

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1777 of 2020

Sheikh Hasnabul Haque & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners	: Mr. Manjit Singh, Mr. Biswajit Mal.
For the Opposite Parties	: Mr. Pawan Kr. Gupta, Mr. Sovan Bera, Ms. Puja Beriwal, Ms. Sofia Nesar.
For the State	: Mr. Arani Bhattacharyya.
Hearing concluded on	: 20.03.2024
Judgment on	: 25.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being G.R. Case No. 579 of 2020 arising out of Lake Town P.S. Case No. 138/2020 dated 06.09.2020 under Sections 420/419/506/120B of the Indian Penal Code now pending in the court of the Learned Additional Chief Judicial Magistrate, Bidhannagar.
2. The petitioners are both directors of a company namely M/s Dynamic Hatcheries Private Limited having its office at 36, Beck Bagan Road, Kolkata – 700 017, PS- Karaya.
3. The complainant, one Girwar Bajaj, lodged a written complaint on 08.03.2020 with the Officer-in-Charge Lake Town PS and subsequently another written complaint with the Commissioner of Police at Bidhannagar Police Commissionerate on 11.03.2020 making certain allegations against the petitioner. On 07.08.2020, the said complainant filed a petition u/s 156(3) of the Code of Criminal Procedure, 1973 being MP Case No. 45/2020 before the Learned Additional Chief Judicial Magistrate, Bidhannagar praying for a direction to the I/C of Lake Town PS to treat the petition as an FIR and conduct investigation into the matter. However, instead of passing such order of directing the registration of an FIR, the Ld. ACJM was pleased to call for a preliminary enquiry report from the Officer-in-

Charge, Lake Town PS as to the alleged facts and to find out whether any cognizable offence was disclosed or not. Further, one Pradip Saha, SI of Police, Lake Town PS conducted such enquiry and submitted a report before the Ld. ACJM, Bidhannagar on 29.09.2020 stating that the aforementioned case, i.e., Lake Town PS Case No. 138/2020 dated 06.09.2020 has been registered in relation to the said matter and the case is under investigation.

4. The allegations in the written complaint are as follows:-

- i) *The Complainant is the Proprietor of Bajaj & Co. and the **Complainant was in business with the above named accused person** who is the Director of his Company namely M/S. Dynamic Hatcheries Pvt. Ltd. and the Complainant entered into the business with said accused person on and from 29.07.2016.*
- ii) *During the said business period Maize and Soya D.O.C. was supplied by the said company of the Complainant to the above said accused company on the condition that said accused will pay the amount after 30 days from the date of supplying of Maize and Soya D.O.C. In the year 2016-2017 the Complainant had supplied the goods of an amount of Rs. 51442226/- and in this respect the Complainant had received an amount Rs. 39822003/- out of said Rs. 51442226/- from the said accused and as such Rs. 11620223/- standing due in the year of 2016-2017 upon the said accused.*
- iii) *In the year of 2017-2018 the Complainant has supplied the goods for an amount of Rs. 108883197/- and in this respect the Complainant had received an amount of Rs. 94418990/-*

and as such Rs. 14464207/- standing due in the year of 2017-2018 upon the said accused person.

- iv) In the year of 2016-2017 the standing due amount of Rs. 11620223/- and in the year of 2017-2018 the standing due amount of Rs. 14464207/- upon the said accused person. So, till the year of 2017-2018 the standing due amount of Rs. 26084430/- i.e. (Rs. 11620223/- + 14464207/-) upon the said accused person.*
- v) Thereafter again in the year of 2018-2019 the Complainant had supplied the goods till 19.03.2019 for the amount of Rs. 63628565/- and up to 11/06/2019 the Complainant had received an amount of RS. 59282270/- and as such Rs. 4346295/- standing due in the year of 2018-2019 upon the said accused person.*

- 5.** That the total out dues from 2016 to 2019 is Rs. 11620223 + Rs. 14464207 + Rs. 4346295 = Total Rs. 30431015.
- 6.** In spite of several requests the petitioners/accuseds have failed to pay the said outstanding dues.
- 7.** The petitioners' further state that on receiving the complaint dated 11.03.2020, the Commissioner of Police, Bidhannagar Police Commissionerate has forwarded the same to Commissioner of Police, Kolkata, who in turn sent it to Karaya Police Station for enquiry.
- 8.** It is stated by the petitioners that in spite of having such knowledge, the Complainant by suppressing the said fact filed the application under Section 156(3) of Cr.P.C., which gave rise to the present case.

