

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3916 of 2022

Pranab Roy & Ors.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Moyukh Mukherjee,
Ms. Aishwarya Bajaj.

For the State : Mr. Rana Mukherjee,
Mr. Bitasok Banerjee.

Hearing concluded on : 08.11.2024

Judgment on : 12.11.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred by the petitioners praying for quashing of the proceeding being GR No. 1173 of 2022 arising out of Shyampukur P.S. Case No. 85 of 2022 dated 29.09.2022, pending before the learned Additional Chief Metropolitan Magistrate at Calcutta, under Sections 354A/354B/323/506/509/188/427/34 of the Indian Penal Code.
2. The petitioners' case is that G.R. No. 1173 of 2022 arising out of Shyampukur P.S. Case No. 72 of 2022 dated 29.09.2022 was registered on the basis of a complaint lodged by one Smt. Mita Roy, wife of Shri Pradip Roy, residing at 8B, Abhoy Mitra Street Police Station-Shyampukur, Kolkata 700005 (hereinafter referred to as the "Complainant") alleging commission of offence under Sections 323/427/188/354A/354B/506/509/34 of the Indian Penal Code.
3. The complainant herein/ opposite party NO. 2 filed an application u/s. 156(3) of the Cr.P.C. before the learned Additional Chief Metropolitan Magistrate at Calcutta, and as per the direction of the court, Shyampukur P.S. initiated an FIR being no. 72 of 2022 dated 29.09.2022 under Sections 323/427/188/354A/354B/506/509/34 of the Indian Penal Code.
4. It is the case of the petitioners that the **complainant** in her petition of complaint has clearly stated therein **that a civil suit is pending between all the co-owners of the aforementioned property before**

the learned 10th Bench, City Civil Court at Calcutta, vide Title Suit No. 1004/2021 and in the said suit learned Civil Judge has been pleased to pass an interim order of status quo in respect of the aforesaid property and the said order is still existing. But in spite of that, the above named accused persons entered into the aforementioned property on 13.08.2022 at about 12.00 p.m. and approached the husband of the complainant to vacate the said premises as soon as possible and sign the development agreement for giving consent to develop as per the choice of the accused persons.

5. That when the husband of the complainant tried to convince them stating inter alia that a civil suit is pending before the learned 10th Bench City Civil Court and an order of status quo is existing thereon so, until the disposal of the said suit, the complainant and her family members will not vacate the premises of the said property. Then the aforesaid accused persons became furious and started to threaten the husband of the complainant with dire consequences stating inter alia that if they would be unwilling to vacate then the accused persons would teach them a lesson.
6. It has further been stated by the complainant that the accused persons then started to abuse the husband of the complainant in filthy languages and when the son of the complainant, Pushkar Roy tried to protest, the accused persons become more furious and assaulted the son and husband of the complainant with fists and blows and also

abused them in filthy languages and the accused persons pushed the son and husband of the complainant on the ground and started to kick their belly and chest and as a result of that they got several internal injury in their body and thereafter when the complainant tried to save her husband and son from the aforesaid accused persons then they conjointly attacked the complainant and the accused persons nos. 1,2,5,7 and 8 also molested her badly and tore her salwar kameez and some of the accused person being nos. 1,2,5,7 and 8 tried to snatch the cloth of the complainant from her body and not only that the accused person nos. 1,2,5, 7 and 8 also molested the complainant by touching her private parts and threatened stating that if the complainant will further come to save her son and her husband then they will rape the complainant.

7. It is further stated by the complainant that valuable articles were destroyed by the accused persons the petitioners herein.
8. A proceedings under Section 144 (2) of the Cr.P.C. was also initiated by the petitioners before the Executive Magistrate's Court Calcutta and an appropriate order was passed by the learned Magistrate.
9. Learned counsel for the State has placed the case diary.
- 10. In spite of service the private respondent being the complainant has not appeared.**
- 11. From the materials on record it appears that the parties are related to each other and the dispute prima facie is a family property**

dispute and admittedly a civil suit is pending before the appropriate Civil Court.

- 12.** The Supreme Court in *Inder Mohan Goswami & Anr. Vs State of Uttaranchal & Ors., Appeal (Crl.) 1392 of 2007, on 09.10.2007*, held:-

“The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court. Scope and ambit of court powers under section 482 Cr.P.C.

This court in a number of cases has laid down the scope and ambit of court powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (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.*

Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

Discussion of decided cases Reference to the following cases would reveal that the courts have

consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In *Connelly v. DPP* [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in *DPP v. Humphrys* [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the courts power to prevent such abuse is of great constitutional importance and should be jealously preserved.

In *R.P. Kapur v. State of Punjab* AIR 1960 SC 866, 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 of the proceedings;
- (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.

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. The 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 should normally refrain from giving a *prima facie* decision in a case where all the 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 such magnitude that they 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.

This court in **State of Karnataka v. L. Muniswamy & Others** (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts.

In **Chandrapal Singh & Others v. Maharaj Singh & Another** (1982) 1 SCC 466, in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at page 467 as under:-

A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous. The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

This court in **Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others** (1988) 1 SCC 692 observed in **para 7** as under:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the

uncontroverted allegations as made *prima facie* establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage. In *State of Haryana & Others v. Bhajan Lal & Others* 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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

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

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

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

This court in **Janata Dal v. H. S. Chowdhary & Others** (1992) 4 SCC 305 observed thus:

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles. **In G. Sagar Suri & Another v. State of UP & Others** (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.

