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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 77 OF 2023

Pradip Mahatme, son of Mr. Prabhakar Mahatme, 71 years of age, married, citizen of India, Chartered Accountant, having residence at H. No. 8/65A, Near Telephone Exchange Altinho, Panaji, Goa. ... PETITIONER

Versus

1. State of Goa, Through its Public Prosecutor, High Court of Bombay at Goa, Porvorim, Goa.

2. Police Inspector, Mormugao Police Station, Mormugao, Goa.

3. Police Inspector, Economic Offences Cell, Altinho, Panaji, Goa.

4. Chowgule and Company Pvt. Ltd., A private company registered under the provisions of the Indian Companies Act, having office at Chowgule House, Mormugao Harbour, Mormugao, Goa – 403803. Through its authorised signatory, Mr. Vivek Mangoli, having office at the above mentioned address. ... RESPONDENTS

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Mr. Aabad Ponda, Senior Advocate with Mr. Shivan Desai, Mr. Subhash Jadhav, Mr. Parag Rao, Mr. Amit Patil, Mr. Rishabh Jadhav, Mr. Akhil Parrikar, Mr. Varun Bhandanker and Mr. Shulin Singbal, Mr. Amit Patil and Mr. Rishabh Jadhav Advocates for the Petitioner.

Mr. Pravin Faldessai, Additional Public Prosecutor for Respondent Nos. 1, 2 and 3.

Mr. Rizwan Merchant with Mr. Gaurish Agni, Mr. Ramiz Shaikh, Mr. Harshil Gandhi, Mr. Yash S. Naik, Mr. Kishan Kavlekar, Mr. Madhav Cuncoliencar and Mr. Nihal Kamat), Advocates for Respondent No. 4.

CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.

DATED: 14th AUGUST 2025

ORAL JUDGMENT: (per BHARATI DANGRE, J.)

1. The present Petition filed under Article 226 of the Constitution of India along with Section 482 of the Code of Criminal Procedure, 1973, seek quashing of FIR No. 11/2022 invoking Sections 409, 420, 465, 468, 471 and 120-B of IPC against the Petitioner and also a subsequent chargesheet filed on completion of the investigations therein in the Court of Judicial Magistrate First Class at Vasco-da-Gama.

The claim in the Petition is based upon the specific contention raised that reading the FIR and the chargesheet along with the entire material compiled therein, fail to make out a case against the Petitioner under the relevant Sections which have been invoked and the pendency of the criminal proceedings is nothing, but abuse of the process of Court and law and therefore, the Court shall exercise its inherent power, for quashing of the pending case.

The quashing of the chargesheet is also sought on the ground that the case is accentuated by malafides and to wake private vengeance, in relation to the differences, which are purely private in nature and therefore, it falls squarely within the four corners of category 7 as provided by the Apex Court in the case of **State of Haryana & Others Vs. Bhajan Lal & Others**. [1]

1 AIR 1992 SC 604

2. We have heard the learned Senior Counsel Mr. Aabad Ponda for the Petitioner, the learned Additional Public Prosecutor, Mr. Faldessai for Respondent Nos. 1, 2 and 3 and Mr. Rizwan Merchant for Respondent No. 4, the Complainant, the private Company registered under the provisions of the Companies Act.

3. In order to appreciate the contentions advanced in support and in opposition of the reliefs sought in the Petition, it is necessary to highlight the case of the prosecution, based on the complaint and the material, which is part of Chargesheet No. 2/2023 filed by the Police Inspector, Economic Offences Cell, Panaji, Goa.

THE PROSECUTION CASE:

4. The prosecution's case in brief is detailed as below:

(A) The Chowgule group of Companies was a family run group by the members of the Chowgule family, being the major shareholders and Directors of the Company in the said group and managing its affairs.

In the wake of the existing dispute, in the family, a split occurred in the year 2020.

(B) The Petitioner, associated with the group as Advisor and particularly, being associated with the Chowgule and Company

Private Limited (CCPL) for past over 45 years, having rendered professional advise to the Company, was co-opted as Director on the Board of CCPL in the year 1989 till his resignation as Director on 14.01.2021.

(C) Upon the split in the family, the Petitioner decided to go along with the elderly members of the family and if required, vote against Padma Chowgule and this was the cause of issuance of a public notice, when CCPL on 09.12.2020 terminated the services of the Petitioner and his Chartered Accountancy Firm, 'P.P. Mahatme & Company'.

(D) In the year 2021, upon a proposal put forth by the Petitioner to settle the disputes, after several rounds of discussions and negotiations, a Memorandum of Family Settlement (MOFS) came to be executed, with an aim to amicably resolve the disputes and effect the division of business and assets of Chowgule family to prevent any further dispute.

