IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2243 of 2022
With
CRR 161 of 2022
(Jalpaiguri Matter)
With
CRAN 8 of 2024
CRAN 9 of 2024
Vineeta Burman & Ors.
Vs.
The State of West Bengal & anr.

For the petitioner	:	Mr. Sabyasachi Banerjee Ms. Reshmi Ghosh Ms. Parna Mukherjee
For the opposite party No.2	:	Mr. Sandipan Ganguly, Sr. Adv. Mr. Ayan Bhattacharya, Sr. Adv. Mr. Satadru Lahiri Mr. Aditya Ranjan Tiwary Ms. Kanchan Jaju
For the State	:	Mr. Antarikhya Basu
Heard on	:	17.03.2025
Judgment on	:	15.07.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have sought for quashing of proceeding being GR case no. 670 of 2019 pending before learned ACJM, Siliguri, arising out of

Siliguri Cyber Crime PS case No. 46 of 2019 under section 490/471/120B of the Indian Penal Code (IPC) read with section 66/66C of the information Technology (I.T.) Act, 2000. Simultaneously petitioners also prayed for quashing of other proceeding being GR case of 670 of 2019 presently pending before learned ACJM, Bidhannagore, arising out of Bidhannagore cyber crime PS case no. 75 of 2019 under sections 418/419/420/465/468/471/506/120B/34 of the IPC read with section 66/66C of the I.T. Act 2000. Though the facts alleged in both the cases are same but two Applications pertains to complaints lodge by two separate FIR maker stated to be erstwhile directors of company.

2. Petitioners' case is that the petitioner no.1, 2 and 3 are the directors of Greenzenbio Pvt. Ltd. (in short company). In the said company petitioner no.1 is having 46.12% share-holding and petitioner no.2 is holding 43.65% share.

3. Their further contention is that the petitioner no.2 had come up with the idea of setting of the said company in Siliguri in 2008 and petitioner no.2 introduced his brother as the initial share holder and promoter/director of the said company. In 2007, husband of opposite party no.2 (CRR 2243 of 2022) had approached the petitioner no.2, with the object of entering into business relationship with the petitioner no.1 and his brother. Accordingly opposite party no.2 herein in CRR 2243 of 2022 Laxmi Tantia was appointed as director of the said company on 2nd May, 2007 along with one Mahesh Kumar Khaitan, thereby the group of said Tantia held 66.66% shareholding in the said company and the Barman family had 33.33% of the paid up share-capital in the said company. At the relevant point of time, the said company had three directors namely Monohar Kant Barman i.e. brother of petitioner no.2, shri Mahesh Kumar Khaitan i.e. uncle of Tantia's and the opposite party no.2 i.e. Laxmi Tantia. In fact from 2009 till 2015, the affairs of the said company was looked by shri Manohar Kant Barman. Though the said opposite party no.2 was one of the directors of the said company but the petitioner no.1 and 2 had to look after entire day to day business of the said company.

4. Petitioners further case is that said Manohar Kant Barman had tendered his resignation on 1st June, 2015 because of his personal issues and the petitioner no.1 was appointed as a director in the Board of the company on 29th September, 2015. After the resignation of shri Manohar Kant Barman, the petitioner no.1 and 2 were looking after the business of the said company and the opposite party no.2 Laxmi Tantia Became a sleeping director of the said company without having much interest in the affairs of the business of the said company. Thereafter on 16th August, 2016 Shri Mahesh Kumar Khaitan had tendered his resignation as a director of the said company and in his place Shri Binod AjitSaria (complainant of CRR 161/2022) was appointed as the director of the said company on 29th September, 2016.

5. Petitioners specific allegation is that the dispute arose between the group of petitioner no.1 and 2 and the opposite party no.2 when without the knowledge and consent of the other directors, a new director was appointed by the opposite party no.2 in breach of contract Since 2016, the petitioner no.2 was the sole nominee of the members of the Barman family in the Board of the said company. All the directors of the said company had been drawing salary during their tenure as the director of the said company. According to the petitioner it was detected that during that period several illegalities wrongful financial irregularities, defalcation of fund of the said company at the instance of both the opposite party no.2 of the two revisional applications. This was primarily because of the fact that these two persons were signatories in the bank account of the said company and they jointly siphoned of money from the bank account of the said company without bringing it to the notice of the petitioner no. 1 and 2. The petitioner no.2 had throughout raised his objection against such financial irregularities, causing harm to the company.

