

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

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 2138 of 2021

M/s. Kerala State Electronics Development Corporation Ltd.

-vs.-

State of West Bengal & Anr.

Mr. Pratim Dasgupta,
Mr. Subhasis Mitra.

...For the Petitioner.

Mr. Sabyasachi Banerjee,
Mr. Ayan Bhattacharjee.

...For the Opposite Party No.2.

Mr. Arijit Ganguly,
Mr. Sanjit Kumar Dan.

...For the State

Reserved on : 30.01.2024.

Judgment on : 29.04.2024.

Tirthankar Ghosh, J:-

The present revisional application has been preferred challenging the continuation of the proceedings being GR(s) no.417/2020 arising out of New Market police station case no. 109/2020 dated 01.04.2020 under Section 120B/420/406/403/469 of the Indian Penal Code.

The petitioner before this Court is a Government of Kerala undertaking who have been implicated along others in connection with the instant case at

the instance of the complainant/opposite party no.2. Petitioner approached this Court at a stage when the investigation of the case was pending, however, during pendency of the revisional application the investigating agency submitted charge-sheet as such the petitioner submitted a supplementary affidavit including the charge-sheet and all the documents relied upon by the prosecution under Section 207 of the Code of Criminal Procedure, which was also taken into account for the purpose of deciding the fate of the present revisional application.

The present case was initiated on the basis of an application under Section 156(3) of the Code of Criminal Procedure filed before the Learned Chief Metropolitan Magistrate, Calcutta, wherein the learned Chief Metropolitan Magistrate, Calcutta by his order dated 02.04.2020 was pleased to direct the Officer-in-charge, New Market, Police Station to start investigation on receipt of copy of the petition of complaint. The relevant paragraphs appearing against the present petitioner being M/s. Kerala State Electronics Development Corporation Limited in the complaint are set out as follows:

“4. That the accused no. 1, M/s Kerala State Electronics Development Corporation Ltd. [hereinafter referred to as "the accused no. 1"] is a public limited company within the meaning of the Companies Act, 1956 having its Registered Office at Keltron House, Vellayambalam, Trivandrum - 695 033, Kerala and its operational address at 20, Ballygunge Circular Road, Kolkata - 700 019. The accused no. 2, Venkateswara Rao is the General Manager (Corporate Marketing) of the accused no. 1. The accused no. 3, Arpan Chakraborty is the

Kolkata Branch Head of the accused no. 1. The accused nos. 2 and 3 are the directing mind and will and alter ego of the accused no. 1 sitting at the helms of affairs of the respective offices of the accused no. 1. The accused nos. 2 and 3 jointly and/or severally dealt with/transacted with the responsible officers of the complainant company under the corporate veil of the accused no. 1 during the entire material time. They are also the alter ego of the accused no. 1 and answerable to the outer world for all the acts and deeds of the said accused no. 1 and further derive pecuniary benefit from the said company. The accused nos. 2 and 3 are fully aware of the facts and circumstances leading to the transaction held between the complainant company and the accused no. 1 during the entire material time and have specific knowledge of the entire transactions. Both of them have played active role in consummating the transaction.

7. *That pursuant to a tender floated in the year 2017 by Asansol Municipal Corporation [hereinafter referred to in short as "AMC"] to implement Paperless Software amongst its various constituents and undertaken a project under the name and style 'Enterprise Municipal System' [hereinafter referred to as "the said project"], the accused No.1, M/s Kerala State Electronics Development Corporation Ltd. was successful bidder.*

8. *That on or about August 01, 2017 AMC entered into contract awarding the project implementation to the consortium of i) M/s Kerala State Electronics Development Corporation Ltd. i.e. the accused no. 1 and ii) M/s. Oproprise Solution Pvt. Ltd. wherein the accused no. 4 is the Chief Executive Officer.*

9. *That with an intent to deceive the complainant company by several crores of rupees, the abovenamed accused persons entered into a criminal conspiracy and they in connivance with each other hatched a*

game plan to defraud the complainant company and to misappropriate huge money in crores belonging to the complainant company. In furtherance of such criminal conspiracy, in the month of August, 2018 the accused nos. 2, 3, 4 and 5 as responsible officers and / or alter ego of their respective companies had approached the complainant company at its registered office through its Auditor Mr. Rajesh Prasad of M/s Emperor Consultancy Pvt. Ltd., who, as communicated by him, is also the Statutory Auditor of the accused company to participate in the said project as investment partner, with an intent to deceive the complainant company.

