



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : Crl. Pet./5/2019

MAYTAS-GAYATRI JV AND 3 ORS
DOOR NO.8-2-120/133/3,
4TH FLOOR,SANALI INFO PARK,CYBER TOWERS, ROAD NO.2,
BANAJARI HILLS, HYDERABAD-500033

2: T.V SANDEEP KUMAR REDDY
MANAGING DIRECTOR
GAYATRI PROJECTS LTD
B-1 T.S.R
TOWERS
6-3-1090 RAJ BHAVAN ROAD
SOMAJIGUDA
HYDERABAD

3: G.V ROA
VICE PRESIDENT(ROAD) GAYATRI
B -1 T.S.R
TOWERS
6-3-1090
RAJ BHAVAN ROAD
SOMAJIGUDA
HYDERABAD

4: A.S. VINOD
PROJECT MANAGER
GAYATRI PROJECTS LTD
B -1 T.S.R
TOWERS
6-3-1090
RAJ BHAVAN ROAD
SOMAJIGUDA
HYDERABA

VERSUS

THE STATE OF NAGALAND AND ANR
KOHIMA

2:LIMAAKUM PHOM
S/O LT. SUNGJEM PHOM

R/O NYIENGCHING COLONY
LONGLENG TOWN
LONGLENG

Advocate for the Petitioner : ,Mr. ELIX GANGMEI (EB LEGAL),
Mr. PFOSEKHO PFOTTE
Mr. K. LUIKANG MICHAEL

Advocate for the Respondent No.1: Ms. S. MERE, P.P

Advocate for the Respondent No.2 : Mr. M. KASAR

Date of hearing : 12.08.2025

BEFORE
HON'BLE MR. JUSTICE RAJESH MAZUMDAR

JUDGMENT & ORDER (CAV)

Date : 18-08-2025

Heard Mr. K. Luikang Michael, learned counsel for the petitioners and also heard Mr. M. Kasar, learned counsel for the respondent No. 2 and Ms. S. Mere, learned P.P. for the respondent No.1.

2. The present petition has been filed under section 482 Cr. P.C by the four petitioners praying for quashing of the order dated 21/05/2019 issued by the Court of Chief Judicial Magistrate, Longleng, Nagaland in C.R Case No. 01/2018 against the petitioners and also for quashing of the summons issued consequentially. The petitioners have also prayed for quashing of Criminal Case No. 01/2018 registered u/s 406/417/420 IPC against the petitioners pending before the Court of the Chief Judicial Magistrate, Longleng, Nagaland.

3. The case as projected in the pleadings is that the petitioner No.1 claims to be a joint venture incorporated under the Companies Act, having its Office at Door No.8-2-120/113/3,4th Floor, Sanali Info Park, Cyber Towers, Road No.2, Banjara Hills, Hyderabad-500033. The petitioner No.1 had entered into a contract with the Chief Engineer, PWD, (N.H), Nagaland on 03/02/2011 for executing the work of 2 Laning of Longleng-Changtongya Road, Mon-Tamlu-Merangkong Road, Phek-Pfutsero Road & Zunheboto-Chakabama Road in the State of Nagaland under Phase 'A' of SARDP-NE. Records show that PIL No. 7/2013 was filed in the Gauhati High Court in an effort to expedite the laying of the 329 Km road relating to the work for which the petitioner No.1 had entered into a contract with the Government of India vide agreement dated 03/02/2011 mentioned hereinabove and which work had been stalled.

The Hon'ble Apex Court while disposing of the Civil Appeal No. 342-343/2017 by its order dated 11/01/2017, (which arose out of the order dated 13/10/2015 passed in PIL No. 7/2013 and the order dated 25/07/2016 passed in Review Petition No. 146/2015), allowed the Government of India to foreclose the contract and to re-tender the project, by initiating a fresh process, by following the contemplated procedure. The petitioner No.1 herein, who was arrayed as the respondent No.7 in the Civil Appeal and whose contract was at risk of being foreclosed, was left to pursue his remedies in terms of the arbitration clause incorporated in the agreement dated 03/02/2011.