6. The petitioners' specific case is that both the said opposite party no.2 in the aforesaid two Applications had siphoned off an amount of Rs. 1,78,60,228/- from the accounts of the said company between 1st April, 2017 and 31st October, 2019. The petitioners claimed when they objected about such illegalities and irregularities committed by said Laxmi Tantia (opposite party no. 2 of CRR 2243 of 2022) and Shri Binod Ajit saria (opposite party no.2 of CRR 161 of 2022) they have decided to voluntarily tender their resignation from the directorship of the company after having accepted their guilt. In fact such resignation of both the above mentioned persons were required for the purpose of protecting the existence of the said company and the assets of the said company. Such resignation letters offered by them are part of the company petition filed before the learned National company Law Tribunal, Kolkata Bench. The resignation tendered by the aforesaid two namely Laxmi Tantia and Binod Ajit saria was duly accepted by the Board of Directors of the said company, on 28th August

2019. Accordingly after such resignation petitioner no.2 and 3 herein were appointed as additional directors of the said company pursuant to the Board meeting held on 1st August, 2019 and there appointments as directors were affirmed in the Extra Ordinary General Meeting held on 26th August, 2019.

7. The Specific contention of the petitioner is that the aforesaid opposite party no.2 in both Revisional Applications had voluntarily resigned as directors of the said company and soon after tendering their resignation, started involving in several illegal activities by creating disturbance both at the office and plant of the said company. The petitioner no.2 accordingly lodged a complaint on 20th September, 2019 to the Commissioner of Siliguri Police Commissionerate.

8. The opposite party no.2 in both the cases along with their associates have tried to capture the plant of the said company. Petitioners' further contention is suppressing the aforesaid material facts, aforesaid two opposite party no. 2 lodged two different complaints in two different police stations and seeking quashment of both the proceedings, common petitioners/accused persons have preferred the present two Applications.

9. After registration of FIR involved in the Revision Petition being CRR No. 3392 of 2019, this High Court was pleased to direct that the investigation of both the above-mentioned cases being Bidhannagore Cybercrime police station case no. 75 of 2019 and Siliguri Cybercrime police station case no. 46 of 2019 be transferred to the Cybercrime police station CID West Bengal.

10. The allegation levelled in the First Information Report reveals that the petitioners herein in collusion and conspiracy with other accused persons manufactured a resignation email allegedly issued by the private opposite party no.2 of both the cases through the alleged e-mail of the company being "**greenzenbio@gmail.com**" to "**vineetasutodia@gmail.com**" thereby expressing intention to resign from the management of the company and the e mail had been issued from the e mail ID being "**greenzenbio@gmail.com**", which does not belong to the concerned FIR maker. It is further alleged in the FIR that surprisingly the alleged Emails were sent at 10:43 a.m. on August 24^{th}, 2019, whereas the Board Meeting in which the alleged resignation was accepted, had already commenced from 10.30 a.m. on August 24^{th}, 2019. Further FIR allegation is that based on those fake documents, the accused persons/petitioners also uploaded Form DIR-12 along with the forged resignation letter in the website of ROC which were purportedly certified by the Company Secretary. The total numbers of directors in the company were three i.e. two from the Tantia group while one of the Barman group. With the uploading of the fake resignation letters of the two directors of the Tantia Group, there remained only one director and a singly Director could not have conducted any valid meeting of the Board of Directors of the company, as the corum of two directors could not be made. It is further alleged in FIR that despite being the sole director, the petitioner no.1 in a completely illegal manner appointed the petitioner no.2 and 3 as the directors. It is further alleged that immediately thereafter the share capital of the group of the private opposite party no. 2 in the company was diluted by the petitioners by way of unilateral increase/issuance of the share capital of the company, whereby the authorized share capital of the company was illegally enhanced from Rs. 20,00,000,/- divided into equity shares of Rs. 10/- each to Rs. 57,28,000/- divided into equity shares of Rs. 10/- each, thereby adding 3,72,800/- equity shares of Rs. 10/-, all of which were allotted to the petitioners and other related parties, without giving the option of purchase to the group to the private opposite party no.2.