9. The relevant part of the Order dated 07.08.2020 of the Learned A.C.J.M., Bidhannagar is as follows:-

“M.P. 45/2020

Order dated:- 07.08.2020

..... Hence the complaint be forwarded to the **I/C Lake Town Police Station** with a direction to cause preliminary inquiry in the facts alleged only to ascertain whether cognizable offence is disclosed or not. **If the inquiry disclose the commission of cognizable offence by any person, the FIR must be registered and the case be endorsed for investigation with a report to this end.** In case the preliminary inquiry manifest no cognizance offence then a report to that effect must be submitted to this court before next date. Since the General Diary is the record of all informations received in a police station, it is directed that the information, weather resulting in registration of FIR, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

Let a copy of this order be sent to the **I/C Lake Town Police Station** for his information and compliance.

To **29.09.2020** for FIR from the police.

**Sd/-
Additional Chief Judicial Magistrate,
Bidhannagar.”**

10. The Lake Town P.S. thus vide its report dated 29.09.2020 informed the Court as follows:-

“During enquiry and after perusing available documents it could be ascertained that the above reference MP case’s matter **is cognizable offence**. So,

after this enquiry a specific case has been registered at Lake Town PS vide Lake Town. PS Case No. - 138/2020 Dated 06.09.2020 U/S 420/419/506(ii)/120B IPC and the case is under investigation.”

11. The said conduct was in due compliance of the Court’s order dated 07.08.2020 and there is no reason to interfere with the said process, which is in accordance with law.
12. As the police on due enquiry found the ingredients required to constitute cognizable offences as alleged, a case was registered as directed.
13. The only defense of the petitioners at this stage appears to be their statements stating that they are duly complying with the notices served by the police.
14. From the petition of complaint and the case diary it prima facie appears that the business relation between the parties started in 2016 and ended in 2019.
15. It has been alleged that dues from the year 2016 (from the inception) are still outstanding and the petitioners are refusing to clear the said dues.
16. **The following rulings have been relied upon on behalf of the petitioners:-**

- i) *Vijay Kumar Ghai & Ors. vs State of West Bengal & Ors., (2022) 7 SCC 124, decided on March 22, 2022.*

- ii) *V.P. Shrivastava vs Indian Explosives Limited & Ors., (2010) 10 SCC 361, decided on September 24, 2010.*
 - iii) *HTC India Private Limited & Ors. vs Link Telecom Private Limited, passed in CRR 660 of 2020 with CRR 1855 of 2022 with CRR 661 of 2020, decided on 03.01.2023, Calcutta High Court.*
17. The petitioners have also placed an order of the NCLT, Kolkata dated 25.07.2023, and submitted that **the company is now in liquidation.**
18. The State has placed the case diary.
19. In ***C.B.I. vs Aryan Singh Etc., in Criminal Appeal nos. 1025-1026 of 2023 (@ SLP (CRL.) Nos. 12794-12795 of 2022), decided on 10.04.2023,*** the Supreme Court held:-

*“4. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the **High Court has exceeded in its jurisdiction** in quashing the entire criminal proceedings in exercise of the limited powers under Section 482 Cr.P.C. and/or in exercise of the powers under Article 226 of the Constitution of India.*

*4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, **while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial.** The High Court in the common impugned judgment and order has observed that the charges against the accused are not*

proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

*4.2 One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been charge sheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. **The same is required to be considered at the conclusion of the trial.** In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.*

5. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.

