IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 168 of 2014
With
CRAN 5/2017 (Old CRAN 1079/2017)

Sushil Mohta
-Vs-
The State of West Bengal & Anr.

With

C.R.R. 656 of 2014
With
CRAN 2/2016 (Old CRAN 1421/2016)
With
CRAN 5/2017 (Old CRAN 1080/2017)

Vikash Mimani
-Vs-
The State of West Bengal & Anr.

With

C.R.R. 657 of 2014
With
CRAN 5/2017 (Old CRAN 1227/2017)

Navneet Baheti
-Vs-
The State of West Bengal & Anr.

For the Petitioners	: Mr. Sudipta Moitra Mr. Sourav Chatterjee Mr. Saptarshi Datta Ms. Srinjita Ghosh Mr. P.K. Pal
For the State	: Mr. Avishek Sinha
For the Opposite Party No.2	: Mr. Aditya Sen
Heard on	: 31.08.2023, 03.10.2024, 02.01.2025, 28.01.2025
Judgment on	: 15.05.2025

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

1. The instant revisional applications are filed by the petitioners praying for quashing of proceedings being A.C. No.60/2013 pending before the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas under Sections 465/468/469/506/120B of the Indian Penal Code and all orders passed therein including the order dated 29.06.2013 passed by the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas thereby issuing process against the petitioners and an order dated 05.01.2013 passed by the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas in A.C.G.R. Case No.3320/2011 which was pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas arising out of Jadavpur Police Station Case No.131/2010 dated 11th March, 2010 under Sections 471/465/468/506/120B/384 of the Indian Penal Code and under Sections 66A/66B/66C/72/72A of the Information Technology Act thereby directing the case to be registered as a complaint case, taking cognizance of offences punishable under Sections 465/468/471/506/120B of the Indian Penal Code and transferring the case to the Court of the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas for enquiry and disposal.
2. The instant revisional applications had been filed by the petitioners praying for quashing of proceedings being A.C. No. 60/2013 pending before the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas under Sections 465/468/469/506/120B of the Indian Penal Code and all orders passed therein including the order dated 29.06.2013 passed by the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas thereby

issuing process against the petitioners and an order dated 05.01.2013 passed by the Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas in A.C.G.R. Case No. 3320/2011 which had been pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas arising out of Jadavpur Police Station Case No. 131/2010 dated 11th March, 2010 under Sections 471/465/468/506/120B/384 of the Indian Penal Code and under Sections 66A/66B/66C/72/72A of the Information Technology Act, thereby directing the case to be registered as a complaint case, taking cognizance of offences punishable under Sections 465/468/471/506/120B of the Indian Penal Code and transferring the case to the Court of the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas for enquiry and disposal.

3. The petitioner had stated that he had been the Managing Director of a company named and styled as Merlin Projects Ltd. (hereinafter referred to as 'MPL'). MPL had been registered and incorporated under the provisions of the Companies Act, 1956 and had its registered office at 79, Sambhunath Pandit Street, PS-Bhowanipore, Kolkata-700020. MPL had carried on business of construction and/or infrastructure development all over the country and had gained goodwill and reputation in the infrastructure sector.

4. MPL had commenced its business in 1983 and over the years had completed many projects and had been in the process of completing several more. The petitioner, as Managing Director of MPL, had acquired immense reputation and goodwill. The petitioner had never compromised with the nature, standard and quality of construction or with the title of

properties or services rendered to customers. MPL had become known for clear title and high-quality construction.

5. The petitioner had been a member of the Governing Council of CREDAI, the apex body of real estate developers in India, and a founder member of CREDAI, West Bengal, as well as a member of Bharat Chamber of Commerce and Confederation of Indian Industries. In April 1990, the petitioner had conceptualized a project of row houses and bungalows with club facilities in Mouza Kriparampore, P.S.- Bishnupur, South 24-Parganas, named as 'Merlin Greens', with the club named 'IBIZA'.
6. On or about 1st May, 2003, an agreement for sale/allotment had been entered into by and between MPL and Pandav Roy and Partha Roy (husband of opposite party no. 2) in respect of a row-house at Merlin Greens at a consideration of Rs. 16,25,000/-. A supplementary agreement had also been executed for club facilities at IBIZA. On 25.08.2003, MPL had intimated Pandav Roy and Partha Roy that the row-house was ready and requested payment and possession.
7. Pandav Roy and Partha Roy had applied for a housing loan from Union Bank of India (U.B.I.) and the bank had sanctioned Rs. 15 lakhs on 22nd January, 2004. On 25th February, 2004, U.B.I. had sent a pay order of Rs. 13,81,250/- in terms of a tripartite agreement dated 21st January, 2004 between MPL, U.B.I. and the borrowers. The balance of Rs. 1,18,750/- had not been disbursed by U.B.I.
8. On 20th April, 2004, Pandav Roy and Partha Roy had taken possession of the row-house. In March 2005, U.B.I. had informed MPL of defaults in loan repayment. Eventually, U.B.I. had declared the row-house a Non-Performing Asset. By letter dated 2nd March, 2005, U.B.I. had warned

the borrowers of overdue EMIs and indicated that MPL should not transfer the row-house in case of further default.

9. No payment had been made and on 24th April, 2007, U.B.I. had issued a notice under Section 13(2) of the SARFAESI Act demanding repayment. By notice dated 06.08.2007, U.B.I. had informed the borrowers of possession being taken on 17th August, 2007 at 1:00 p.m. On the same day, Pandav Roy and Partha Roy had moved W.P. No. 18936(W) of 2007 before this Court. An interim order had been obtained but vacated on 24th August, 2007.

10. U.B.I. had taken possession on 17th August, 2007 and informed MPL by letter dated 27th August, 2007 enclosing the possession notice and inventory minutes, confirming physical possession by U.B.I.'s Authorized Officer in presence of witnesses and Partha Roy. The Learned Advocate representing the petitioners had submitted that this action had enraged Partha Roy, who then lodged a false complaint leading to Bhowanipore P.S. Case No. 90 of 2008 dated 5th April, 2008 under Sections 420/427/120B IPC.

11. By letter dated 21st April, 2008, U.B.I. had confirmed to MPL that it had sold the property to Murarka Advisory and Holdings and instructed MPL to execute the Deed of Conveyance. The criminal case had been investigated and found civil in nature, leading to Final Report No. 17 of 2010 dated 11th February, 2010.

12. The Final Report had stated that no criminal conspiracy had been found between MPL and U.B.I.'s Branch Manager Supriya Sengupta and recommended discharge. Notice had been issued to Partha Roy, who had filed a Narazi petition under Section 173(8) CrPC seeking further

investigation. The Learned Magistrate, by order dated 19th June, 2010, had rejected the Narazi petition, accepted the final report, and discharged the accused including Supriyo Sengupta.

13. In the said order dated 19th June, 2010, the Learned Chief Judicial Magistrate had observed that the sale had been under the SARFAESI Act and there had been no grounds to presume any offence under Sections 420/427/120B IPC. Partha Roy had assailed the order in C.R.R. No. 2929 of 2010. The Single Bench of this Court had dismissed the same by judgment dated 24.3.2011.

14. Meanwhile, Pandav Roy and Partha Roy had moved the State Consumer Disputes Redressal Commission in S.C. Case No. 07/0/2007. By order dated 24th February, 2009, the Commission had directed execution of the Deed of Conveyance. MPL had challenged this in First Appeal No. 128 of 2009 before the National Consumer Disputes Redressal Commission, which had granted a stay on 20.04.2009.