11. Therefore in view of the creation of complaint's fake resignation letter and uploading the same on the private portal, the private opposite party no.2 in CRR No. 2243 of 2022 namely Laxmi Tantia lodged FIR with the officer in charge Bidhannagore Cyber Crime police station and the private opposite party of CRR 161 of 2022 namely Binod Ajit saria lodged the FIR with the O.C. Siliguri cybercrime police station with the allegations as has been stated above.

12. Being aggrieved by the said impugned proceedings, Mr. Sabyasachi Banerjee learned senior Counsel appearing on behalf of the petitioners argued that on plain reading of FIR, it would reveal that at its height the dispute pertains to affairs of a company, which is a commercial dispute and the ingredients of none of the penal sections mentioned in the FIR has been made out. The O.P no.2 had already preferred a company petition before the National Company Law Tribunal, Kolkata Bench with same allegation of obtaining their resignation by practicing fraud. The opposite party/FIR maker has also preferred an appeal before the National Company Law Appellate Tribunal and both NCLT and NCLAT had only passed orders with regard to maintain status quo over the bank accounts of the company during the course of hearing of the application and the Tribunal has not prevented the running of the said company and the petitioner no.2 was allowed to carry on the business of the said company and operate a bank account for the same purpose.

13. He further submits, after completion of investigation the investigating authority has submitted charge sheet in the instant case. The cyber forensic report dated 25.06.2021 reveals that the email of the petitioners no.2 was used by the Opposite party no.2, but while accessing the email of the said company, the opposite party no.2 was at their residence and as such the respective FIR maker had raised absolute frivolous allegations against the petitioners and the police have also acted on such baseless and frivolous allegation to harass the petitioners without any cogent reason. The petitioners no.2 while allowing access to the FIR maker to use the email ID of the said company, then the FIR maker was acting as a director. Accordingly the petitioner no.2 cannot have any knowledge about the contents of the email and he has only given access.

14. Mr. Banerjee strenuously argued that the entire allegation is a product of after-thought, since the respective opposite party no.2 had wilfully offered their resignations and having accepted the same by the Board of Directors, the opposite party no. 2 cannot accuse the petitioners of any wrong committed against the complainant. The conduct of the complainants shows that their intention is to misuse the process of the criminal law to harass and humiliate the petitioners, so that they can extort from the petitioners and the said company. His further contention is that since the dispute is a commercial dispute which has already been referred to the National Company Law Appellate Tribunal, the self same issue cannot be the subject matter of criminal court's jurisdiction to adjudicate, in as much as no ingredient of criminality is involved. In fact entire allegations made in the instant complaint are within the domain of the Companies Act 2013, which is a special statute enacted for the affairs of the companies and as such there is an efficacious redress for the grievance of the aggrieved party and therefore the instant criminal proceeding has no leg to stand.

15. His further contention is in the absence of any allegation of deception or representation, exercised on the complainant by the petitioners, resulting in any wrongful loss to the complainant, the ingredients of the offence under sections 418/419/420 of the IPC are not made out. The allegation of deception since inception of transaction is also absent in view of the fact that admittedly the petitioner no.1 was a director of the said company from the very inception and the petitioner no. 2 and 3 were subsequently inducted as directors of the company whereas the complainant is the erstwhile director of the said company. Therefore, the question of possessing dishonest intention from inception of the transaction does not arise. The basic ingredients to constitute offence of forgery under sections 465/468/471 of IPC is also absent in as much as there is no materials to show that the signature of the FIR maker was forged in any document including electronic document on record. The investigating authority during investigation did not consider certain relevant documents, which were brought to their notice and which includes certain screenshots taken from the device and also the existence of another device and thereby they have arrived at an erroneous understanding and thereby have filed the erroneous charge sheet