10. *That the accused nos. 2 and 3 introducing themselves to be the controlling mind and will of the accused no. 1 had represented that their enterprise had entered into a Contract dated August 02, 2017 with AMC to develop, build, manage the software system, facilities and deliver the services for the purpose of successful implementation of the said project. The accused nos. 2 and 3 also showed a copy of the said Contract dated August 02, 2017 entered with AMC and signed by accused no. 3 as Kolkata Branch Head of the accused no. 1. The accused nos. 2 and 3 then represented that they would require huge funds for execution of the said big project and offered to pay a minimum guarantee revenue for such investment, with an intent to deceive the complainant company and/ or misappropriate such huge funds from the complainant company.....*

12. *That being allured by the mis-representations made by the accused no.3 being the Branch Head of the accused No.1, the complainant company on their request, issued a Letter of Proposal dated September 04, 2018 to the accused company giving an outline and scope of the proposed investment of the said project to the tune of Rs.6,72,50,000.00/- (INR Six Crores Seventy Two Lakh Fifty Thousand Only).....*

13. That the accused nos. 2 and 3 as instrumentality and alter ego of the accused no. 1 accepted the proposal of the complainant company and accordingly a Memorandum of Understanding dated September 17, 2018 [hereinafter referred to as the "said MOU"] was entered into and executed between i) the accused no. 1, ii) the complainant company, iii) M/s Oroprise Solution Pvt. Ltd. represented by the accused no. 4 and iv) M/s Touchstone Tie-Up Pvt. Ltd. represented by the accused no. 5. on the terms and conditions mentioned therein.....

15. That in terms of the said MOU and Three Contracts all dated September 17, 2018 and based upon the representations and assurances made by the accused nos. 2, 3, 4 and 5 as aforesaid, the complainant company had on September 24, 2018 disbursed Tranche 1 payment of Rs.35,00,000/- to M/s Oroprise Solution Pvt. Ltd. And Rs.1,35,00,000/ - to M/s. Touchstone Tie-Up Pvt. Ltd. in pursuance of Proforma Invoice dated September 18, 2018.....

18. That during the period from October 2018 upto January, 2019 the complainant company had further disbursed Tranche 2 payment of Rs. 35,00,000/ - to M/s. Oroprise Solution Pvt. Ltd. through accused no.4 and the aggregate sum of Rs.1,42,50,000/- to M/s Touchstone Tie-Up Pvt. Ltd. through the accused no. 5 in pursuance of Proforma Invoice dated October 22, 2018 and December 26, 2018 respectively.....

19. Thereafter the accused no. 1 furnished the complainant company a copy of letter dated December 12, 2018 addressed to AMC claiming that the Project has gone Live. In time this was found to be false representation, which was also confirmed by AMC.

20. That as per the terms and conditions of the said MOU and Contracts all dated September 17, 2018 the accused no. 1 was required to issue irrevocable standing instruction upon its Banker for

the disbursement to the designated Bank Account of the complainant company of its share of revenue from the Project and the same was precondition for disbursement of Tranche 3. By letter dated March 02, 2019 the accused no. 1 approached the complainant company pretending to be bonafide for furnishing bank details for setting up standing instructions for payment of the share of revenue of the complainant company from the Project. Being allured by such letter and also relied upon the representations and assurances made by the accused nos. 2, 3, 4 and 5 from time to time, representing their companies/ entities, on March 11, 2019 the complainant company disbursed Tranche 3 of Rs. 1,32,75,000/- to TTPL in pursuance of Proforma Invoice dated February 18, 2019. The complainant company by e-mail confirmed the details of its bank account on April 12, 2019 for the receipt of its share of revenue from the accused no. 1.....

23. *That by a letter dated September 23, 2019 the complainant company wrote to accused no. 1, M/s Oroprise Solution Pvt. Ltd. and M/s Touchstone Tie-Up Pvt. Ltd. for not performing their part of obligations under the said MOU and Contracts and also for providing misleading facts relating to the said Project. On November 7, 2019 there had been joint meeting of the parties at the office of the complainant company, which was also attended by the accused no. 2 the G.M of the accused no. 1 when discussions were made in respect of the status of the Project and revenue realization from AMC.....*

24. *That in pursuance to the said discussions, the complainant company repeatedly furnished the details of its bank account for issuance of the irrevocable standing instructions for disbursement of its share of revenue from the Project. By letter dated December 5, 2019 the complainant company reminded the accused no. 1 for a copy of the irrevocable standing instruction for disbursement of payment of its share as precondition for the disbursement of Tranche 4, which was to:*

be completed within 30 (thirty) days of the disbursement of Tranche 3. However the complainant company did not receive any reply from them.....