5.1 In view of the above and for the reasons stated above, present appeals succeed. The impugned common judgment and order passed by the High Court quashing and setting aside the criminal proceedings against the accused Aryan Singh and Gautam Cheema is/are quashed and set aside. The accused to face the trial for which they are charge sheeted. However, it is observed that all the contentions and

defences, which are available to the respective parties are kept open, to be considered by the learned Trial Court during the trial.

Considering the fact that the allegations in the FIR relates back to the year 2014 and as more than eight years have passed, we direct the learned Trial Court to conclude the trial at the earliest, but not later than 12 months from the date of the receipt of the present order. CBI to produce the present order before the concerned Magistrate at the earliest. All concerned are directed to cooperate with the learned Trial Court in concluding the trial within the time prescribed mentioned hereinabove.”

20. The proceedings in this case has been initiated for offences punishable under Sections 420/419/506/120B of IPC.

21. Section 420 of I.P.C. lays down:-

“420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ingredients of offence.— The essential ingredients of the offence under Sec. 420 are as follows:-

- (1) There should be fraudulent or dishonest inducement of a person by deceiving him;
- (2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or
 - (b) The person so induced to do anything which he would not do or omit if he were not so deceived, and
 - (c) In cases covered by second part of clause (a), the act or omission should be one which

caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are –

- (A) Deceit, that is to say dishonest or fraudulent misrepresentation, and*
- (B) Inducing the person deceived to part with property.”*

22. There was payment made every year with some outstanding which finally culminated to the amount as stated. It is seen that in spite of there being some outstanding every financial year, the complainant continued the business transaction till 2019.

23. Section 418 of IPC, lays down:-

“418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—*Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

Ingredients of offence.—*The essential ingredients of the offence under Sec. 418 are as follows:-*

- (1) Accused cheated a person;*
- (2) At the time of offence accused was bound by law or legal contract to protect the interests of the person whom he cheated;*
- (3) The obligation related to the transaction involving the cheating;*
- (4) Accused had the knowledge that his act was likely to cause wrongful loss to the person cheated and whose interest he was bound to protect.”*

24. Admittedly there is a business relationship between the parties.

Cheating with knowledge to cause loss to the complainant herein will also cause loss also to the petitioners. From the petition of complaint, no such materials has been produced to prima facie show that the petitioners intentionally with knowledge cheated the complaint. The dispute between the parties is regarding outstanding payments. Certain payments have also been received by the complainant during the business transaction, when in spite of there being outstanding due every year, the complainant continued the transaction. As such the ingredient required to constitute the said offence under Section 418 IPC is also absent against the petitioners.

25. The Supreme Court in ***Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021)*** while considering an appeal against an judgment and order of the High Court of Karnataka in an application under Section 482 of the Cr.P.C. wherein the prayer of the petitioners for quashing of proceedings of offence punishable under Section 406, 419, 420 read with Section 34 of the IPC was dismissed, held:-

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

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

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

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

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

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

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

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

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

of such misconceived criminal proceedings, in accordance with law.”

42. *It was also observed:-*

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

43. *On an earlier occasion, in case of G. Sagar Suri and Anr. Vs. State of UP and Ors.8, this Court has also observed:-*

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

44. *Furthermore, in the landmark judgment of State of Haryana & Ors. Vs. Ch. Bhajan Lal and Ors. 9 regarding exercise of inherent powers under section 482 of CrPC, this Court has laid down following categories of instances wherein inherent powers of the can be exercised in order to secure the ends of justice. These are:-*

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

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

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

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

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

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

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

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

46. *Recently, this Court in case of Randheer Singh Vs. The State of U.P. & Ors.10, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-*

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

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

48. *In view of the above facts and discussions, the impugned order dated 13.08.2019 passed by the High Court of Karnataka is set aside. The impugned F.I.R. No. 185 of 2016 dated 29.03.2016 and proceedings in C.C.No.*

20609 of 2017 on the file of VI Additional CMM, Bengaluru, in pursuance of charge sheet dated 29.03.2017 against the appellants for offences under Sections 406, 419, 420 read with Section 34 IPC stands quashed.”