On 15/10/2018, the respondent No. 2 in this revision petition had filed a complaint in the Court of the Chief Judicial Magistrate, Longleng, Nagaland. In the complaint, it was alleged that the petitioner No.1 and its employees had issued two work orders to the complainant on 05/03/2015 and 02/04/2015 respectively for execution of certain works and it was alleged about non payment of bill by the petitioner No.1 herein despite submission of bills. The complainant/respondent No.2 herein prayed before the Court of the Chief

Judicial Magistrate, Longleng, Nagaland to take cognizance of offences.

The order dated 16/08/2018 passed by the learned Chief Judicial Magistrate, Longleng in the complaint is reproduced herein below;

“Received a Criminal Complaint from the complainant name Limaakum Phom which filed through his representatives namely I. Limatoshi, Bendangnuken A, M. Kasar before this Court.

The complainant stated that 2(two) work order were issued to him by the Maytas Gayatri-JV on 05/03/15 and 2/4/15 respectively. However on executing the work and on submitting the bills no payment was released.

I have perused the criminal complaint and also the statement made by the complainant and satisfied.

Register the criminal complaint.

Issue summon to the defendants to appear before this Court in person or through their Counsels fixing on 16.11.18.”

4. On receipt of the summons, four of the accused approached this Court as petitioners by preferring Criminal Petition No. 5(K) of 2018 praying for quashing the orders and summons issued and also for quashing of the criminal proceeding that was instituted against them vide Criminal Case No. 01/2018 in the Court of the Chief Judicial Magistrate, Longleng, Nagaland.

After hearing the parties and upon perusal of the record received from the learned Trial Court, this Court by the order dated 08/03/2019, held that the due process of law laid down under section 200 and 220 (sic 202) had not been followed and therefore, the order dated 16/10/2018, which had directed the issuance of summons to the petitioners herein, is not sustainable. Accordingly, the said order was set aside. Clarifying that the merit of the case was not being assessed by this Court, the case was remanded back to the learned Chief Judicial Magistrate, Longleng, Nagaland, requiring that the said Court would examine the complainant and the witnesses, if any, and follow the procedure prescribed under section 200 and 202 Cr. P.C, before he comes to a decision

that summons should be issued. The complainant was required to appear before the Court of the learned Chief Judicial Magistrate, Longleng, Nagaland on 12/04/2019.

5. Taking up the matter again on remand, the learned Trial Court passed the order dated 12/04/2019 thereby issuing direction to register a criminal complaint under section 406/417/402 IPC. Simultaneously directions were issued to summon the accused persons to the Court, fixing the case on 21/05/2019. The order dated 12/04/2019 & 21/05/2019 are reproduced herein below:

12/04/2019

“Perused the criminal complaint filed by the complainant Shri. LImaakum Phom, recorded the statement of the complainant on Oath U/S 200 Cr.P.C. The Court is satisfied after making an enquiry U/S 202 of Cr.P.C hence register a criminal complaint petition u/s 406/417/420 IPC, Issue summon to the Accused persons on the Addresses given accordingly.

Fixing for appearance of the Accused on 21/5/2019.”

21/05/2019

“The witnesses in connection with CR 1/18 present with complainant.

All the witnesses were examined on Oath and their statement has been recorded.

Issue summon to Accused Fixing on 13/06/19.”

6. This petition under section 482 Cr. P.C then came to be filed on 04/06/2019 with the prayers as already noted herein before. While issuing notice on 06/06/2019, this Court had directed that till the next returnable date i.e. 04/07/2019, the further proceedings of C.R Case No.01/2019 (sic 2018) shall remain stayed. By the order dated 03/09/2019, the relevant records were called for from the learned Trial Court and the same have been since received.

7. Today, the matter was argued at length, both sides were heard and the

record has been pursued.

8. Mr. K. Luikang Michael, learned counsel for the petitioners at the outset submitted that the complaint is not maintainable on the face of it since the grievance sought to be agitated by the complainant is purely civil in nature and the complainant had already availed civil remedy by initiating Money Suit No. 1 of 2018.

The learned counsel referred to the order dated 12/04/2019 to emphasise that the learned Trial Court had committed error when it decided to register the criminal proceeding only on the basis of statement of the complainant recorded on Oath under section 200 Cr. P.C. He then referred to the order dated 21/05/2019 to submit that it is evident from the order that all the witnesses in connection with the complaint filed by the complainant were examined only on 21/05/2019 and by the order dated 21/05/2019, the direction for issuing summons to the accused was only reiterated. He submitted that the direction to issue summon to the accused in order dated 21/05/2019 were only reiteration of the direction passed on 12/04/2019. It cannot be said, he argues, that there was any application of mind in the order dated 21/05/2019 as is required under the provision of section 200 & 202 of the Cr. P.C. He submitted that the order dated 21/05/2019, as well as the order dated 12/04/2019 deserve interference of this Court.