25. *That in the mean time the complainant company was utterly shocked and surprised to learn that the accused no. 1 had been sending ad-hoc bills to AMC without any consultation with the complainant company and in gross violation of the terms and conditions of the said MOU and the Three Contracts. Immediately vide letter dated December 13, 2019 the complainant company asked explanation from the accused nos. 1, 2 and 3 for their such dishonest acts contrary to the mutual agreements and covenants.....*

26. *That in reply, the accused no.1 exposed their criminal intent for the first time and issued an email/ letter dated December 27, 2019 issued by the accused no.2 as G.M. (Corporate Marketing) of the accused No.1 Company, wherein he alleged that they 'did not know that a company named M/s. Eden Consultancy Services Pvt. Ltd. existed' until they received the letter dated December 13, 2019 from the complainant company and they never recognized the complainant company nor the Contract and the MOU signed amongst the four parties was alleged to be void. It fell upon the complainant company like a bolt from the blue as the complainant company had never thought that the said persons could so resile from the said MOU and Contracts and deceive the complainant company from the revenue realization of the complainant company from AMC.....*

27. *The complainant company forwarded copies of the said e-mail/letter dated 27.12.2019 issued by the accused No.1 to M/s. Oroprise Solution Pvt. Ltd. represented by the accused no.4 and M/s. Touchstone Tie-Up Pvt. Ltd. represented by the accused no. 5 for their information and requesting them to take appropriate actions against*

the accused no. 1. As an eyewash the accused nos.4 and 5 sent two letters to the accused no. 1 requesting them only to reconsider their decision but also promised the complainant company to hold joint meetings with them and accused no. 1 which they never did.

28. *That since thereafter the management of the complainant company tried to contact the accused nos.2, 3, 4 and 5 on several occasions over phone but they very dishonestly denied the entire transactions and went beyond the reach and contacts of the complainant.*

30. *Thus it is most palpable and glaring that the accused persons and others had entered into a deep rooted criminal conspiracy amongst themselves to cheat the complainant company and commit criminal breach of trust in respect of the huge amount of the complainant company and in pursuance to that, as overt acts, the accused persons acting under the veil of their respective companies/ entities had made false and fake representations to induce the complainant company to enter into the said MOU and Three Contracts all dated September 17, 2018 and from time to time part with/ invest the said aggregate sum of Rs. 5,05,25,000.00 (Rupees Five Crore Five Lakh and Twenty Five Thousand) into the said project of AMC but when the complainant company asked for revenue realization from AMC, they very dishonestly resiled from the said MOU and Contracts and also even denied execution of those documents in gross violation of the terms and conditions of the said MOU and Three Contracts dated September 17, 2018 causing wrongful gain to themselves and wrongful loss to the complainant company and thereby cheated the complainant company to the tune of Rs. 5,05,25,000.00 (Rupees Five Crore Five Lakh and Twenty Five Thousand), whose interest the said persons were liable to protect under the said transaction.*

32. *That the complainant states that the aforesaid premeditated and designed acts, perpetrated by the accused persons in consortium miserably encashing the trust, faith and confidence of the complainant company are punishable, inter alia, under Sections 120B/420/406/403/469 of the Indian Penal Code, 1860 which are very grave and serious in nature having far reaching consequences over the Trade and Commerce of the Society.”*

Mr. Dasgupta, learned advocate appearing for the petitioner submitted that the complainant has admitted that at the time of signing the Memorandum of Understanding dated September 17, 2018, no correspondences were made with the petitioner and as such there is no question of the petitioner being aware of execution of any MOU and the three agreements. So far as the investment of money which was done, it was without taking the petitioner into confidence and the same would be evident from the MOU dated September 17, 2018 and the three supplementary agreements. The complainant also never exchanged any correspondence with the petitioner regarding the execution of the agreements and for the first time the complainant on December 13, 2019 issued an email informing the execution of the MOU dated September, 17, 2018. Thus there being contradiction in the statements made by the complainant in the FIR, it is apparent that the petitioner neither approached the complainant/opposite party no.2 nor there was any misrepresentations alluring to invest any money in the project. It is after a year since the execution of the purported MOU the petitioner was made aware regarding the existence of the same. Learned advocate emphasized that