16. In this context he also emphasized that the email "**greenzenbio@gmail.com**", was accessed and used by all directors and two staff of the company at Siliguri namely Binod Ajit saria, Laxmi Tantia, Ramakant Barman, Sandip Basak being the manager and Lilawati Chand being the accountant of the company. On the date of resignation both Laxmi and Binod were reportedly at Siliguri office of Greenzen, while the petitioners were in Kolkata. The Private opposite party no.2 accessed the email account of the company, on being given access from the Samsung device as the Samsung device was the connected device with the company Email ID. The email ID "**greenzenbio@gmail.com**", was already configured in the Samsung device of petitioner no.2, therefore, there is no question of sending email from Samsung device by allowing access. Access is always allowed for another/alternative device. The other device which was allowed access had a separate IP address and the said device was never recovered by the police as this device was within the control of FIR maker Vinod and Laxmi. The IP address of the internet connection to that device was different from Samsung mobile Vodafone IP address of the petitioner no.2. The petitioner no. 2 herein has not only access to the official email of the company but all the other directors have access to the same. On the date of incident access was sought for from the petitioner no.2 and he permitted access to the concerned complainants to avail the email. However, while granting access neither petitioner no. 2 had asked the reasons nor the opposite party no.2 had offered any explanation.

17. Mr. Banerjee in this context tried to take a point that a security alert was raised for the link google account being the personal e mail account of the petitioner no.2 **ramakant222@gmail.com**. Petitioner no. 2 received said google alert in his said e mail address wherein intimation was given for access made in "**greenzenbio@gmail.com**", from a window device. In fact it is shocking that while access was granted to the Samsung device of petitioner no.2 to enter "**greenzenbio@gmail.com**", at 11.42 a.m., much prior to that at 10:42 a.m., password was changed for the linked account being "**greenzenbio@gmail.com**". Since the petitioner no. 2 has his personal google account, linked with the company's google account, therefore had received a separate intimation in his personal email account. His specific case is when such resignation was being submitted by the complainant during that span of time i.e. from 10.45 a.m. to 11.45 a.m., all other devices including that of the petitioner no.2 were logged out automatically from the company's e mail account, since the password was changed.

18. His further grievance is during the course of investigate the investigating officer has seized the mobile phone of the petitioner no.2 assuming that such mail was sent from the personal device of the petitioner no.2. However IO has completely failed to fathom that mail was sent from a window device likely to be a desktop or a laptop as the Samsung device of the petitioner no.2 was already logged out of the company e mail Id at the time when resignation e mail was sent. During investigation the IO failed to seize the window device from where the email was sent and such material fact was brought to the notice of the investigating officer, who ignored the same and therefore submission of the charge sheet in the instant case is a result of biased and mechanical investigation conducted by the IO. Therefore the instant case is devoid of any criminality and initiated with *malafide* motive and if allowed to be continued will be mere abuse of the process of the court.

19. Mr. Sandipan Ganguly, learned senior counsel, appearing for opposite party no.2 in both the cases submits that the materials collected during investigation and as stated in the charge sheet discloses clear involvement of the petitioners and others in commission of the alleged offences. Cumulative appreciation of the facts demonstrated in the FIR, materials collected during investigation, specially the seized contemporaneous materials and independent opinion of the forensic expert along with the motive of the petitioners to commit the offence, leaves no room of doubt as to the involvement of the petitioners in commission of the offences complained. Accordingly after thorough investigation police has submitted charge sheet which discloses that the accused persons entered into an evil design and acted hand in glove together for illegally removing the private opposite party no.2 in each case from the post of directorship as well as to reduce their respective shareholding of Tantia Group in the company and thereby capturing the entire company. In the process of executing such evil design the accused /petitioner no.2 sent fake resignation letter of the FIR makers from the directorship of the company from the email account of the company to the personal mail address of **vineetasutodia@gmail.com** by using his cell phone. Therefore, the documents itself speaks about its false execution and contents both, which brings the same within the scope of false documents as defined under section 464 of the IPC. The forged documents have been used for relinquishing the status/position of the private opposite party as well as their right in the company and as such comes within the definition of "valuable security" as defined u/s 30 of IPC.

20. Mr. Ganguly alleged that uploading Form DIR-12, thereby intimating the resignation of private opposite party along with such fake and fabricated resignation letter had been prepared and had been validated by the accused /petitioner no.1 under her digital signature and subsequently the same was uploaded by the company secretary to the website of ROC. The accused persons in the entire process impersonated the private opposite parties for perpetrating the fraud complained of and falsely represented that private opposite party no.2 issued letter for their resignation from the company.