15. Thereafter, Partha Roy had again filed an application under Section 156(3) CrPC against MPL and its officials. Pursuant to this, Bishnupur P.S. Case No. 526/09 dated 25.09.2009 under Section 420/406 IPC had been registered. Additionally, Jadavpur P.S. Case No. 131/2010 dated 11.03.2010 under Sections 471/465/468/506/120B/384 IPC and Sections 66A/66B/66C/72/77A of the I.T. Act had also been registered.

16. Pandav Roy and Partha Roy had also begun a verification campaign, circulating defamatory emails and blogs against MPL and its officials. MPL had filed C.S. No. 170 of 2010 for defamation. Hon'ble Justice Sanjib Banerjee, by order dated 29th June, 2010, had observed that Partha Roy

and family had embarked on a scheme of publishing defamatory material and granted an injunction.

17. By further order dated 27.07.2010, this Court had disposed of the interlocutory application in C.S. No. 170 of 2010, confirmed the injunction and awarded costs of Rs. 5,100/-. Due to violation of this order, contempt proceedings had been initiated by issuance of Contempt Rules in C.C. No. 137 of 2010 dated 10.9.2010.

18. MPL and the petitioner had also filed another defamation suit, T No. 42 of 2010, against Nilmani Dutta, advocate for Partha Roy and Pandav Roy. By order dated 21.10.2010, an interim order had been passed. Contempt proceedings in C.C. No. 163 of 2010 had also been initiated against the said advocate by order dated 06.01.2011.

19. Finally, by order dated 11.03.2011 in C.S. No. 170 of 2010, this Hon'ble Court had observed that a case of defamation had been made out and granted an injunction restraining further publication of the impugned blogs and directed immediate removal. The petitioner had stated that Partha Roy and his family had continued to launch frivolous civil and criminal proceedings to harass and humiliate the petitioners and others, despite the fact that the row-house had not been repossessed by MPL but by U.B.I. under the SARFAESI Act.

20. The petitioner had further filed a petition of complaint before the Learned Chief Judicial Magistrate, Alipore, South 24 Parganas under Sections 500/34 of the Indian Penal Code, which had been numbered as Complaint Case No.5552 of 2010 against the husband of the opposite party no.2, namely Sri Partha Roy, and others. Process had been issued therein and the complaint case had been pending.

21. The petitioner had thereafter lodged a written complaint against the husband of the opposite party no.2, namely Sri Partha Roy, and others, pursuant whereto a criminal case had been registered for investigation at Jadavpur Police Station under Sections 66A/778 of the Information Technology Act, 2000 read with Section 34 of the Indian Penal Code.
22. Another case alleging forgery and extortion had been started at Bhowanipore Police Station at the behest of MPL against the said Sri Partha Roy. The prayer for bail of Sri Partha Roy had been refused by the Learned Courts below and had subsequently been granted by this Hon'ble Court. Upon conclusion of investigation, the Investigating Agency had submitted a charge-sheet against the said Sri Partha Roy.
23. Notwithstanding the injunction orders and contempt rules passed by this Hon'ble Court, the vilification campaign via blogs, emails, and SMS had continued against MPL and the petitioner, allegedly orchestrated by Sri Pandav Roy, Sri Partha Roy and their associates.
24. On 16.05.2011, Sri Partha Roy had filed a petition of complaint before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, alleging offences punishable under Sections 406/420/427/430/380 of the Indian Penal Code. The same had been numbered as A.C. No. 605/2011 (T.R. No. 197/2011). By order dated 16.05.2011, the Learned Magistrate had taken cognizance and made over the case to the Learned 9th Judicial Magistrate, Alipore, South 24 Parganas for enquiry and disposal.
25. On 02.06.2011, the opposite party no.2 had been examined on solemn affirmation. By order dated 02.06.2011, process had been issued against the petitioner, and 15.07.2011 had been fixed as the next date.

26. The said complaint case had been assailed by MPL and the petitioner under Section 482 CrPC before this Hon'ble Court in CRR No. 2159 of 2011, and further proceedings therein had been stayed.

27. Meanwhile, upon conclusion of the investigation in Jadavpur Police Station Case No.131/2010 dated 11.03.2010, the Investigating Agency had submitted Final Report No.312/2011 dated 14.06.2011, declaring the case a mistake of law. Upon submission of the final report, notice had been issued to the opposite party no.2, who had entered appearance and filed a Narazi petition praying for re-investigation

28. On 05.01.2013, the opposite party no.2 had filed a petition praying for issuance of process. By the impugned order dated 05.01.2013, the Learned Additional Chief Judicial Magistrate had converted the case into a complaint case, taken cognizance under Sections 465/468/471/506/120B of the IPC, and transferred the matter to the Learned 5th Judicial Magistrate, Alipore.

29. The opposite party no.2 had thereafter been examined under Section 200 CrPC. By order dated 29.06.2013, the Learned 5th Judicial Magistrate had issued process under Sections 465/468/469/506/120B of the IPC against the petitioner and two others.

30. The petitioner had prayed that in view of the abuse of process and absence of prima facie case, this Hon'ble Court may be pleased to invoke its inherent powers under Section 482 CrPC and quash the proceedings including the orders dated 05.01.2013 and 29.06.2013.

31. The Learned Advocate for the petitioners submitted that the Learned Magistrate, while passing the impugned order dated 05.01.2013 converting the case into a complaint case and taking cognizance, had

failed to appreciate that although the opposite party no.2 had prayed for further investigation and had filed a Narazi petition, she had abandoned such prayer at the time of hearing on 05.01.2013. The opposite party no.2 had instead prayed for conversion of the case to a complaint case to continue to harass and humiliate the petitioner by prosecuting him with allegations that had neither any factual nor legal basis.

32. It had been further submitted that when the Investigating Agency had, upon full and complete investigation, filed a Final Report, there had been no requirement for the Learned Magistrate to convert the case into a complaint case without recording any specific finding that the materials on record justified taking of cognizance. The Learned Magistrate had passed the impugned order dated 05.01.2013 merely on the basis of the prayer of opposite party no.2 without independently assessing the materials on record or recording reasons.

33. The Learned Advocate for the petitioners submitted that the Learned 5th Judicial Magistrate, Alipore, South 24 Parganas had issued process vide the impugned order dated 29.06.2013 under Sections 465/468/469/506/120B of the Indian Penal Code in a mechanical manner without appreciating the background of the case.

34. It had been further submitted that MPL had never cheated the complainant or her family members out of rightful ownership and occupancy of the row house. It had been denied that MPL had not transferred the said property in favour of the husband of the complainant even after receiving full payment. It had been submitted that the husband and son of the complainant had obtained a housing loan from UBI by creating an equitable mortgage and had defaulted in making payments,

following which UBI had, under SARFAESI, repossessed the property and transferred it to a third party, in which MPL had no role.

35. The Learned Advocate for the petitioners submitted that the application under Section 156(3) CrPC moved on 10.03.2010 had suppressed the fact that the order of the State Commission had already been stayed by the National Commission.