from the FIR it is admitted position that no payment was ever transferred in the account of M/s. Kerala State Electronics Development Corporation. In fact, the admitted position is that Rs.35,00,000/- were paid to M/s. Oroprise Solutions Private Limited and Rs.1,35,00,000/- to M/s. Touchstone Tie-up Private Limited in pursuance of the proforma invoices dated September, 18, 2018. It was further alleged by the complainant that from October, 2018 to January, 2019 the complainant company disbursed payment of Rs.35,00,000/- to M/s. Oroprise Solutions Private Limited and aggregate sum of Rs.1,42,50,000/- to M/s. Touchstone Tie-up Private Limited which was assessed from the proforma invoices dated October 22, 2018 and December 26,2018 respectively. The complainant company also made payment of Rs.1,32,75,000/- to M/s. Touchstone Tie-up Private Limited in respect of proforma invoices dated February 18, 2019.

Learned advocate for the petitioner has repeatedly contended that not a single farthing has been paid to the petitioner which happens to be a Government of Kerala undertaking and who do not have any power to enter into any tie up without a proper tender being floated. Additionally it was submitted that on issues relating to law none of the Sections for which the investigation commenced or charge-sheet has been submitted do apply to the present petitioner as the complainant neither entrusted any property to the petitioner or the petitioner had any dominion over the property of the complainant. If the branch head who has been shown as an accused in this case in his individual capacity by keeping the petitioner in dark dealt with the

complainant and/or other entities and at no point of time the same was informed to the petitioner company the act and action of the individual cannot impose any liability, far less criminal liability on the petitioner company. The petitioner company has taken steps against the said Branch head by filing a criminal complaint at Kerala, the petitioner also apprised that a Civil Suit was instituted by the complainant being G.A. No. 1 of 2021 praying for an order of injunction and on September 13, 2021 a direction was passed in the nature of “ad interim order” which was instituted from time to time. Petitioner has also submitted that there are no iota of materials of preparation of any false document being a juristic entity and in spite of the same Section 469 of Indian Penal Code has been labelled against the petitioner. Learned advocate has relied upon certain factual circumstances regarding the consortium partner M/s. Oroprise Solutions Private Limited having returned a sum of Rs.65,00,000/- out of the sum of Rs.70,00,000/- which was received by them in two instalments. The petitioner has also relied upon the following judgments, to justify his contentions:

- (i) Indian Oil Corporation –Vs. – NEPC India Limited & Ors. reported in (2006) 6 SCC 736;
- (ii) V.Y. Jose & Anr. –Vs. – State of Gujarat & Ors. reported in (2009) 3 SCCC 78;
- (iii) Rekha Jain & Anr. –Vs. – State of Uttar Pradesh & Ors. reported in (2022) 3 SCC 497;

- (iv) G. Sagar Suri & Anr. –Vs. – State of Uttar Pradesh & Ors. reported in (2000) 2 SCC 636;
- (v) N. Raghavendar –Vs. – State of Andhra Pradesh (CBI) reported in 2021 SCC OnLine 1232;
- (vi) Unreported judgment in Sushil Kumar Berlia –Vs. – The State of WB & Anr. in CRR No. 1919 of 2016.

Referring to paragraphs 12 and 13 in Indian Oil Corpn. –Vs. – NEPC India Ltd., (2006) 6 SCC 736, learned advocate for the petitioner emphasised on the exercise of powers under Section 482 of Cr.P.C. as well as disputes which are eventually civil in nature, have been given the cloak of criminal proceedings. The relevant paragraphs are set out as follows:

“12. *The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8*

SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

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

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

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

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

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from

furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. *While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)*

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

Drawing the attention of this Court to V.Y. Jose –Vs. – State of Gujarat, (2009) 3 SCC 78, following paragraphs are relied upon by the petitioner:

“21. *There exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever that in the absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.*

22. *We may reiterate that one of the ingredients of cheating as defined in Section 415 of the Penal Code is existence of an (sic fraudulent or dishonest) intention of making initial promise or existence thereof from the very beginning of formation of contract.*

23. *Section 482 of the Code of Criminal Procedure saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.*