21. Mr. Ganguly further argued that the ill motive of the accused persons/petitioners is easily fathomable from their subsequent conduct i.e. fraudulent incorporation /introduction of the petitioner no.2 and 3 in the company as directors for taking the entire control of the business and the management of the company. Cumulative appreciation from the facts demonstrated in the FIR as well as materials collected during investigation discloses *prima facie* commission of the cognizable offences, alleged in the FIR. He further submits that the defence of an accused cannot be considered in a petition under section 482 of the Code of Criminal Procedure. Moreover appreciation of veracity of the prosecution case qua the defence version and/or defence case, which is yet to be proved in accordance with law is impermissible.

22. He also submits that the contention of the petitioners is largely based on alleged *malafide* of private opposite parties, which is not to be considered at this stage. Since both the Revisonal Application are largely based on private untested documents annexed to the respective Revisional Applications, there is hardly any scope of consideration of such documents, when the fate of the application of the quashing has to be determined only on the basis of the FIR, charge sheet and materials collected during investigation.

23. In reply to the petitioners allegation that the dispute between the parties at best can be categorized as civil dispute and opposite parties opted for civil proceeding which is pending and as such criminal proceeding does not lie, Mr. Ganguly on behalf of the opposite party submits that mere pendency of the proceeding before NCLT Kolkata Bench pertaining to identical issue does not bar continuation of the subject proceeding towards its logical conclusion. Once from the materials on the record it is prima facie established that accused persons committed forgery and used forged documents to remove the private opposite party no. 2 from the directorship of the company, the pendency of the proceeding before Tribunal cannot oust the criminality involved therein nor the penal consequences arising from such action. Infact a bundle of facts may give rise to both civil cause of action as well as commission of offence and therefore both civil proceeding and criminal proceeding can run parallelly and there is no conflict in this proposition of law.

24. He strenuously argued that the manner in which, the petitioners by impersonating the private opposite parties and by creating forged resignation documents removed them from the directorship of the company and subsequently reduced their shareholding in the company for causing wrongful loss to opposite parties and corresponding wrongful gain to themselves as well as for capturing the ownership of the company, jeopardising the right and interest of the property of the private opposite parties herein it cannot be generalized as a principle that pendency of civil proceeding originating from identical issue always eclipses the scope of criminal proceeding. Therefore, the facts involved in the subject FIR as well as materials collected during investigation does not satisfy the tests prescribed by the Hon'ble Apex Court, as well as by this Hon'ble Court in several authorities including ***State of Haryana Vs. Bhajanlal***. Reported in **1992 supp (1) SCC 335** and as such this is not a fit case where the proceeding can be quashed by the court invoking its jurisdiction under section 482 of the Cr.P.C.

25. Having heard learned counsel appearing on behalf of both the parties it appears that the FIR case *interalia* is based on an allegation that the petitioners herein/accused persons manufactured a resignation email allegedly issued by the private opposite party through alleged email of the company thereby expressing intention to resign from the management of the company and the emails had been issued from the email ID which does not belong to the private opposite party. Their further case is that, based on those fake documents, the accused persons also uploaded Form DIR 12 along with forged resignation letter, in the website of the ROC, which were purportedly certified by the company secretary. Accordingly in view of the creation of fake resignation letters in the name of the complainant and uploading the same on the public portal, the petitioners herein committed cognizable offences.

26. On the contrary petitioners accused/persons who have come before this court for quashing the proceeding specifically alleged that the complainant and his /her associates had issued several fictitious bills upon the said company from April, 2017 for purported payment being made to several persons whose existence were never brought to the notice of petitioner no.1 and thereby they had allegedly siphoned off huge amount of money from the accounts of the said company during the period of 1st April, 2017 and 31st October, 2019. Their further case is when petitioner no.1 had come to learn of such gross illegalities and irregularities committed by the complainants, he raised strong objection and as such the complainants/opposite parties herein decided to voluntarily tender there resignation from the directorship of the company after having accepted there guilt and such resignation was duly accepted by the Board and in their place petitioner no. 2 and 3 were appointed as additional directors.