36. It had been argued that in Bhowanipore Police Station Case No. 90 of 2008 dated 5th April, 2008 under Sections 420/427/120B IPC, the complainant had falsely claimed that for 23 months no legally tenable report had been filed, whereas the investigation had ended with Final Report No. 17 of 2010 dated 11.02.2010 declaring the case to be civil in nature. The Learned Magistrate had discharged the accused upon hearing both parties, but such fact had been suppressed by the complainant in the Section 156(3) CrPC application.

37. It had further been submitted that the said Bhowanipore P.S. Case had been fully investigated and found to be of civil nature. The order of the Learned Magistrate accepting the Final Report had been challenged in CRR No. 2929 of 2010 by the husband of the opposite party no.2, which had been dismissed by this Hon'ble Court on 24.03.2011.

38. The Learned Advocate for the petitioners submitted that the uncontroverted allegations in the instant case did not give rise to any reasonable suspicion regarding commission of cognizable offences. The foundation of the allegations of forgery had been based on the act of one Sri Navneet Baheti, allegedly a former employee of ICICI Bank, who had used the CIBIL Member ID Code of ICICI Bank to request information about the complainant and her family members. Such use had not

constituted the making of a false document under Section 464 IPC. There had been no impersonation or false transmission of electronic records.

39. The Learned Advocate for the petitioners submitted that merely making a false statement in a document did not render the document forged. For a document to be false under Section 464 IPC, it must have been made to appear as if executed by someone else or under someone's authority. If a person had executed a document for a property not owned by him, it did not make the document a false one within the meaning of Section 464.

40. It had been further submitted that inclusion of a false statement in a document did not ipso facto make the document false; for a document to be false, it had to tell a lie about itself.

41. The Learned Advocate for the petitioners submitted that the request made to CIBIL could not be said to have been made by someone impersonating another, and the ingredients of the offence under Section 464 IPC were not satisfied. Consequently, the offences under Sections 465/468/469 IPC had not been made out.

42. It had also been submitted that the FIR did not disclose the ingredients of Section 506 IPC. The Learned Magistrate had failed to scrutinise the contents of the G.R. case or the impugned complaint, and had remained a silent spectator at the stage of preliminary evidence.

43. It had been contended that judicial proceedings under Section 190(1)(a) CrPC or directions under Section 156(3) CrPC must be based on full disclosure and clean hands. Deliberate suppression of facts was impermissible.

44. The Learned Advocate for the petitioners submitted that the Learned Magistrate while passing the order dated 29.06.2013 had failed to

appreciate that summoning an accused was a serious matter. The Magistrate had not scrutinised the evidence carefully or put questions to ascertain the truth of the allegations.

45. It had been further submitted that repeated complaints over the same incident were impermissible, and the Hon'ble Apex Court and this Hon'ble Court had deprecated such conduct. The initiation of the impugned proceedings had been done with an ulterior and oblique motive to harass the petitioner.

46. It had been submitted that the allegations in the impugned complaint did not disclose any ingredients of the offences under Sections 465/468/469/506/120B IPC. There had been no specific material against the petitioner to justify the continuation of the proceedings, and the proceedings had been an instrument of harassment.

47. The Learned Advocate for the petitioners submitted that disputes of civil nature should not be converted into criminal proceedings. The instant criminal proceedings had been initiated to put pressure on the petitioner and had amounted to abuse of process of court.

48. It had submitted that the proceedings and all orders passed therein, including the impugned order dated 29.06.2013, were liable to be quashed under Section 482 CrPC to prevent abuse of process and to secure the ends of justice

49. The learned advocate for the petitioners submitted that Vikash Mimani had been the Project Manager of Merlin Projects Limited (MPL) at the relevant time when the impugned proceedings had been initiated. Sushil Mohta had been the Managing Director of MPL, and Navneet Baheti, a distant relation of Sushil Mohta, had no involvement with MPL.

50. It had been submitted that on or about 1st May, 2003, an agreement for sale and/or allotment had been executed between MPL and Pandav Roy (son of the opposite party no.2) along with her husband, Partha Roy, for the purchase of a row-house in the Merlin Greens project at a consideration of Rs. 16,25,000/-. A supplementary agreement had also been entered for providing recreation facilities at a club named "IBIZA".

51. MPL had thereafter, by a letter dated 25.8.2003, intimated the said purchasers that the row-house was ready and called upon them to make payment and take possession. Pandav Roy and Partha Roy had applied for a housing loan from Union Bank of India (UBI), which had been sanctioned on 22nd January, 2004, for Rs. 15 lakhs. Pursuant thereto, a Pay Order of Rs. 13,81,250/- had been issued on 25th February, 2004, as part of a Tripartite Agreement dated 21st January, 2004. However, the remaining sum of Rs. 1,18,750/- had never been disbursed for reasons best known to UBI.

52. On or about 20th April, 2004, possession of the row-house had been taken by the said purchasers. However, in March 2005, MPL had been intimated by UBI that there had been a default in repayment of the EMIs. Despite repeated reminders including the letter dated 2nd March, 2005 from the Branch Manager of UBI, the dues had not been cleared. Consequently, UBI had issued a notice dated 24th April, 2007 under Section 13(2) of the SARFAESI Act demanding payment and subsequently, by a notice dated 6.8.2007, had informed of its intent to repossess the property on 17th August, 2007.

53. It had further been submitted that UBI had taken possession of the said property and had forwarded the possession notice and minutes of

inventory to MPL, which had been countersigned by Partha Roy. On 21st April, 2008, UBI had issued a Sale Certificate in favour of Murarka Advisory and Holdings and instructed MPL to execute the deed of conveyance in its favour.

54. The learned advocate for the petitioners submitted that the husband of the opposite party no.2, Partha Roy, had become enraged by the repossession and in retaliation, had lodged a false FIR which had been registered as Bhowanipore Police Station Case No. 90 of 2008 dated 5th April, 2008 under Sections 420/427/120B of the Indian Penal Code against Sushil Mohta, Vikash Mimani and Supriyo Sengupta of UBI.

55. It had been submitted that upon investigation, the Final Report No. 17 of 2010 dated 11th February, 2010 had been filed by the investigating agency, declaring the dispute to be civil in nature. The report had stated that no criminal conspiracy could be established, and that the dispute had stemmed from non-payment of dues to MPL and UBI. The Learned Chief Judicial Magistrate, Alipore, by an order dated 19th June, 2010, had accepted the final report and discharged all accused persons.

56. The order dated 19th June, 2010 had observed that the property had been sold in accordance with the SARFAESI Act and there had been no ground to presume commission of offences under Sections 420/427/120B of the Indian Penal Code.

57. The learned advocate for the petitioners submitted that the said order had been assailed before this Hon'ble Court in C.R.R. No. 2929 of 2010. By a judgment and order dated 24th March, 2011, His Lordship the Hon'ble Mr. Justice Ashim Kumar Banerjee had dismissed the said revisional application and affirmed the acceptance of the final report.

58. It had been further submitted that despite such finality, the opposite party no.2 had filed a second criminal case being Jadavpur Police Station Case No. 131 of 2010 dated 11th March, 2010 under Sections 471/465/468/506/120B/384 of the Indian Penal Code and Sections 66A/66B/66C/72/72A of the Information Technology Act, 2000. The application under Section 156(3) of the Code of Criminal Procedure had been verified and filed on 2nd March, 2010, while suppressing the fact that Final Report No. 17 of 2010 had already been filed in the previous case.