24. *It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.*

According to the petitioner in Rekha Jain –Vs. – State of U.P., (2022) 3 SCC 497, it has held that in respect of an FIR or charge-sheet so filed, some of the accused persons who have been implicated may be innocent and under those circumstances it would be the duty of the High Court to exercise its

powers under Section 482 of Cr.P.C. to quash the proceedings in respect of the innocent. The relevant paragraph is set out as follows:

“6. Having heard the learned counsel appearing on behalf of the respective parties and having perused the allegations in the complaint/FIR, it can be seen that the main allegations are against the other co-accused — Arun Kumar Maheshwari and others. The only allegation against the appellants is that they have purchased the property in question, which was attached in the year 1998-1999 against the amounts due and payable to the depositors, who had deposited in Kuber Mutual Benefits Ltd. between 1998-1999. It is to be noted that the property has been purchased by the appellants in the year 2019. Nothing is brought on record that at the time when the property was purchased by the appellants, the attachment was continued and/or any attachment was registered. There are no allegations that the appellants are related to the other co-accused, Arun Kumar Maheshwari and others. Even from the averments and the allegations in the FIR, it cannot be said that there is any prima facie case made out against the appellants for the offences under Sections 406, 420, 467, 468, 471 and 120-B IPC. The main allegations are against the other co-accused. Therefore, to continue the criminal proceedings against the appellants would be an abuse of process of law and the Court and unnecessary harassment to the appellants, who seem to be the purchasers of the property on payment of sale consideration. In the above facts and circumstances of the case, the High Court ought to have exercised its powers and discretion under Section 482 CrPC and ought to have quashed the criminal proceedings against the appellants.”

Petitioner reiterated his contentions by referring to G. Sagar Suri & Anr. –Vs. – State of U.P. & Ors., (2000) 2 SCC 636 and further contended that

criminal proceedings are never short cut to other remedies available under Law. The following paragraphs have been referred, which are set out as follows:

“7. It was submitted by Mr Lalit, learned counsel for the second respondent that the appellants have already filed an application in the Court of Additional Judicial Magistrate for their discharge and that this Court should not interfere in the criminal proceedings which are at the threshold. We do not think that on filing of any application for discharge, the High Court cannot exercise its jurisdiction under Section 482 of the Code. In this connection, reference may be made to two decisions of this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] and Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704] wherein it has been specifically held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial.

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

under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

Petitioner relied upon N. Raghavender –Vs.- State of A.P., CBI, (2021) 18 SCC 70 for emphasising on the issues relating to criminal breach of trust and misappropriation, the relevant paragraphs so referred are as follows:

“46. *The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409IPC. The expression “criminal breach of trust” is defined under Section 405IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405IPC, the following ingredients must be satisfied:*

46.1. *Entrusting any person with property or with any dominion over property.*

46.2. *That person has dishonestly misappropriated or converted that property to his own use.*

46.3. *Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.*

47. *It ought to be noted that the crucial word used in Section 405IPC is “dishonestly” and therefore, it pre-supposes the existence of mens*

rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is “misappropriates” which means improperly setting apart for ones use and to the exclusion of the owner.

48. *No sooner are the two fundamental ingredients of “criminal breach of trust” within the meaning of Section 405IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409IPC, for which it is essential to prove that:*

- (i) The accused must be a public servant or a banker, merchant or agent;*
- (ii) He/She must have been entrusted, in such capacity, with property; and*
- (iii) He/She must have committed breach of trust in respect of such property.”*

Attention of the Court was drawn to the unreported judgment of this Court in Sri Sushil Kumar Berlia –Vs. – The State of West Bengal and Ors. (CRR 1919 of 2016). In the said case this Court was pleased to hold that mere breach of contract do not give rise to offences under Section 406 or 420 of the Indian Penal Code.

In Lalit Chaturvedi & Ors. –Vs. – State of Uttar Pradesh & Anr., 2024 SCC OnLine SC 171, similar views were expressed by the Hon’ble Supreme

Court after relying upon its earlier judgment. Petitioner relied upon the following paragraphs of the reported judgment:

“6. In *“Mohammed Ibrahim v. State of Bihar”*, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:—

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

7. *Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr. P.C. Section 482 of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain””*