27. It further appears from record that investigation has already been culminated into a charge sheet, submitted against five accused persons including the present petitioner. It further appears that police had recorded in the charge sheet:-

> *"During investigation collected IP allotment details from Google Inc and subsequently fixed up the suspect mobile number involved. The subject mobile number was fixed up and it was seized and sent for forensic examination. During investigation of the case, necessary documents were collected from ROC wherein it is found e-mail resignation letters of two directors Laxmi Tantia & Binod Ajitsaria were uploaded by CS Riteek Baheti on 24.08.19 having no signatures of both resigned directors on their respective resignation letter. During investigation complainant Laxmi Tantia and other victim director Shri Binod Ajitsaria and other witnesses in this case were examined with recording of their statement. Obtained necessary IP data from google in respect of greenzen bio @ gmail. com was found IP of Vodafone was used to access the gmail. Collected IP allotment details from MSP Vodafone & found IP was allotted to mobile no. 990339118 which was possessed and used by Ramakant Burman. It also revealed that the, generation of questioned email*

message of resignation letter of the complainant, Laxmi Tantia was from mobile of Ramakant Burman. During investigation, seized the mobile phone of Ramakant Burman under proper seizure list. After that myself took up its investigation as Shri Subhash Janai was transferred in other section in CID. During investigation collected the report from cyber forensic & Digital Evidence Examiners Laboratory, CID, West Bengal in respect of the seized exhibits. In which Dr. Asim Kr. Srivastava, Senior scientific examiner, CF & DEEL, CID, W.B. has opined (i) The Soft copy of mail id greenzenbio @ gmai.com was accessed and retrieved from the exhibit marked as Ex-1 is given in the pendrive marked 200908011442/10/2020-DATA (ii) the mail id vineetasutodia@gmail.com was found in the exhibit marked as Ex-1, is given in the pendrive marked 200908011442/10/2020-DATA (iii) the ICCID and SIM no. retrieve from Exhibit marked as Ex-1 is same is given in device information in hard copy of extraction report. The soft copy of same is given in the pendrive marked 200908011442/10/2020-DATA (iv) the memory card marked Ex-1A has been analysed by using cellebrite physical analysed version 7.44.2.10. The soft copy of audio, documents, images, text and videos would be retrieve from the digital storage media (MMC) is given in the pendrive marked 200908011442/10/2020-DATA from the forensic report the prima facie involvement of accused Ramakant Burman, Vineeta Burman has surfaced. During investigation, examined witnesses under Section 161 Cr.P.C. and from their statement the involvement of accused Rittik Baheti, Arunodoi Das Bhaumick and Sashikant Burman would also be unearthed further. During investigation, from the forensic examination of the seized material as well from the statement of independent and material witnesses the documents seized so far, involvement of Ramakant Burman, Vineeta Burman, Sashikant Burman, Arunodoi Bhoumick and Rittik Baheti could be surfaced behind this case. Prima facie charge against the above noted accused persons to be involved for the act of sudden unlawful termination of directorship from the company Greenzen Bio Pvt. Ltd. and uploading the alleged resignation letter of the complainant and Vinod Ajit Saria in ROC is well founded to stand them in trial in the open Court of law. Evidences against the above noted accused persons regarding their involvement in respect to other allegation also surfaced."

28. In the charge sheet police have also cited the name of 23 witnesses whom prosecution wishes to examine during trial to establish the case of the prosecution which are as follows:-

(i) Accused persons/petitioners entered into an evil design and acted hand in glove together for illegally removing the private opposite parties from the post of directorship.

(ii) In the process of executing such evil design the petitioner no.2 sent fake resignation letter/documents of the complainant from the directorship of the company from the email account of the company to the personal mail address of Vineeta Burman by using his cellphone.

(iii) Said email has been impersonated as if the opposite party/complainant sent the same from the email ID of the company which according to the prosecution is false.

(iv) The complainant/opposite party no. 2 in both the cases herein never intended to resign from the post of directorship of the company and as such there was no scope of sending such email.