59. The learned advocate for the petitioners submitted that such suppression amounted to an abuse of the process of court. Reliance had been placed on *Prem Chand Singh v. State of U.P.*, (2020) 3 SCC 54, where the Hon'ble Apex Court had held that subsequent FIRs based on the same substratum were impermissible. The relevant paragraphs are given below:-

> ***"11.*** *It is, therefore, apparent that the subject-matter of both the FIRs is the same general power of attorney dated 2-5-1985 and the sales made by the appellant in pursuance of the same. If the substratum of the two FIRs are common, the mere addition of Sections 467, 468 and 471 in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds.*

i. Reference had also been made to *Ashutosh Sarkar and Ors. v. Naturam Das @ Rajjak & Anr.*, 1990 C.Cr.L.R. (Cal) 174, where it had been held that suppression of material facts by the complainant vitiated criminal proceedings and warranted exercise of inherent powers for quashing the same. This Court in paragraph no. 6 held as follows:-

"Now let me consider in the above proposition of law as discussed above whether it is permissible for this Court to exercise the inherent powers to quash the instant proceeding as prayed for by the petitioners. The main ground for quashing the proceeding, as has been indicated earlier, is that the complainant (opposite party no. 1) obtained process against the present petitioners by supressing some material facts which were very much within his knowledge and that if those facts would have been disclosed in the petition of complaint, the learned S.D.J.M. would not have issued process against the petitioner and that if the present petitioners prove those facts by producing the documents the copies of which have been made annexures to the instant revisional petition, the learned Magistrate would have no other alternative but to acquit the petitioners.

Had those facts been disclosed in the petition of complaint then there can be no manner of doubt that the learned S.D.J.M. would not have issued processes against the present petitioners. If the petitioners prove these facts by producing the aforesaid documents at the time of trial of the instant proceeding which is a summons case, then the learned Magistrate would have no alternative but to acquit the present petitioners of the offences alleged to have been committed by them. In such circumstances it appears that the continuance of the present proceeding amounts to an abuse of the process of the Court and it intends to cause harassment to the petitioners. It also appears from the certified copy of the judgment and decree passed in title suit no. 56 of 1984 of the 2nd Court of Assistant District Judge, Hooghly that sometimes after the alleged date of occurrence i.e. on 14.7.84, the present petitioner no. I filed a suit against the complainant and two others for declaration of title and permanent injunction in respect of the disputed plot. As subsequent to the institution of the suit, the defendant no. 2 forcibly entered into the suit property on 27.4.84 and raised a chalaghar thereon, the plaintiff of that suit also prayed for recovery of possession. Ultimately, the suit was decreed in favour of the plaintiff who got a decree for declaration of his title to and recovery *of possession of the disputed plot against the defendant no. The dispute about title to and possession of the disputed plot appears to have been set at rest by the judgment and decree of the aforesaid competent Court. Be that as it may. For the reasons given above the continuance of the present proceeding in the facts and circumstances of the case amounts to an abuse of the process of the Court and this Court, therefore, must exercise its inherent powers and quash the said proceeding. In the result, the instant revisional petition is allowed. The rule is made absolute. The impugned proceeding i.e. C.R. Case No. 357 of 1984 pending before the learned S.D.J.M., Serampore is hereby quashed."*

60. Further reliance had been placed on *Tajmul Hossain Shah @ Taju Shah & Anr. v. The State of West Bengal and Anr.*, 2006 (1) C.Cr.L.R. (Cal) 177, where it had been held that the complainant had misled the court by not disclosing prior complaints over the same incident. This Hon'ble Court in paragraph no. 7 held as follows:-

"The learned CJM allowed the prayer and, in terms of such direction after receiving the complaint at the P.S., the Dantan P.S. Case No. 67 dated 12.7.05 has been started against the petitioners. In the third complaint the opposite party No. 2, the de facto complainant did not mention at all that previously he filed two complaints relating to same incident before the learned Judicial Magistrate at Dantan. It is manifestly clear that by suppressing material fact the de facto complainant approached the Court of the learned CJM at Midnapore and misied the Court to pass an order for sending the complaint to Dantan P.S. for investigation. Had it been disclosed in the complaint or FIR that over self same incident dated 2.5.05 relating to taking away of daughter of the complainant by the petitioners he earlier lodged two complaints against the petitioners in the Court of the learned Judicial Magistrate at Dantan, the

learned CJM would not have passed the order directing investigation under Section 156(3) of the Code."

61. Lastly, *Raymond Ltd (JKFT Division) v. HV Doshi & Bros Pvt Ltd*, 2006 (1) CHN (Cal) 578, had been cited to argue that suppression of earlier proceedings and material facts in a fresh complaint constituted an abuse of process and the complainant had not come to court with clean hands. This Hon'ble Court in paragraph nos. 28 and 30 held as follows :-

> *"28. In the petition of complaint filed by the O.P. as complainant it was completely suppressed by O.P. that the accused No. 1 company had earlier filed two complaint cases against it for dishonour of the cheques and the said cases are pending before the learned Metropolitan Magistrate, 33rd Court, Ballard Estate, Mumbai. The complainant also suppressed the fact of fling writ application before this Court for quashing the criminal proceeding and also challenging the jurisdiction of Mumbai Court to take cognizance of offence and made no whisper in the complaint that the said writ application was before this Court for quashing the criminal proceeding and also challenging the jurisdiction of Mumbai Court to take cognizance of offence and made no whisper in the complaint that the said writ application was dismissed by this Court. It is clear, therefore, that the complainant came to the Court not with clean hands and supressed material facts which were veryvital. If all those facts were disclosed before the learned Metropolitan Magistrate, the learned Magistrate would have been hesitant to issue process against the accused petitioners. Filing of complaint suppressing vital and material facts in this matter amounts to abuse of process of law.*
>
> *30. The suppression of material facts in the petition of complaint is a vital and serious matter for which the Court can treat that the complainant came to Court not with clean hands. In this connection the decisions cited by Mr. Mukherjee for the petitioner are pertinent.*

In Sundar Das Loghani vs. Fardun Rustom Irani (supra), a Division Bench of this Court affirmed the order of discharge by the learned Magistrate in a case in which the learned Magistrate after hearing both sides and examining some documents reached the conclusion that the complainant petitioner had deliberately suppressed several facts in his petition of complaint and that the complaint was a thoroughly dishonest."

62. Accordingly, the learned advocate for the petitioners submitted that the impugned proceedings were not maintainable in law and were liable to be quashed under Section 482 of the Code of Criminal Procedure to prevent abuse of process and to secure the ends of justice.

63. The learned advocate for the petitioners submitted that the present case had stemmed from Jadavpur Police Station Case No. 131/2010 dated 11th March, 2010. Upon conclusion of a full and complete investigation, the Investigating Agency had submitted a Final Report being Final Report No. 312/2011 dated 14.6.2011, classifying the case as a mistake of law. Upon presentation of the said report before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, notice had been issued upon the de-facto complainant being the opposite party no.2.

64. The learned advocate for the petitioners submitted that the opposite party no.2, having entered appearance, had initially filed a Narazi Petition praying for re-investigation. However, on 5.1.2013, she had filed a petition praying for issuance of process, and the Learned Additional Chief Judicial Magistrate, Alipore, had by the impugned order dated 5.1.2013, directed the case to be registered as a complaint case, taken cognizance under Sections 465/468/471/506/120B of the Indian Penal Code, and

transferred the case to the Learned 5th Judicial Magistrate, Alipore, South 24 Parganas.