Mr. Sabyasachi Banerjee, learned advocate appearing on behalf of the complainant/opposite party no.2 submitted that the petitioner is guilty of suppression of material facts and as such the revisional application is liable to be dismissed in limine. According to the learned advocate the accused/petitioner has cheated the complainant which would be evident from their conduct as they refused to acknowledge the complainant. To that effect attention of the Court was drawn to the paragraph 26 of the FIR. It was

submitted that the contents of the said paragraph itself would reflect that the G.M. (Corporate Marketing) of the accused company/petitioner alleged that they did not know any company named as M/s. Eden Consultancy Services Pvt. Ltd. till they received the letter dated December 13, 2019 from the complainant company and as such they do not recognize the complainant company nor the contract and the MOU signed amongst the four parties. Such version of the accused company/petitioner surprised the complainant as the same was for deceiving the complainant company for the purposes of realising revenue by the complainant company from Asansol Municipal Corporation. Additionally it was submitted that after receiving money from Asansol Municipal Corporation the petitioner herein has disowned its responsibility by deliberately failing to recognize M/s. Eden Consultancy Services Pvt. Ltd./complainant which in the meantime invested a sum of Rs.4,80,25,000/- being impressed by the representation of the accused no.1/petitioner. Complainant/opposite party relied upon Rajesh Bajaj -Vs. - State (NCT of Delhi) & Ors. reported in (1999) 2 SCC 259 to substantiate his contentions along with Medchl Chemicals & Pharma (P) Ltd. -Vs. - Biological E. Ltd. & Ors. reported in (2000) 3 SCC 269. Learned advocate for the opposite party also submitted that the foundation of the application for quashing is based on probable defence and certain annexed documents which cannot be adjudicated at the present stage. To that effect learned advocate relied upon State of Punjab -Vs. - Subhash Kumar & Ors. reported in (2004) 13 SCC 437 and State of MP - Vs. - Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691. The

complainant also contended that the argument of the petitioner that a civil case is pending has no relevance in view of the settled proposition of law that pendency of civil suit will be of no consequence of determining the criminality of an accused. To that effect reliance was placed on Dr. Lakshman –Vs. – State of Karnataka & Ors. reported in (2019) 9 SCC 677. The orders which have been passed by the Civil Court are interlocutory in nature and therefore, do not decide any right, title and interest of the parties, legally also they are not relevant under the provisions of Section 40, 41, 42 of the Indian Evidence Act. Further it has been settled that criminal proceeding and civil proceeding can run concurrently. To that effect K. Jagadish – Vs. – Udaya Kumar G.S. & Anr. reported in (2020) 14 SCC 552 and Rajeshbhai Muljibhai Patel & Ors. –Vs. – State of Gujarat & Anr. reported in (2020) 3 SCC 794 were relied upon by the complainant. The complainant/opposite party therefore submitted that the revisional application should be dismissed and the proceedings before the learned trial Court relating to New Market PS. Case no. 109/2020 dated 01.04.2020 be expedited.

In Rajesh Bajaj –Vs. – State NCT of Delhi & Ors., (1999) 3 SCC 259, learned advocate referred the following paragraphs:

“7. After quoting Section 415 of IPC, learned Judges proceeded to consider the main elements of the offence in the following lines:

“A bare reading of the definition of cheating would suggest that there are two elements thereof, namely, deception and dishonest intention to do or omit to do something. In order to bring a case

within the first part of Section 415, it is essential, in the first place that the person who delivers the property should have been deceived before he makes the delivery; and in the second place that he should have been induced to do so fraudulently or dishonestly. Where property is fraudulently or dishonestly obtained, Section 415 would bring the said act within the ambit of cheating provided the property is to be obtained by deception.”

9. *It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder: (SCC p. 379, para 103)*

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the

FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

10. *It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Penal Code, 1860 [Illustration f] is worthy of notice now:*

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

11. *The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.”*

Relying upon *Medchl Chemicals & Pharma (P) Ltd. –Vs. – Biological E. Ltd. & Ors.*, (2000) 3 SCC 269, the following paragraphs were referred:

“4. *The factual score depicts that the respondents approached the petitioner for the purpose of securing ethambutol hydrochloride drug in bulk for sale and use in various pharmaceutical drugs and products*

being manufactured by the respondent Company. It is at this juncture that the petitioner has come out with a definite case that by reason of a promise of maintaining a continuous supply of raw materials to the petitioners herein for the purpose of manufacturing ethambutol hydrochloride and in such a way so as not to cause any interruption or hindrance to the manufacturing activity of the complainant's factory, the complainant-petitioner entered into an agreement dated 31-8-1997 which inter alia records as below:

“It is the responsibility of the party of the 2nd part to maintain sufficient inventory of the raw materials as described in Annexure I in order to maintain consistent supplies to the manufacturer and not to cause any interruption/hindrance with the manufacturing activity by the manufacturer.”