(v) The alleged email had been issued much after purported board meeting of the company which started on August, 24, 2009 at 10.30 a.m. and said alleged forged resignation letter of opposite party had been used to adopt a false resignation in the said board meeting for accepting the same in the meeting and knowing fully well that the Board meeting cannot be a valid meeting for want of corum.

(vi) Form DIR 12 had been prepared along with fake and fabricated resignation, which had been validated by petitioner no.1 under her digital signature and the same was uploaded to the website of ROC

(vii) The petitioner /accused persons had also diluted the shareholding of the group of the private opposite parties in the company by way of unilateral increase/issuance of the share capital of the company to cause wrongful loss to opposite parties and wrongful gain to the petitioners. Their modus operandi is reflected by their subsequent conduct of introduction of petitioner no. 2 and 3 in the company as directors for taking the entire control of the business and the management of the company.

29. Now whether the opposite party no. 2 voluntarily resigned or not is a serious factual dispute. The correctness of the defence case which states that being guilty of misappropriating huge amount of money, they were compelled to resign from the post of directorship is also a serious factual dispute. The correctness of such defence of the petitioners is to be gone into only after appreciating the evidence during the trial. Merely by referring to statements made herein and the defence document supplied before this court during hearing and which are not part of the case diary, can hardly be taken into consideration for the purpose of quashing the proceeding.

30. Mr. Banerjee lerned Counsel for the petitioners heavily relied upon ***Rukmini Narvekar Vs.Vijay Sataredkar and Ors***. reported in **(2008) 14 SCC 1** to demonstrate that though ordinarily defence materials cannot be looked into by the court while framing of the charge but there may be some cases where some defence material can be looked into by Court and therefore it cannot be said as an absolute proposition that under no circumstance the court can look into the materials produced by the defence at the time of hearing application under section 482 Cr.P.C. Having thoughtful consideration made on this subject, I am constrained to say that in the said judgment it has also made clear that the defence materials can be looked into by the court in very rare cases i.e. where the defence produced some materials which convincingly demonstrate that the whole prosecution case is totally absurd or totally concocted. In the instant case from the statements made in the FIR and the materials collected during investigation, there is hardly any scope to say that the prosecution case is totally absurd or totally concocted.

31. In ***Nitya DharmaNanda Vs. Gopal Sheelum Reddy*** reported in **(2018) 2 SCC 93,** the court held that at the stage of framing of charge the accused cannot ordinarily invoke section 91 of Cr.P.C, however, the court being under the obligation to impart justice and to uphold the law can exercise its power under section 91, if the interest of justice in a given case so requires but for that also the court is required to be satisfied that the materials available with the investigator, not made part of the charge sheet, has crucial bearing on the issue of framing of charge. In the present two Applications, the parties have come up for quashing of the impugned proceeding after filing of the charge sheet and it is too early to say whether the trial court would think it fit to invoke it's jurisdiction under section 91 considering such documents as crucial for consideration of charge at the appropriate stage.

32. On the other hand there appears to be positive assertion that in order to illegally remove the complainant from the post of directorship as well as to reduce their respective shareholding, with an evil motive, accused person had sent fake resignation letter which has been impersonated as if the complainant sent the same from the email ID of the company. Now whether or not the complainant had voluntarily sent their resignation is a question of utmost importance in answering a charge of the nature indicated in the complaint. Merely because a commercial dispute may have also involved in the present context, it cannot be said that the ingredients of none of the penal sections mentioned in the FIR has not been made out in the instant case. For example section 416 of IPC which deals with cheating by personation stated in illustration B as follows:-

> *(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.*
>
> *(b) A cheats by pretending to be B, persons who is deceased. A cheats by personation.*

33. Accordingly it may be that the facts narrated in the present complaint would also reveal a dispute among the directors of the company for which the parties had also approached before the Company Law Tribunal but that can hardly be a reason for holding that the offence of cheating by personation or offence of forging document, would elude from such a company dispute. In fact many a times offences under the Indian Penal Code could have been committed in the course of company affairs.

