court on production of documents to have effect on evidence. Moreover, whether the petitioners having claimed to be non-functional entities under the provisions of the Act considering to be manufacturers beyond the jurisdiction of the opposite party respondent can question the financial liabilities of the opposite party respondent in terms of the expenditure incurred by the same attributing the allocated funds for providing facilities in "quid pro quo" for the services rendered to is a subject matter to be decided if there had been any procedural lapse to that effect on the part of the opposite party respondent under the provisions of the aforesaid Act.

73. The Apex Court held the following in ***State of M.P. v. Awadh Kishore Gupta*** reported in **(2004) 1 SCC 691:-**

> *"8. Exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of*

law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle quando lex aliquidalicuiconcedit, concederevidetur id sine quo res ipsaesse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. *In R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:*

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR para 6)

***10.** In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative* *categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)*

"(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 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 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."

11. *As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or* *acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142 : AIR 1990 SC 494] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401 : AIR 1999 SC 1216] .]*

13. *It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial.* ***While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge****. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused.* ***For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials***

produced are sufficient or not for convicting the accused. *In Chand Dhawan v. Jawahar Lal [(1992) 3 SCC 317 : 1992 SCC (Cri) 636] it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No. 116 of 1994) registered by the Special Police Establishment, Lokayukta, Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the matter further."*

74. *In* ***Kamal Shivaji Pokarnekar v. State of Maharashtra*** reported in **(2019) 14 SCC 350,** the following was held:-

*"**5.** Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] .*

***6.** Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the* *ingredients of a criminal offence or not [Indian Oil Corpn. v. NEPC (India) Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] .*

9. *Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the trial court issuing summons to the respondents. A perusal of the complaint discloses prima facie, offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."*

75. In view of the above discussions, the instant criminal revisional application is dismissed.
76. There is no order as to costs.
77. Let the copy of this judgment be sent down to the Learned Trial Court and the concerned police station for necessary action.
78. 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.)