65. The learned advocate for the petitioners further submitted that thereafter, the opposite party no.2 had been examined under Section 200 of the Code of Criminal Procedure, and by order dated 29.6.2013, the Learned 5th Judicial Magistrate, Alipore, South 24 Parganas, had issued process under Sections 465/468/469/506/120B of the Indian Penal Code.

66. It had been submitted that the opposite party no.2, having herself abandoned her prayer for further investigation and having chosen to proceed as a complaint case based on the materials collected by the police, could not now be permitted to inject new facts. It had been further urged that the submissions made by the opposite party no.2, as recorded in the impugned order dated 5.1.2013, indicated that she had expressly confined her case to the materials available in the police record and the Final Report.

67. The learned advocate for the petitioners submitted that the fresh facts introduced by the opposite party no.2 in paragraph 3 of her Affidavit-in-Opposition in CRR 168 of 2014, and the annexures SA/1, SA/2, and SA/5, being untested and private documents, could not be relied upon by this Hon'ble Court while exercising its revisional jurisdiction.

68. It had further been submitted that in the petition under Section 156(3) CrPC forming the basis of Jadavpur Police Station Case No.131/2010, the opposite party no.2, despite referring to emails in paragraphs 12 and 14, had not mentioned any dates therein. However, in paragraph 23, reference had been made to an email dated 7.10.2009 allegedly sent by a co-accused to the learned Advocate of the opposite party no.2 regarding

the CIBIL report. Hence, it had been contended that the alleged cause had arisen prior to 27.10.2009—the effective date of the amendment to the Information Technology Act.

69. The learned advocate for the petitioners argued that the provisions of the Information Technology Act could not be applied retrospectively, in view of Article 20(1) of the Constitution of India. The Investigating Agency, while filing Final Report No.312/2011 dated 14.6.2011, had concluded that the offence had allegedly taken place on 22.9.2009.

70. The learned advocate for the petitioners submitted that since the opposite party no.2 had chosen not to rely on the result of the investigation and proceeded by way of a private complaint, she could not selectively rely on police materials. It had been contended that the dispute was civil in nature and had attained finality before civil forums, and hence the continuation of the criminal proceedings would amount to an abuse of process.

71. The learned advocate for the petitioners submitted that the allegations of forgery under Sections 465/468/469 IPC had not been made out. The allegations related to one Navneet Baheti, allegedly a former employee of ICICI Bank, having used the CIBIL Member ID Code to obtain information from CIBIL. It had been submitted that the act of using a Member ID Code to obtain a credit report could not amount to making a false document under Section 464 IPC.

72. In support of this contention, reliance had been placed on the judgment in *J. Th. Zwart & Ors. Vs. Indrani Mukherjee*, reported in 1989 SCC OnLine Cal 289: (1990) 1 CHN 62, wherein the Hon'ble Division Bench had held that inclusion of a false statement in a document would not ipso

facto make the document false unless it told a lie about itself. A Hon'ble Division Bench of this Hon'ble Court in paragraph 12 thereof held as follows:-

> *"12. The allegation in the complaint is that the contents of the two documents dated 3.2.89 and 30.3.89 are false and that they have been manufactured to sustain a false charge against the complainant. In our considered view incorporation or inclusion of a false statement in a document would not ipso facto make the document false for a document to be false it has to tell a lie about itself. In the instant case the documents were admittedly written and signed by Sri S.N. Banerjee and therefore it would not be false even if the complainant's receipt of Rs. 1510/- from Sri Banerjee as contained therein was a lie."*

73. Further reliance had been placed on *Sheila Sebastian v. R. Jawaharaj*, (2018) 7 SCC 581, where it had been held that a charge of forgery could not lie against a person who was not the maker of the false document, and that penal provisions could not be expanded by implication.

> ***"25.*** *Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery."*

74. It had also been submitted that the institution of the criminal proceedings had been actuated by mala fide and squarely fell within Category 7 of the illustrative grounds laid down in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335:-

> ***"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 have given 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."

75. The learned advocate had relied on paragraph 15 of *Haji Iqbal alias Bala Vs. State of U.P.*, 2023 SCC OnLine SC 946, to argue that in frivolous or vexatious proceedings, the Hon'ble Court could look into attending circumstances beyond the pleadings in the FIR or complaint:-

> ***"15.*** *At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for*

wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

76. The learned advocate for the petitioners submitted that the entire dispute had already been adjudicated upon in the consumer forum. A complaint had been filed by Pandav Roy and the opposite party no.2 in State Consumer Disputes Redressal Commission, West Bengal in S.C. Case No. 07/0/2007, and by order dated 24.2.2009, directions had been given for execution of the Deed of Conveyance. MPL had filed First Appeal No.128

of 2009 before the National Commission, which had been dismissed on 23.5.2014.

77. The learned advocate submitted that the said dismissal had been assailed before the Hon'ble Supreme Court in Civil Appeal No.6849 of 2015, and by order dated 1.9.2015, the Hon'ble Apex Court had remanded the matter to the State Commission. On 10.4.2017, compensation had again been awarded, but the order had been set aside by the National Commission on 19.2.2019. In the third round, the State Commission had passed an order dated 13.8.2019 directing MPL to pay Rs.50,00,000/- in lieu of the property (after deducting Rs.25,00,000/- already deposited), Rs.10,00,000/- as compensation and Rs.1,00,000/- as costs.

78. The learned advocate submitted that both parties had filed appeals being First Appeal No.1822 of 2019 and First Appeal No.1868 of 2019, and by a common judgment dated 4.1.2022, the National Commission had directed payment of Rs.25,63,896/-, Rs.5 lakhs each as compensation from Opposite Party Nos. 1 & 3, and Rs.50,000/- each as litigation cost, failing which interest at 9% p.a. would apply.

79. It had further been submitted that MPL had filed SLP (C) Nos.5211-5212 of 2022 before the Hon'ble Supreme Court, but the same had been dismissed on 21.2.2023. Thereafter, MPL had complied with the common judgment dated 4.1.2022.

80. The learned advocate for the petitioners accordingly submitted that since the civil dispute had attained closure and compensation had been paid, no cause survived in the impugned criminal proceedings, and the same was liable to be quashed.