34. It is trite law that in exercising courts power under section 482 of the Code of Criminal Procedure, this High Court is not supposed to evaluate the veracity of allegation. The allegations levelled in the FIR as well as contents of the charge sheet, if taken into consideration it constitutes *prima facie* cognizable offence at this stage. Detailed examination of materials supplied by the defence, which are not part of the case diary cannot be undertaken nor its probative value can be considered at this stage. In fact the petitioners demonstrated their prayer for quashing solely based on the documents and contentions which are not part of the investigation report and on the contrary it cannot be said that the materials disclosed in the charge sheet and the accompanying documents do not satisfy the ingredients of a cognizable offence.

35. Mr. Banerjee has made strenuous argument that the allegations in the FIR are based on *malafide* of the complainant and has resulted due to business rivalry, and that the issue is subject matter of consideration before of company Tribunal. The issue of *malafide* even if exists is of secondary consideration, unless the same is explicit from the face of the record and furthermore the issue of *malafide,* if any, is again an issue of fact which requires adjudication by adducing evidence. Moreover mere pendency of the proceeding before National Company Law Tribunal Kolkata pertaining to identical issue does not circumvent continuation of the subject proceeding towards its logical conclusion. This is also because the object and purport of the proceeding pending before Tribunal and the ingredients of criminal proceeding may have originated from similar factual matrix but they are completely different and infact the reliefs prayed for in the said two proceedings are also not similar and as such both the proceedings are maintainable. The object of enquiry in the proceeding pending before Tribunal is restricted to the legality of the procedure of removal of erstwhile directors and introduction of new directors and has got nothing to do with the allegation of cheating by impersonation or manufacturing of document for the purpose of cheating. It is also well settled principle of law that merely because dispute has a civil outfit and/or has occurred during a company affairs, would not automatically dilute the criminality of action involved in it and cannot be ground for quashing of a legitimate criminal proceeding.

36. The crux of the instant criminal proceeding is based on the allegation that the petitioners by impersonating the private opposite parties and by creating forged resignation documents have removed them from the directorship of the company and subsequently reduced their shareholding in the company for causing loss to opposite parties and corresponding wrongful gain to themselves, which cannot be the subject matter of consideration for a Tribunal.

37. It is also to be mentioned that whether all the ingredients of cognizable offence have been precisely spelled out in the complaint and in the charge sheet or not are not required to be adjudicated at this stage. Since factual foundation for the offence has been laid, simply because dispute regarding company affairs regarding appointment and termination of directorship is also involved in the present case, it cannot be said that the criminal proceeding is not maintainable.

38. In ***State of M.P. Vs. Awadh Kishore Gupta and others***. reported in **(2004) 1 SCC 691** the Apex Court has made it clear that what is important to bear in mind in such cases is the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which on appreciation may or may not support the accusation. It is also made clear therein that while exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry, whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained because that is the function of the trial judge.

39. Infact in the instant case there is nothing to say that there is no legal evidence in the materials collected during investigation or that the materials available at the end of investigation are inconsistent with the accusation. Thus, without going to the question as to whether the instant criminal proceeding would be ended in conviction or acquittal, the allegations if considered in the light of the statements and documents availed during investigation and taken to be true, it appears that the ingredients of the offence or offences are disclosed and there is no material to explicit that the complaint is *malafide* frivolous or vexious.

40. The very parameters which are required to be applied while quashing the FIR, the Supreme Court in ***State of Haryana Vs. Bhajanlal*** reported in **1992 (Supp) 1 SCC 335** had identified the following cases in which the proceeding can be quashed. Relevant paragraph may be quoted in this context:-

> ***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.*

41. Having considered the written complaint, result of investigation and connected materials taking them as their face value and as correct in their entirety and judging the same with the parameters of law laid down in **Bhajanlal's case** (Supra) as above, I am unable to persuade myself to hold that the materials placed before me does not disclose any cognizable offence or that continuance of the instant criminal proceeding against the petitioners herein will be an abuse of the process of the court.

42. For the aforesaid reasons the **CRR 2243 of 2022** and **CRR 161 of 2022** along with connected applications are hereby dismissed. It would be open for the court to proceed from the stage at which the proceedings were stopped and to decide the same in accordance with law, uninfluenced by any of the findings and observation made by this court. It is also made clear that the petitioners will have full liberty to agitate all his points referred herein before the trial court at the time of charge hearing or at any appropriate subsequent stage.

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

(DR. AJOY KUMAR MUKHERJEE, J.)