Mr. K. Luikang Michael, learned counsel for the petitioners further submitted that neither the complaint nor the statement of either the complainant or the witnesses recorded by the learned Trial Court below reveals the commission of any of the offence relatable to Section 406/417/420 respectively of the IPC and therefore, even in that view of the matter, the impugned proceedings drawn up by the learned Trial Court deserve interference of this Court.

The learned counsel for the petitioners has further submitted that the complainant has not made out any allegation in his complaint against the petitioner No. 2, 3 & 4 and, even in that view of the matter, the decision of the learned Trial Court to direct the issuance of summons against those writ petitioners cannot stand on the scrutiny of law.

The learned counsel for the petitioners finally submitted that the petitioner No. 1 being a corporate body and no act having been attributed to the petitioner No. 2, 3 & 4 whom the complaints sought to project as persons in the helm of affairs of petitioner No.1, the issuance of summon to the petitioner No. 1 cannot stand the scrutiny of law and deserve the interference of this Court in exercise of discretion and inherent powers under section 482 of the Cr. P.C.

9. In order to buttress his submission, the learned counsel for the petitioners has relied upon the following judgments of the Hon'ble Apex Court in the cases of;

i). **Thermax Ltd. -versus- K.M. Johny & Others**, reported in **(2011) 11 SCC 412.**

ii). **Paramjeet Batra -versus- State of Uttarakhand & Others**, reported in **(2013) 11 SCC 673.**

iii). **Vesa Holdings P. Ltd. -versus- State of Kerala & Others**, reported in **(2015) 8 SCC 293.**

iv). **Birla Corporation Limited & Others -versus- Adventz Investments and Holdings Limited & Others**, reported in **(2019) 16 SCC 610.**

v). **Delhi Race Club (1940) Ltd. and Others -versus- State of Uttar Pradesh and Others**, reported in **(2024) 10 SCC 690.**

vi). **Sachin Garg -versus- State of Uttar Pradesh and Others**, reported in **2024 (1) SCC 587**.

vii). ***S.N Vijayalakshmi and Others* -versus- State of Karnataka and Others**, decided on **31.07.2025**.

viii). **Rikhab Birani and Others -versus- State of Uttar Pradesh and Others**, reported in **2025 INSC 512**.

ix). **M/s Shikhar Chemicals -versus- The State of Uttar Pradesh and Another**, decided on **08.08.2025**.

10. Per contra, vehemently opposing the prayer made in this writ petition, Mr. M. Kasar, learned counsel appearing for the respondent No. 2/complainant in the C.R Case No. 01/2018 has argued that this petition on the face of it, is not maintainable in law.

11. Mr. M. Kasar, learned counsel for the respondent No.2 has drawn our attention to the fact that there is no statement in the pleadings of the petitioners that any or all of them had authorised the petitioner No.4 to approach this Court on their behalf and or to verify the contents of the pleadings and the supporting affidavit on their behalf.

Mr. M. Kasar, learned counsel, has argued that "cause of action" under criminal law cannot be allowed to be agitated by a person other than those who are aggrieved and in the present case there being no statement in the pleadings regarding such authorisation, no such authorisation can even be inferred and therefore, he argued that this petition deserves to be dismissed without going into the merit of the matter.

The learned counsel for the respondent No. 2 has stressed that there is no bar for a criminal proceeding to proceed parallelly or simultaneously along with a civil proceeding. He has stressed that the criminal complaint does not

deserve to be quashed only on the ground that the allegation is before the Trial Court is of civil nature. He has submitted that the question of interference in criminal proceeding would arise only where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. He therefore argued that, when from the reading of the complaint and consideration of the allegations therein and in the light of the statement made on oath before the Magistrate, the ingredients of the offence alleged is disclosed, there would be no justification for interference in the proceeding. He further submitted that although defence in abundance may be available to the accused to enable him to secure an acquittal, such defences are immaterial at this stage and cannot be considered as ground for quashing the complaint at the threshold.