81. The learned Advocate for the respondent no. 2 submitted that the respondent no. 2 had filed the Note on Arguments in connection with CRR No. 168 of 2014, CRR No. 656 of 2014, and CRR No. 657 of 2014, as directed by this Hon'ble Court vide order dated 31.08.2023, tagging together the Revisional Applications filed by Sushil Mohta, Vikas Mimani, and Navneet Baheti.
82. The learned Advocate for the respondent no. 2 submitted that the respondent no. 2 had brought to the attention of this Hon'ble Court the question as to whether a High Court could intervene in a matter under adjudication before the Judicial Magistrate's Court, especially when the commission of offences had been established in the Charge Sheet/Police Report and proceedings had been initiated accordingly. It had been submitted that the Hon'ble High Court would not ordinarily interfere in such matters when the FIR and Charge Sheet had already been filed based on evidence and where prima facie offences had been established.
83. The learned Advocate for the respondent no. 2 had placed reliance on excerpts from the Charge Sheet/Final Report dated 13.08.2011 filed by the Inspector-in-Charge, Jadavpur Police Station, which had admitted to the commission of offences as reported in the FIR. The Charge Sheet had contained specific findings that:

    a) Vikas Mimani, on behalf of Merlin Projects Ltd., a company headed by Sushil Mohta, had sent offensive emails to the respondent no. 2 and had also posted such material on the internet. Both Sushil Mohta and Vikash Mimani had been found liable under Section 66A of the I.T. Act.

b) Sushil Mohta had received stolen CIBIL reports of the respondent no. 2 and the son of the respondent no. 2 via email from Navneet Baheti, who had obtained them using personal information provided by Sushil Mohta. Both had been found liable under Section 66C of the I.T. Act.

c) Navneet Baheti had fraudulently accessed the CIBIL database using ICICI Bank credentials and had been found liable under Section 66C of the I.T. Act.

d) Sushil Mohta and Navneet Baheti had obtained the CIBIL reports using forged electronic documents and had been found liable under Section 72 of the I.T. Act.

e) Sushil Mohta and Vikash Mimani had circulated confidential information without consent and had been found liable under Section 72A of the I.T. Act.

f) The accused persons had committed forgery with intent to cheat the family of the respondent no. 2 of their property and had been found liable under Sections 468/120B of the IPC.

84. Reference had been made to the Charge Sheet/Final Report dated 13.08.2011 annexed as Annexure P/20 at pages 161 to 165 of CRR No.168/2014, and to Exhibits SA1 and SA2 of the Affidavit-in-Opposition dated 08.04.2024.

85. The learned Advocate for the respondent no. 2 submitted that although the commission of offences had been confirmed, the police had made

factually incorrect statements in the said Charge Sheet by stating that the amended I.T. Act had not come into force at the time of the offence. The Charge Sheet had claimed that the Act came into effect on 27.10.2009 and that the offence had occurred earlier. However, the email with the CIBIL reports had been circulated on 31.10.2009 at 15:20 hrs, as per Exhibit SA2.

86. The learned Advocate for the respondent no. 2 submitted that the concerned officers, including the Inspector-in-Charge and the Dy. Superintendent of Police, had suppressed material facts, omitted to attach the email in question, and thereby wrongfully declared the matter as a "Mistake in Law" in Final Report No.312 dated 14.06.2011.

87. The learned Advocate for the respondent no. 2 submitted that a 'Narazi Petition' had been filed against the said Charge Sheet/Final Report and the Court of the Hon'ble Chief Judicial Magistrate, Alipore, had found sufficient grounds under Sections 465/506/468/471/120B IPC and had taken cognizance on 05.01.2013. The said case had been registered as a complaint and transferred to the Learned Judicial Magistrate, 5th Court, Alipore for enquiry under Section 200 Cr.P.C. Reference to this order had been made at page 174 of CRR No.168 of 2014.

88. The learned Advocate for the respondent no. 2 submitted that upon receipt of directions from the CJM, the Learned Judicial Magistrate had summoned the accused on 01.10.2013. While Vikas Mimani and Navneet Baheti had surrendered and were granted bail, Sushil Mohta had failed to appear and had absconded. He had then filed CRR No.168 of 2014 before this Hon'ble Court, and the warrant of arrest issued against him had been held in abeyance upon the intervention of this Hon'ble Court.

89. The learned Advocate for the respondent no. 2 submitted that despite such intervention, Sushil Mohta had not appeared before the Investigating Court for the last 12 years and had misused the process to delay proceedings. It had further been submitted that Sushil Mohta, being a powerful promoter with high-level police and political contacts, had received assistance from senior police officials who had made incorrect statements to favour him and his associates.

90. The learned Advocate for the respondent no. 2 submitted that during hearings of CRR No.168 of 2014, it had falsely been claimed that the respondent no. 2 could not be served notice as the respondent no. 2 was missing. However, records had shown that the respondent no. 2 and the learned Advocate for the respondent no. 2 had regularly appeared in proceedings before the Learned Judicial Magistrate in AC-60/2013, and thus the claim had been made mala-fide. Further reference had been made to the hearing on 16.01.2023, when the learned Advocates for Sushil Mohta had not disclosed that the respondent no. 2 was alive and present, even as the Hon'ble Court had directed the State to verify if the respondent no. 2 was alive.

91. The learned Advocate for the respondent no. 2 submitted that Sushil Mohta had thereby mala-fidely delayed both CRR No.168 of 2014 and the case AC-60/2013 for over a decade, causing the respondent no. 2 severe pecuniary loss, health deterioration and emotional trauma.

92. The learned Advocate for the respondent no. 2 submitted that the background to the criminal intimidation and email harassment arose from the consumer dispute filed as SC/07/2007 before the Hon'ble State Consumer Disputes Redressal Commission, West Bengal, by the husband

and son of the respondent no. 2. It had been alleged therein that M/s Merlin Projects Ltd., headed by Sushil Mohta, had failed to execute a sale deed for premises no. B-15, Merlin Greens, despite full payment and had wrongfully evicted the family by withdrawing essential services.

93. The learned Advocate for the respondent no. 2 submitted that despite a final order passed on 29.04.2009 by the Hon'ble State Commission directing the promoter to transfer title and pay compensation of Rs.50,000/- with costs of Rs.10,000/-, it had come to light that the property had already been sold on 20.11.2008 to a third party, M/s. Murarka Advisory & Holdings Pvt. Ltd.

94. The learned Advocate for the respondent no. 2 submitted that the promoter had challenged the State Commission's order before the Hon'ble NCDRC, which after 16 years of litigation, had passed a final order dated 04.10.2022 directing M/s Merlin Projects Ltd. to pay Rs.25,86,893/- in lieu of the property, Rs.5,00,000/- as compensation and Rs.50,000/- as costs. Union Bank of India had also been directed to pay Rs.5,00,000/- for withholding disbursal of funds and Rs.50,000/- as costs. The Hon'ble Supreme Court had rejected the promoter's challenge on 23.02.2023 and payments had been made accordingly. These orders had been annexed to the Affidavit-in-Opposition.

95. The learned Advocate for the respondent no. 2 submitted that during the pendency of litigation, it had been discovered that the promoter had violated a restraining order dated 24.08.2008 passed in W.P. No.18936 of 2007 by selling the suit property. It had further been discovered that the property had been fraudulently shown as belonging to M/s. Merlin

Projects Ltd., while the sale deed dated 20.11.2008 had recorded the owner as M/s. Best Property Consultancy & Services Pvt. Ltd.

96. The learned Advocate for the respondent no. 2 submitted that the respondent no. 2 and the family of the respondent no. 2 had suffered extreme trauma. The respondent no. 2 had developed diabetes, incurring costs of Rs.5,000/- per month since 2014, amounting to Rs.6,60,000/- till date. The respondent no. 2 had incurred litigation and travel costs of approximately Rs.5 lakhs. The son of the respondent no. 2, Pandav Roy, a post-graduate in Computing from the University of Liverpool who had been employed in the United Kingdom, had suffered severe mental trauma upon learning of the loss of the family home. He had become permanently disabled with a certified 70% disability rating under the PWD Act. The projected loss of earnings had been quantified as Rs.10,32,00,000/- based on expected future income.