11. *While Section 415 is an offence of cheating, Section 418 deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section 420 is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (g) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the learned Single Judge. But can the factual situation as narrated above in the longish reproduction of the complaint lend support to the observations of the learned Judge, the answer is a pivotal one but before so doing one other aspect as regards*

the powers under Section 482 CrPC ought to be noticed. As noted hereinbefore this power is to be exercised with due care and caution and rather sparingly and has been so held on more occasions than one.

17. *On a careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however, hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they*

“are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import”. (vide Pratibha Rani v. Suraj Kumar [(1985) 2 SCC 370 : 1985 SCC (Cri) 180]) (SCC p. 383, para 21)”

Reference was made to State of Punjab –Vs. – Subhash Kumar & Ors., (2004) 13 SCC 437, to draw the attention on the issue that High Court should not act as an investigating agency:

“2. By the impugned order, the High Court has quashed FIR No. 55 dated 27-4-2001. The FIR was registered against four respondents for having committed theft of cheel logs from the forest of Kukanet. In sum and substance, the allegation is of illegal felling of trees and theft of the same from the forest. Curiously, the High Court by entering into the factual arena has passed the impugned order quashing the FIR. Such a course is wholly impermissible. The High Court acted more as an investigating agency at a stage when the FIR was under investigation. At this stage, we wish to say no more lest it may prejudice the parties.”

Learned advocate for the Opposite Party referred to paragraph 8 of State of M.P. –Vs. – Awadh Kishore Gupta & Ors., (2004) 1 SCC 691 which is as follows:

“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 aliquid alicui concedit, concedere videtur id sine quo res ipsa esse 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.”

On the issue relating to pendency of civil proceeding, learned advocate for the complainant relied upon paragraph 8 of Dr. Lakshman v. State of Karnataka & Ors., (2019) 9 SCC 677 which is set out as follows:

“8. It is not seriously disputed by the parties with regard to the entering of the agreements for procuring the land in favour of the appellant in Ballur Village, Anekal Taluk, Bangalore Urban District and the respondents have received the amount of Rs 9 crores by way of demand drafts and cheques. It is the specific case of the appellant that there are schedules mentioned to the agreements as per which the respondents have agreed to procure the land covered by Survey Nos. 115 and 117 of Ballur Village apart from other lands. In a petition under Section 482 CrPC it is fairly well settled that it is not permissible for the High Court to record any findings, wherever there are factual disputes. Merely on the ground that there is no pagination in the schedule, the High Court has disbelieved such schedule to the agreements. It is the specific case of the appellant that the lands covered by Survey Nos. 115 and 117 of Ballur Village were sold even prior to the first agreement, as such the respondents have committed an act of cheating. It is also the specific case of the appellant that two cheques were issued by the respondent-accused by way of security for the amount of Rs 9 crores which is advance but the account of such cheques was closed even prior to entering into the agreement itself. The second complaint filed by the appellant is self-explanatory and he is forcefully made to sign the sale deed which were executed subsequently for the lands covered by Survey Nos. 115 and 117 of Ballur Village. Mere filing of the suits for recovery of the money and complaint filed under Section 138 of the NI Act by itself is no ground to quash the proceedings in the complaints filed by the appellant herein. When cheating and criminal conspiracy are alleged against the

accused, for advancing a huge sum of Rs 9 crores, it is a matter which is to be tried, but at the same time the High Court has entered into the disputed area, at the stage of considering the petitions filed under Section 482 CrPC. It is fairly well settled that power under Section 482 CrPC is to be exercised sparingly when the case is not made out for the offences alleged on the reading of the complaint itself or in cases where such complaint is filed by way of abuse of the process. Whether any schedules were appended to the agreement or not, a finding is required to be recorded after full-fledged trial. Further, as the contract is for the purpose of procuring the land, as such the same is of civil nature, as held by the High Court, is also no ground for quashing. Though the contract is of civil nature, if there is an element of cheating and fraud it is always open for a party in a contract, to prosecute the other side for the offences alleged. Equally, mere filing of a suit or complaint filed under Section 138 of the NI Act, 1881 by itself is no ground to quash the proceedings. While considering the petition under Section 482 CrPC, we are of the view that the High Court also committed an error that there is a novation of the contract in view of the subsequent agreement entered into on 8-11-2012. Whether there is novation of contract or not and the effect of such entering into the contract is a matter which is required to be considered only after trial but not at the stage of considering the application under Section 482 CrPC.”