12. The learned counsel for the respondent No. 2 has relied upon the judgment and the order dated 12/02/2019 passed by the Hon'ble Apex Court in Criminal Appeal No. 255/2019 (arising out of SLP(Crl.) No. 7513/2014), in the case of **Sau. Kamal Shivaji Pokarnekar -versus- The State of Maharashtra & Others**, to impress that criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature

13. Ms. S. Mere, learned P.P has adopted the argument made by the learned counsel for the respondent No. 2 and prayed that the criminal petition be dismissed without granting the relief prayed for. She submitted that in any case defence sought to be agitated by the petitioners in this petition case be taken in the trial and therefore at this stage, the matter may be remanded back to the Trial Court to proceed with the trial.

14. I have heard the learned counsels for the parties at length. I have considered the submissions made and the judgments relied upon. This Court would first examine the extent of interference which can be made in the present

case in exercise of power conferred by section 482 of the Cr.P.C.

In State of Haryana -versus- Ch. Bhajan Lal and Others, reported in (1992) Supp (1) SCC 335, the Hon'ble Supreme Court had held:

“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 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 F.I.R. 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 F.I.R. 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.”

In Umesh Kumar -versus- State of Bihar, reported in (2013)10 SCC 591, the Hon’ble Apex Court has held as follows:

“The scope of Section 482 Cr. P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr. P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial.”

In Delhi Race Club (1940) Ltd. -versus- State of Uttar Pradesh, reported as (2024) 10 SCC 690; the Hon’ble Apex Court has held as follows:

“22. In the aforesaid circumstances, the next question to be considered is whether a summons issued by a Magistrate can be interfered with in exercise of the power under Section 482, CrPC. In the decisions in Bhushan Kumar v. State (NCT of Delhi) reported in (2012) 5 SCC 424 and Pepsi Foods Ltd. (supra), this Court held that a petition filed under Section 482, CrPC, for quashing an order summoning the accused is maintainable. There cannot be any doubt that once it is held

that sine qua non for exercise of the power to issue summons is the subjective satisfaction "on the ground for proceeding further" while exercising the power to consider the legality of a summons issued by a Magistrate, certainly it is the duty of the Court to look into the question as to whether the learned Magistrate had applied his mind to form an opinion as to the existence of sufficient ground for proceeding further and in that regard to issue summons to face the trial for the offence concerned."

In Vineet Kumar -versus- State of Uttar Pradesh, reported in (2017) 13 SCC 369, the Hon'ble Supreme Court has held:

"Inherent power given to the High Court under Section 482 Cr.P.C. 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. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 Cr.P.C. to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal, which is to the following effect:

"(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."

15. Reverting to the present lis under consideration, a perusal of the records received from the learned Trial Court reveals that the complainant had received a work order No. 001/2014-15 from the Vice President acting on behalf of the Raing Infra. Pvt. Ltd. for executing of Pipe Culverts, RCC Slab Culverts and Retaining Walls from Longleng to Changtongya Road to the improvement of Road to 2-lane standard under SARDP-NE in the State of Nagaland for a total amount of Rs. 7,61,76,969/- as per the BOQ enclosed subject to the terms and conditions spell out in the work order itself. The complainant had thereafter

received a revised work order No.002/2015-16 dated 02/04/2015 from an authorised signatory acting on behalf of the petitioner No.1. The record also reveals that the complainant had served legal notice dated 11/08/2018 to "Gayatri, B-1, T.S.R Towers, 6-3-1090, Raj Bhavan Road, Somajiguda, Hyderabad-500082, Andhra Pradesh" and another un-dated notice to "Gayatri, B-1, T.S.R Towers, 6-3-1090, Raj Bhavan Road, Somajiguda, Hyderabad-500082, Andhra Pradesh" demanding clearance of the billed amount for the work that had already been executed.

The complaint filed by the complainant reveals that an amount of Rs. 25 Lakhs was paid as a part payment of pending bills to the bank account of the complainant and the complainant alleges that no further payments were made. The respondent No.2/complainant thereafter filed the C.R Case No. 01/2018 in the Court of the Chief Judicial Magistrate, Longleng, Nagaland and simultaneously filed a Money Suit No. 1/2018 for recovery of dues.