This court in **Roy V.D. v. State of Kerala** (2000) 8 SCC 590 observed thus:-

18. It is well settled that the power under section 482 Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice. This court in **Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another** (2005) 1 SCC 122 observed thus:-

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. In Indian Oil Corporation v. NEPC India Ltd. & Others (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that 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. The question before us is - whether the case of the appellants comes under any of the categories enumerated in Bhajan Lal (supra)? Is it a case where the allegations made in the first information report or the complaint, even if they are

taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120B IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/complaint.”

- 13.** The Supreme Court in ***R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022***, held:-

“17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. **Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.**”

- 14.** The Supreme Court in ***Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023***, held:-

“21. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations

pertain to alleged breach of contractual obligations. **Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not be entertained and should be dismissed at the threshold.** To avoid prolixity, we would only like to refer to the judgment of this Court in **Thermax Limited and Others v. K.M. Johnny (2011) 13 SCC 412**, as it refers to earlier case laws in copious detail. In **Thermax Limited and Others** (Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal

provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

24. *We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”*

15. In the present case, the essential ingredients of a criminal offence as alleged are not present. The complaint and the materials on record are in substance a dispute of civil nature and as such the proceeding is liable to be quashed.

16. In *Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors.*, 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

“15. *This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings*

in Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

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

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

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

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

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

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

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

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

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

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

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

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

17. The present case falls under category 3 and 7 of **Para 102 of Bhajan Lal (Supra).**

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

“18. The only question is whether there is any criminal offence disclosed in the FIR so far as the Appellant is concerned. When the High Court passed its order dated 5th October, 2017, Rajan Kumar (since deceased), the executant of the sale deed and the Power of Attorney holder was also an applicant before the Court. Today, there has been a change in

situation, in that, criminal proceedings against Rajan Kumar have abated since Rajan Kumar is no longer alive. It is the case of the private respondent that the private respondent purchased property. In the meantime, Rajan Kumar, who is no longer alive, on the basis of a false Power of Attorney of Bela Rani, executed a sale deed in favour of Randheer Singh, i.e., the Appellant herein. There is only a vague averment "by connivance". The next part of the sentence reads "Bela Rani had no right to sell the aforesaid plot."

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

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

On noting several precedents the Court finally held:-

"33. In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any offence so far as the Appellant is concerned.

There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

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

19. On **careful perusal of the case dairy**, it appears that the additional officer-in-charge of Shyampukur by a letter dated 04.11.2022 requested the complainant/opposite party no. 2 to produce the following documents :-

1. *Medical Injury Certificate in support of the injury sustained by your husband and son Mr. Pradip Roy and Mr. Puskar Roy during the incident.*
2. *Provide the original “Status Quo” order of the Ld. Court.*
3. *Provide the CCTV footage (if any) of the alleged incident which took place on 13.08.22 at about*

12.00 hours at your residence certified by certificate U/S-65B of the Indian Evidence Act.

- 4. Store the CCTV footage (if any) and its source (DVR Box, power Card, SD card, etc.) for production before Ld. Court in future.*
- 5. Any evidence in support of the damage made by the FIR named accused persons as claimed by you.*
- 6. Proper list and documents in support of the articles stored by your son in the allegedly locked rooms as claimed by you.*
- 7. Proper/original documents in support of your claim that the 7/seven rooms in question is owned by you or under your possession.*
- 8. Any other relevant documents/points in connection with the above noted case.*

20. None of the said documents as requested by the police are part of the case dairy and the complainant has also not produced the said documents in support of her case and allegations against the petitioners in this case, before this Court.

21. The de facto complainant/ private opposite party no. 2 has also not appeared before this Court in spite of due service and has thus chosen not to prima facie substantiate her case before this Court.

22. Considering the said materials on record, this Court finds that the FIR has been filed against the petitioners under Sections 323/427/188/354A/354B/506/509/34 of the Indian Penal Code.

23. The materials on record and the case diary show that none of the ingredients required to constitute the said offences are prima facie present in respect of the petitioners herein.

24. No documents in support of the allegations as made in the written complaint has been produced before the investigating officer in spite being given an opportunity to do so and also before this Court.
25. **Admittedly there is a title suit pending between the parties** in respect of **their family property dispute** and as such, permitting such a case to proceed to trial would clearly be an abuse of the process of law and thus in the interest of Justice, the proceedings are **liable to be quashed**.
26. **The present revisional application being CRR 3916 of 2022 is allowed.**
27. The proceeding being GR No. 1173 of 2022 arising out of Shyampukur P.S. Case No. 85 of 2022 dated 29.09.2022, pending before the learned Additional Chief Metropolitan Magistrate at Calcutta **is quashed in respect of the petitioners, namely Pranab Roy, Prabir Roy, Sayantani Roy, Rina Roy, Pinaki Roy and Sushmita Ghosh Roy.**
28. Pending applications stand disposed of.
29. Interim order, if any, stands vacated.
30. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
31. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)