97. The learned Advocate for the respondent no. 2 concluded by praying for dismissal of CRR Nos.168/2014, 656/2014 and 657/2014 with costs and compensation. The learned Advocate for the respondent no. 2 further prayed that Sections 66A, 66B, 66C and 72 of the Information Technology Act, 2000 (Amended 2008), may be restored in view of the Charge Sheet dated 03.08.2011 submitted by the Officer-in-Charge, Jadavpur Police Station.

98. Dispute between the parties originated on account of failure on the part of the opposite party no. 2 and her family to have failed to pay the instalment for obtaining a housing loan of Rs.15 Lakhs from the Union Bank of India, Sarat Bose Road, through an application dated 15.10.2003 at the instance of the petitioner no. 1/Sushil Mohta in CRR 168 of 2014

and petitioner no. 1/ Vikash Mimani in CRR 656 of 2014 which allegedly facilitated the opposite party no. 2 in obtaining the aforesaid housing loan from the Union Bank of India.

99. The petitioner no. 1/Sushil Mohta in CRR 168 of 2014 and petitioner no. 1/ Vikash Mimani in CRR 656 of 2014 had been engaged in with M/s. Merlin Projects Ltd. in the capacity of Director and Project Manager. It further appeared that in pursuance of an agreement with the aforesaid M/s. Merlin Projects Ltd. for purchasing a row house at the consideration of Rs. 16,25,000/-, a tripartite agreement was executed between the husband and son of the opposite party no. 2 and M/s Merlin Projects Ltd. as well as the Union Bank of India.

100. The aforesaid bank directly disbursed the loan amount to the M/s. Merlin Projects Ltd. before registration of deed. The intending purchasers, pending registration of the deed, had paid certain amounts of instalments, however, failed to continue with further payments and accordingly, the Union Bank of India declared the property as "Non-Performing Asset" and in pursuance of an order obtained under Section 13(2) of the SARFAESI Act and the said bank secured the possession of the row house and by a letter dated 27th August, 2007 forwarded the copies of the possession notice and minutes and inventory to M/s. Merlin Projects Ltd.

101. Subsequently, M/s. Merlin Projects Ltd. executed a deed of conveyance in favour of a purchaser namely Murarka and Advisory Holdings on the basis of sale certificate issued by the authorized officer of Union Bank of India enforcing the security interest under the SARFAESI Act.

102. The husband and the son of the opposite party no. 2 time and again filed several criminal complaints against the petitioners as stated above. Pertinently, the husband of the opposite party no. 2 moved the Sate Consumer Disputes Redressal Commission, West Bengal in S.C. Case No. 07/0/2007, wherein by an order dated 24th February, 2009 the State Commission directed for a execution and registration of deed of conveyance in respect of the aforesaid row house in favour of the husband and son of the opposite party no. 2 against which the M/s. Merlin Projects Ltd. filed an application before the National Consumer Disputes Redressal Commission, New Delhi, in First Appeal No. 128 of 2009, wherein a stay was granted vide an order dated 20.04.2009 against the order of the Hon'ble State Commission which had been in effect till date. The peculiarity of the dispute between the parties endorsed the same to be civil in nature in the assessment and understanding of this Court.

103. The present complaint filed by the opposite party no. 2 precisely stated that petitioner Sushil Mohta (in CRR 168 of 2014) along with Vikash Mimani (in CRR 656 of 2014) and Navneet Baheti (in CRR 657 of 2014) in connivance collected private and financial details of the opposite party no. 2 and her husband and son from some unknown sources. The petitioner had shared the details to one Mr. Navneet Baheti being the petitioner in CRR CRR 657 of 2014. By an email directed the same and obtained extremely confidential Credit Information Reports (CIR) from the Credit Information Bureau (India) Limited (CIBIL), which the petitioners as aforesaid were not legally empowered to access.

104. It was further contended that by forging a Credit Information Record Request and impersonating as an employee of ICICI Bank "Online", the

petitioner Navneet Baheti obtained the private CIBIL report and forwarded the same to the petitioner Sushil Mohta by an email.

105. The opposite party no. 2 checked with the ICICI Bank and was informed by an email dated 17.10.2009 that the CIBIL report had not sent by ICICI Bank and Mr. Navneet Baheti was not their employee. According to opposite party no. 2, the petitioners Sushil Mohta (in CRR 168 of 2014) along with Vikash Mimani (in CRR 656 of 2014) and Navneet Baheti (in CRR 657 of 2014) collusively forged an electronic "CIBIL" Credit Record Request and passed it off as an genuine request made by ICICI Bank to unlawfully obtain the CIBIL Report.

106. Subsequently, the said reports were widely circulated by the petitioner Vikash Mimani with false and malicious comments and imputations on her husband and son to police departments and bank officials and to their family members all over the world.

107. After circulating the above CIBIL Reports, accused no. 3, Mr. Vikash Mimani warned their legal advisor Mr. Nilmani Dutta that Mr. Sushil Kumar Mohta had very strong influence with police officers & senior bankers and unless the cases against him were withdrawn he would ensure that her son was arrested and tortured by the police for failing to repay his bank loans.

108. In reply, their legal advisor Mr. Nilmani Dutta warned Mr. Vikash Mimani that they were misusing the said CIBIL Reports because they were not in any way related to the subject matter of the pending cases and would not influence the merits or final outcome of the said cases.

109. The Learned Advocate Mr. Nilmani Dutta further mentioned that he would investigate the veracity of the said CIBIL Reports and find out how those were obtained by the accused persons.

110. In reply, Mr. Vikash Mimani sent an email dated 07.10.2009 to Mr. Nilmani Dutta with copy marked to their home email ID and the relevant portion of the said email is replicated as follows:

> ***"With regard to the CIBIL report, we state that in the fitness of things it would be appropriate and sensible to restrain from exploring the veracity of the CIBIL report for the present. <u>Who knows laying down the CIBIL report beneath the investigative eyes off scrutiny and intensive examination might end up in leading your client within the circumference of custodial detention</u>."***

111. Her son was in a disturbed and irrational frame of mind due to his illness and after reading the above email he was panic stricken and started imagining that he would be arrested and tortured by the police. He then lapsed into a deep depression and even started contemplating suicide.

112. As per medical evidence, the nature of her son's illness was such that it increased the risk of a patient committing suicide by 20% to 50% as compared to a normal person.

113. This Court in revisional application under Section 482 of the Code of Criminal Procedure considers it prudent to restrict itself only to the extent of considering quashing the proceedings being A.C. No. 60/2013 pending before the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas under Sections 465/468/469/506/120B of the Indian Penal Code and all orders passed therein including the order dated 29.06.2013 passed by the

Learned 5th Judicial Magistrate, Alipore, South 24-Parganas thereby issuing process against the petitioner and the order dated 05.01.2013 passed by the Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas in A.C.G.R. Case No.3320/2011 pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas arising out of Jadavpur Police Station Case No.131/2010 dated 11th March, 2010 under Sections 471/465/468/506/120B/384 of the Indian Penal Code and under Sections 66A/66B/66C/72/72A of the Information of Technology Act 2000 thereby directing the case to be registered as a complaint case, taking cognizance of offences punishable under Sections 465/468/471/506/120B of the Indian Penal Code and transferring the case to the Court of the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas for enquiry and disposal.