16. In Delhi Race Club (1940) Ltd. (supra), while discussing the scope of enquiry under Section 202 of the Cr. P.C, the Hon'ble Supreme Court has held as under;

"6. It is by now well settled that at the stage of issuing process it is not the duty of the Court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. [See : D.N. Bhattacharjee v. State of West Bengal : MANU/SC/0104/1972 : 1972:INSC:93 : (1972) 3 SCC 414 : AIR 1972 SC 1607 : (1972 Cri LJ 103)

7. Further it is also well settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the

complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. ... The scope of the inquiry under Section 202 of the CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. The discretion given to the Magistrate on this behalf has to be judicially exercised by him.

17. In Birla Corporation Ltd. (supra), the Hon'ble Supreme Court has held as under;

“31. Under the amended sub-section (1) to [Section 202 Cr.P.C.](#), it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.

34. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint.....

18. Therefore, what follows from the above judgments is that the Trial Court, when it is considering a criminal complaint under the provision of Section 202 Cr. P.C to decide whether summons should be issued to accused who are beyond the territory of the Court, is not required to find out whether the accused will be ultimately convicted or acquitted but the enquiry is to be limited only to determine whether there are sufficient ground for proceeding further or not. If the perusal of the complaint or the evidence lead in support of it shows essential ingredients of the offence alleged are absent or that the dispute is only of a civil nature, then the complaint is liable to be dismissed at that stage itself.

The correctness, probability or improbability of evidence is not material but the existence or otherwise of a prima facie case is what is required to be considered. The scope of enquiry is limited only to ascertain the truth or falsehood of the allegation made in the complaint on the material placed by the complainant before the Court for the limited purpose of finding whether a prima facie case for process of issue of the matter without at all adverting to any defence that the accused may have. The discretion given to the Court has to be exercised judiciously. The application of mind has to be indicated by disclosure of mind on the satisfaction. There must be sufficient indication as to the application of mind.

19. In Sunil Bharti Mittal (supra), reported in (2015) 4 SCC 609, the Hon'ble Supreme Court has held as follows;

“53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

The words “sufficient ground for proceeding” also appear in the language used in Section 202 Cr. P.C.

20. In the present case at hand, I find that while reiterating the issue of summons ordered on 12/4/2019 to the accused, the order dated 21/05/2019 states that the evidence produced by the witnesses of the complainant were recorded on that day. Ironically, summons had already been issued to the accused on 12/04/2019 itself only on the basis of the statement of the complainant on oath. Neither the order dated 12/04/2019 nor the order dated

21/05/2019, for that matter, at all reflect that the learned Trial Court had applied its mind as to what overt act stipulated in the Indian Penal Code has resulted in injury to the complainant and what state of mind preceded or accompanied the act of the accused. There is no indication in the orders taking cognizance and requiring issuance of summons that the learned Trial Court had applied its mind to find out as to whether there were sufficient grounds for proceeding against the accused. The enquiry envisaged in Section 202 of the Cr. PC is mandatory for the purpose of deciding whether or not "there is sufficient ground" for proceeding.

21. In view of the prayer of the petitioners to quash the proceedings bearing C.R No. 1 of 2018 pending in the Court of learned CJM, Longleng, it has to be seen whether such interference can be made in accordance with the law. The provisions of law under which the learned Trial Court has registered the C.R case No. 1/2018 are Sections 406, 417 and 420 of the IPC.

22. In *Hridya Ranjan Prasad Verma and Others -versus- State of Bihar and Another*, reported in (2000) 4 SCC 168, the Hon'ble Apex Court had held thus:

"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed."

23. In *SW Palanitkar -versus- State of Bihar*, reported in (2002) 1 SCC 241, the Hon'ble Apex Court, while considering the ingredients in order to constitute

offence of criminal breach of trust and cheating respectively observed in paragraphs 9 and 10;

“9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged (ii) of any legal contract made touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii) (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property”

24. In Punjab National Bank and Ors. -versus- Surendra Prasadd Sinha, reported in (1993) Supp(1) SCC 499, the Hon’ble Apex Court has held as follows:

“It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the

appellants without any prima facie case to harass them for vendetta.”

25. In the present case, there is nothing either in the complaint or in the statements made by the witnesses that any property was entrusted to any of the petitioners or that they had any dominion over any of the properties of respondent No. 2 which they dishonestly converted to their own use. The ingredients of the offence punishable under Section 406 IPC cannot be said to be made out even if the complaint or the statements of witnesses are taken on their face value. Further, neither the complaint nor the statement of witnesses implicates the petitioners with the fraudulent or dishonest intention at the time when the work orders were issued and accepted or when the work was being executed. The non-payment of bills which were raised by the complainant would be mere breach of contract and it cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Failure to keep promise for payment of bills subsequently cannot lead to a presumption of a culpable intention right at the initial stage.