26. In the present case admittedly there was no dispute between the parties from 2016 to 2019 (four years).

27. *State of Madhya Pradesh vs. Awadh Kishore Gupta and others*, 2003 AIR SCW 6501.

“13.While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.....”

28. *Ravindra Kumar Madhanlal Goenka & Anr. Vs. M/s. Rugmini Ram Raghav Spinners P. Ltd.*, 2009 AIR SCW 3211.

“14.....While entertaining a petition under Section 482 Cr.P.C.. the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are prima facie materials available, a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases.”

29. *S.P. Gupta vs. Ashutosh Gupta*, 2010 AIR SCW 3683.

“13.....However the aforesaid provision clearly indicates that if at the very initiation of the negotiations

it was evident that there was no intention to cheat, the dispute would be of a civil nature. But such a conclusion would depend on the evidence to be led at the time of trial. In the instant case, the complaint does make out a prima facie case to go to trial.”

30. The said observation supports the case of the petitioners as admittedly, at the very initiation from 2016 to 2019 (four years) of business transaction, it is evident that **there was no intention to cheat**. Such a dispute would be of civil nature (which would depend on the evidence to be led at the time of trial). And in the present case the complaint as discussed earlier also does not make out a prima facie case against the petitioners for them to go to trial.

31. This Court relies upon the judgment of the Supreme Court in ***Birla Corporation Ltd. vs. Adventz Investments and holdings, in Criminal Appeal no. 877 of 2019, decided on 9 May, 2019,*** wherein the Court held:-

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

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

accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

32. The Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd. Vs. The State of Maharashtra & Ors., decided on 13 April, 2021, in Criminal Appeal No. 330 of 2021**, citing several precedents held:-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under **Section 482 Cr.P.C.** is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

33. In **Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra)** the Supreme Court **also** held:-

21. In Rajiv Thapar v. Madan Lal Kapoor [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

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

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

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

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”

34. Considering the nature of dispute between the parties based on a business transaction thereby effecting the right of the complainant, the following judgment of the Supreme Court is relied upon:-

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

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

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

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

Re : Point No. (i) :

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

Prasad Verma v. State of Bihar [2000 (4) SCC 168], *M. Krishnan vs Vijay Kumar* [2001 (8) SCC 645], and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [2005 (1) SCC 122]. The principles, relevant to our purpose are :

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

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

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

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

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

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

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

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

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

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal

proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.”

- 35.** The Supreme Court in **Satishchandra Ratanlal Shah vs. The State of Gujarat & Anr., Criminal Appeal No.9 of 2019 (arising out of SLP (Crl.) No. 5223 of 2018), on 3rd January, 2019**, held that:-

“14. Now coming to the charge under Section 415 punishable under Section 420 of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea.(See Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168). In the case before us, admittedly, the appellant was trapped in economic crisis and therefore, he had approached the respondent no.2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no.2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 of IPC.”

- 36. There is also no materials on record to show that the ingredients required to constitute the offence under Sections 506 of IPC is prima facie present against the petitioners.**
- 37. Thus from the discussions above, and the materials on record, it is evident that there was a business transaction between the parties. The transaction continued for four years in spite of there being some outstanding every year.**
- 38. The dispute at this stage is only the outstanding dues which is subject to submission of accounts and other relevant papers by both the parties. And such disputes are clearly civil in nature, arising out of continuing business transaction.**
- 39. There thus being none of the ingredients required to prima facie constitute the offences alleged against the petitioners, the present proceeding is liable to be quashed in the interest of justice.**
- 40. CRR 1777 of 2020 is allowed.**
- 41. The proceedings being G.R. Case No. 579 of 2020 arising out of Lake Town P.S. Case No. 138/2020 dated 06.09.2020 under Sections 420/419/506/120B of the Indian Penal Code now pending in the court of the Learned Additional Chief Judicial Magistrate, Bidhannagar, is hereby quashed in respect of the petitioners.**
- 42. All connected applications, if any, stand disposed of.**

- 43.** Interim order, if any, stands vacated.
- 44.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 45.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)