114. The Learned Advocate representing the State placed a copy of the case diary concerning the investigation as regards the aforesaid pending criminal cases. The memo of evidence filed by the S.I. of Jadavpur P.S. dated 21.01.2024 in connection with the aforesaid Jadavpur P.S. Case No.131/2010 dated 11.03.2010 against the present petitioners, *inter alia,* stating that the Investigating Officer closed the investigation of the case on 14.06.2011 declaring the same as mistake of law with a prayer for discharging the three accused persons from the case as the amended Information and Technology Act came into force on 27.10.2009 and the offence was committed on 22.09.2009.

115. It is pertinent to revisit the provisions of the following Sections of the Indian Penal Code and Sections of Information Technology Act, 2000 for the purpose of assessing the allegations further:-

*“**Section 471. - Using as genuine a forged document or electronic record.**- Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].”*

*“**Section 465. – Punishment for forgery.** - Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

*“**Section 468. – Forgery for purpose of cheating.** - Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”*

*“**Section 469. – Forgery for purpose of harming reputation. –** Whoever commits forgery, [intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.”*

.....

*“**Section 66A. – Omitted. – Punishment for sending offensive messages through communication service, etc.**-- Any person who sends, by means of a computer resource or a communication device,*

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device;

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation.--For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.]"

*"**Section 66B. – Punishment for dishonestly receiving stolen computer resource or communication device. –** Whoever dishonestly receive or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both."*

*"**Section 66C. – Punishment for identity theft. –** Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh."*

*"**Section 72. – Penalty for Breach of confidentiality and privacy. –** Save as otherwise provided in this Act or any other law for the time being in force, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such*

electronic record, book, register, correspondence, information, document or other material to any other person shall be [liable to penalty which may extend to five lakh rupees].”

“***Section 72A. – Punishment for disclosure of information in breach of lawful contract. [72A. [Penalty] for disclosure of information in breach of lawful contract.---*** *Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be [liable to penalty which may extend to twenty-five lakh rupees].”*

116. The opposite party no.2 alleged that the private credit information had been forged through Credit Information Bureau India Limited (CIBIL). Forgery as defined in the Indian Penal Code involves production or creation of a false document or electronic record with the intent to deceive. In the instant case, if any private information was obtained from the electronic record did not comprise forgery since the contents of the record remained as its is in the source alleged to have been obtained without any scope whatsoever to create such personal and private information. It had not been disputed by the opposite party no.2 that the personal duties had been fabricated or wrong if at all it was procured since an e-mail communication indicating the name of ICICI Bank was obtained with certain annexed documents and an allegation of imputation demeaning and defamatory in nature to have been circulated to harass

the opposite party no.2 and her husband and son with an intention to threaten them to their project.

117. The opposite party no.2 did not mention the intention to deceive since the petitioners as well as the opposite party no.2 and her family members had severed contractual relationships long back without any further possibility or probability to cheat or deceive the opposite party no.2. The information as alleged to have been circulated amongst the public being in the electronic media from the time it was incorporated or fell into a computer generated field or an electronic media cannot be altered, modified or reconstructed subsequently by anybody which would instantaneously be recorded in the system. Accordingly, the applicability of Section 471 cannot be substantiated in the facts and circumstances of the instant case thereby negating the effectivity and applicability of Section 465 as well as Section 468 and Section 469 of the Indian Penal Code.

118. The charge to have been framed under Section 66A of the Information Technology Act, 2000 had been struck down by the Hon'ble Supreme Court in 2015 deeming the same to be unconstitutional in the case of Shreya Singhal Vs. Union of India. A charge to have been framed under Section 66A of the Information Technology Act indicated a lack of awareness and erroneous implementation of the Court's decision by the Investigating Officer.

119. As far as the applicability of Section 66B of the I.T. Act, 2000 is concerned, the complaint failed to aver the dishonest manner of receiving and retaining of any stolen computer resource or communication device with knowledge reasonably to believe the computer resource or

communication device to be stolen. The applicability, therefore, of Section 66B of the Information Technology Act, 2000 in view of the instant complaint is negated since there is no description as to who allegedly had received or retained any computer stolen resource or communication device with a conviction of the same to have been stolen.

120. Section 66C of the Information Technology Act deals with punishment for identity theft. It specifies and addresses the misuse of digital identities which include situations where someone uses another person’s electronic signature, password or any other unique identification feature to access or utilize online accounts or systems. The intent and purport of this Section in a way has been alleged against the petitioners to have dishonestly and fraudulently obtained the Credit Information Report through the platform of CIBIL obtaining and disclosing the private information of the complainant and her family members and circulating the same to third parties in order to defame the opposite party no.2 and her family members as aforesaid.

121. Section 72 of the Information Technology Act, 2000 refers to penalty of breach of confidentiality and privacy. The instant Section primarily focuses to protect the confidentiality and privacy of digital information. It penalizes the unauthorized disclosure of information that was assessed due to official duties or under the provisions of the Information Technology Act without the consent of the person concerned. If any of the official of ICICI Bank having access to the CIBIL relating to credit information as alleged without consent of the opposite party and her family members, the same comes within the purview of Section 72 of the Information Technology Act.

122. Section 72A of the Information Act stipulates punishment for disclosure of information in project of a lawful contract it categorically dealt with circumstances where a person duty bound to provide services under a lawful contract thereby gaining access to personal information discloses it to a third party without the individual's consent or in violation of the contract.

123. In the instant case, the petitioner did not have a lawful contract with the opposite party and her family members as aforesaid. The relationship between the petitioners namely Sushil Mohta (in CRR 168 of 2014) along with Vikash Mimani (in CRR 656 of 2014) of Merlin Projects Limited had been severed and extinguished after the row house had been sold to a third party pursuant to the order under the SARFAESI Act as aforesaid. The other petitioner being Navneet Baheti was not engaged in the ICICI on the date of the incident as would appear from the reply e-mail by an official of the ICICI Bank to the opposite party no.2.

124. The charge under Section 66A of the Information Technology Act cannot be sustained since the same had been omitted from the context of Information and Technology Act, 2000. In view of the aforesaid discussions, the charge under Section 66B as well as Section 72A of the Information Technology Act cannot be sustained, however, the allegations pertaining to Section 66C and Section 72 of the Information Technology Act 2000 requires further investigation to identify the actual culprit which might or might not be the present petitioners in the facts and circumstances of the case. The proceedings under Sections 66B and 72A of the Information Technology Act are also quashed.

125. In view of the aforesaid discussions, since the complaint did not reveal any allegations to constitute an offence, the proceedings against the present petitioners in A.C. No.60/2013 pending before the Learned 5th Judicial Magistrate, Alipore, South 24-Parganas are quashed since the compliant did not prima facie reveal commission of a cognizable case as discussed above and to allow to continue to proceed with the trial will result in abuse of the process of law in view of the decision of the Hon'ble Apex Court in *State of Haryana v. Bhajan* Lal *1992 SCC(Cri) 426.*

126. The investigation agency is to proceed to further investigate under the charges of Section 66C and 72 of the Information Technology Act, 2000 in connection with the proceedings in A.C.G.R. Case No.3320/2011 pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24-Parganas is to continue under Section 66C and Section 72 of the Information Technology Act.

127. In view of the above discussions, the instant criminal revisional applications being CRR 168 of 2014, CRR 656 of 2014 and CRR 657 of 2014 are allowed in part and accordingly, disposed of.

128. There is no order as to costs.

129. Case diary, if any, to be returned forthwith.

130. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

131. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)