26. In **Uma Shanker Gopalika -versus- State of Bihar**, reported in **(2006)2 SCC (Cri)49**, the Hon'ble Apex Court held thus:

“Every breach of contract would not give rise to an offence of cheating and only in those cases the breach of contract would amount to cheating, where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating.”

27. It is pertinent to mention that in respect of offences alleged to have been committed by a company, there is no special provision in the Penal Code for applying the principles of vicarious liability so as to rope in any office bearer of the company for an offence committed by the company unless specific allegation is made against such office bearer, who is responsible for commission of the offence. In the complaint petition and in the statements of the witnesses,

no allegation is made against the petitioners No. 2, 3 and 4 which would make them liable to be prosecuted as sought to be done by the learned Trial Court.

28. The records of C.R Case No. 1/2018 and the documents annexed to the petition in support of the averments made therein and the statements recorded under section 200/202 Cr. P.C reveal that there is dispute arising out of a work order for carrying out constructions and nonpayment of bills to the complainant/respondent No.2 herein. It is further revealed that upon bills being raised by the complainant, part payment was made and the grievance of the complainant arose when the entire demanded amount was not paid to the complainant. The disputes in question are apparently arising out of non-performance of the promise to honour the bills raised by the complainant in the terms of the work orders in their entirety. This is a dispute of civil nature, when no specific allegations of commission of the alleged offences by the petitioners themselves in their individual capacity or at the behest of the petitioner No. 1 which is a company registered under the Companies Act, 1956 have been made.

29. At this stage it would be appropriate to refer to the judgment passed by the Hon'ble Apex Court in the case of Binod Kumar and Others -versus- State of Bihar and Others, reported in (2014) 10 SCC 663, wherein it was held on the facts therein as follows:

“18. In the present case, looking at the allegations in the complaint on the face of it, we find no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilized the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be

shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a short cut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 IPC are missing, prosecution of the appellants under Sections 406/120B IPC, is liable to be quashed.”

30. Without critically examining the truth or falsity of the allegations made in the complaint involved in the present litigation and simply examining them on their face value, this Court has no hesitation to hold that there is no element of offence of either criminal breach of trust or of cheating made out against the petitioners. It is further noticed that while passing the order dated 12/4/2019 and the order dated 21/5/2019, the learned Trial Court neither made any discussion nor gave any reason for directing the criminal complaint to be registered or for directing the issuance of summons to the petitioners. Due application of mind by the learned Trial Court is not discernible in the impugned orders. Considered thus, this Court is of the opinion that no criminal liability arises against the petitioners.

31. It is also further noted that the complainant has already set in motion Money Suit No. 1/2018 for recovery of his dues. Even in that view of the matter, the impugned criminal proceedings deserve to be quashed to prevent the abuse of process of law. This is clearly the law laid down by the Hon’ble Apex Court in *Paramjeet Batra -versus- State of Uttarakhand and Others*, reported in (2013) 11 SCC 673 to the following effect:

“7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a

criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court. “

32. Consequently, the petition stands allowed. Accordingly, the impugned C.R Case No. 1/2018 along with the order dated 12/4/2019 and 21/5/2019, passed therein taking cognizance of the offences aforementioned against the petitioners stand set aside and quashed.

33. With regard to the contention of the learned counsel for the respondent No. 2 that in the absence of any authorization by the remaining petitioners in favour of the petitioner No. 4, the petition cannot be maintained on behalf of the said petitioners No. 1, 2 and 3, suffice it to say that since the complaint itself has been held to be not disclosing any cause of action for the learned Trial Court to have taken cognizance, all petitioners arrayed as accused in the complaint would be entitled to the benefit of the quashing of the criminal proceedings. Parity would so demand in the facts and circumstances of the case, as also to serve the cause of justice. (Refer S.N. Vijayalakshmi -versus- State of Karnataka, 2025 INSC 917 at para 48)

34. Petition stands disposed of accordingly. No costs.

35. Send back the LCR.

JUDGE

Comparing Assistant