Petitioner emphasised that very same facts may give rise to Civil and Criminal case, to that effect reference was made to K. Jagadish v. Udaya Kumar G.S. & Anr., (2020) 14 SCC 552, the relevant paragraph is set out as follows:

“8. *It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal*

proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.”

Attention of this Court was drawn to *Rajeshbhai Muljibhai Patel & Ors. – Vs. – State of Gujarat & Anr*, (2020) 3 SCC 794, to stress on the issue relating to proceeding of Civil Suit and quashing of Criminal Proceedings, the following paragraph is relevant on the said issue:

“20. *Be that as it may, in Summary Suit No. 105 of 2015, leave to defend was granted to Respondent 2 Mahendrakumar on 19-4-2016. On the application filed by Appellant 3 in the said Summary Suit No. 105 of 2015, four receipts filed in the suit were sent to the handwriting expert. The handwriting expert has opined that signatures in all the four receipts did not tally with the sample signatures which were of Respondent 2 Mahendrakumar. It was only thereafter, complaint was filed by Mahendrakumar, based on which, FIR No. I-194/2016 was registered on 28-12-2016 against the appellants for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 114 IPC. As rightly contended by the learned counsel for the appellants, in Summary Suit No. 105 of 2015, Issue 5 has been framed by the Court “whether the defendant proved that the plaintiff has fabricated the forged signature illegally and created forged receipts”. When the issue as to the genuineness of the receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit.”*

Learned advocate appearing for the State has submitted that the investigating agency on conclusion of investigation has submitted their charge-

sheet and it is only after collection of materials the investigating agency has come to a finding, so the petitioner should face the trial in a Court of Law and the proceedings as such before the learned Trial Court should not be nipped or scuttled at this stage.

On an assessment of whole of the allegations made in the petition of complaint it is transparent that the funds which were transferred by the complainant company were in respect of M/s. Oprorise Solutions Private Limited and M/s. Touchstone Tie-up Private Limited. None of the funds which complainant has transferred were to the present petitioner being M/s. Kerala State Electronics Development Corporation Limited. Needless to state that the petitioner no.1 is Government of Kerala undertaking which has its mode and manner particularly calling for a tender before entering in any manner of agreement or contractual relations. The series of factual circumstances appearing in the instant case, particularly with regard to the allegations as also the materials collected by the investigating agency do fail to overcome the threshold required for an element of guilt to bring the petitioner within the zone of criminal offence. If there has been any act and/or action by the accused no.2 Venkateswara Rao, G.M. (Corporate Marketing) and the accused no.3 namely, Arpan Chakroborty as Branch Head Kolkata of petitioner no.1/company the same was in their personal capacity. The petitioner no.1 has already informed the same before the Director General of Police, Kerala, for taking appropriate action against the accused no.3, Arpan Chakroborty. A civil case being CS no. 179/2021 is also pending between M/s. Eden Consultancy Services Pvt. Ltd.

and the present petitioner being M/s. Kerala State Electronics Development Corporation Limited. Being a corporate entity the petitioner can only be implicated as an accused if the board of the company has taken an unanimous decision or a tender was floated for entering into contract.

Having considered the overall facts of the case and that the complainant company has sustained a wrongful loss not for any act of the petitioner, the complicity of the petitioner cannot be assessed in the present case as it is an admitted position in the FIR/charge-sheet that the payments were made to M/s. Oroprise Solutions Private Limited and M/s. Touchstone Tie-up Private Limited. In view of the materials collected by the investigating agency and evaluating the complicity of M/s. Kerala State Electronics Development Corporation Limited, I am of the opinion that there has been no wrongful loss being committed at the instance of the petitioner and as such the further continuance of the proceedings against the petitioner is unwarranted.

However, the complicity of the other accused persons in the case have not been taken into account and the same would proceed in accordance with law.

Accordingly, all further proceedings of New Market Police Station Case no. 109 dated 01.04. 2020 including the charge-sheet submitted therein before the learned Chief Metropolitan Magistrate, Calcutta in connection with the instant case, so far as the petitioner is concerned, the same is hereby quashed.

Thus, CRR 2138 of 2021 is allowed.

Pending connected applications, if any, are consequently disposed of.

Case Diary be returned to the learned advocate for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities. .

(Tirthankar Ghosh, J.)