(E) The MOFS executed between the two groups of members of the Chowgule family, bifurcated the family into 'Group-A' and 'Group-B' i.e. seven family members headed by Padma Chowgule were referred to as 'Group-A' and eleven family members headed by Vijay Chowgule were referred to as 'Group-B'.

(F) The MOFS allocated the assets/business units and/or shares to either group, which was described in detail in two Schedules 'C' and 'D', forming part of MOFS.

(G) As per the MOFS, CCPL, which was the flagship Company of the united Chowgule group came to be allocated to 'Group-A'. Prior to the execution of MOFS, over several years, CCPL had advanced loans aggregating to about Rs.336 crores to 'Angre Port Private Limited' (APPL), a Company whose shares were allotted to 'Group-B' under the MOFS. Similarly, loans were advanced to another seven Companies whose shares were included in Schedule 'D'. A specific clause was found place in MOFS, which stated that any inter-company loans as on 31.03.2020, between the Companies allotted to 'Group-A' and 'Group-B' would be transferred along with the company/business unit and it was also agreed that such loans would not be required to be repaid by the borrower companies and this was so stated in clause 9 of the family settlement.

(H) Upon execution of the MOFS, the directors belonging to 'Group-A' resigned from the Board of Directors of the Companies whose shares were allotted to 'Group-B' under Schedule 'D' of the MOFS and the entire control and management of such Companies vested in 'Group-B'. Simultaneously, 'Group-B' members resigned from the Board of Directors of Companies whose shares were mentioned in Schedule 'C' and thus, the entire management and control of such Companies vested in 'Group-A'. As the Petitioner was associated with 'Group-B', the Petitioner also resigned from all the Companies whose shares were allotted to 'Group-A'. Each group assumed full management and operational control on their respective Companies.

(I) However, within a few days of execution of the MOFS, 'Group-A' refused to comply with the terms and obligations under the MOFS, thereby depriving 'Group-B' of their entitlements under the MOFS to the shares of companies, divisions and assets specifically allotted to them in Schedule 'D' of the MOFS.

(J) 'Group-B' invoked an arbitration clause under the MOFS by addressing a notice dated 18.05.2021, and the Arbitral Tribunal was constituted for the resolution of the dispute.

(K) A meeting of the Board of Directors of APPL was held on 07.06.2021, to take review of the accounts for the quarter ending on 31.03.2021 and this meeting was held online in the wake of Covid situation and a resolution was passed, which is the bone of contention between 'Group-A' and 'Group-B' as it relate to the issue of write-back of loan amounting to Rs.336 crores, which was lent by CCPL and it is this resolution which was placed in the arbitration proceedings while the Tribunal was considering Section 17 Application.

(L) In these proceedings, APPL, through its Director, Mr. Nathan Chowgule, filed an affidavit stating that in the background of the fact that the MOFS specifically contemplated non-payment of loans obtained from Schedule 'C' Company as on 31.03.2020, the Board of Directors considering all the applicable parameters, including tax incidences, deemed it appropriate and proper to approve the write-back of the loan payable and the respective Company resolution approving and/or ratifying such write-back was annexed.

(M) By an interim order dated 05.07.2021, the Arbitral Tribunal directed 'Group-B' to maintain the status quo, thereby restraining any further writing-back of loans provided by 'Group A' Companies.

(N) While these proceedings were in progress, CCPL, through its signatory Vivek Mangoli filed a criminal complaint on 31.08.2021 alleging that the resolution annexed to the affidavit of APPL before the Tribunal has been "forged and fabricated" as no discussion on the aspect of write-back of loans had ever taken place during the board meeting held on 07.06.2021.

(O) The complaint was directed against the Petitioner, Vijay Chowgule, Rohini Chowgule and Nathan Chowgule. However, no action was taken on this complaint, though as a part of preliminary investigation, a questionnaire was forwarded to the Petitioner.

5. It is to be noted that the Arbitral Tribunal disposed of Section 17 Application filed by 'Group-A' by a majority order dated 16.12.2021 in the ratio of 2:1 and the majority taking the view that the writing-back of loans was a bonafide decision taken in the best interest of the Companies and the same could not described as malafide, despite some defects in following procedure which would not take away the entitlement of 'Group-B' in that behalf and ad-interim relief against the 'Group-B' was vacated. This decision was appealed in a Commercial Appeal before the Commercial Judge, Vasco-da-Gama, and the Appeal is pending for adjudication.

6. CCPL filed another criminal complaint on 02.02.2022, agitating the same issue about write-back of loans by APPL, describing the Petitioner as "mastermind and criminal guide" and responsible for the said write-back. The FIR came to be registered on 08.02.2022 at 18:25:06 hours based on the information received and arrayed the Petitioner as Accused No. 1 along with

Mr. Vijay Chowgule, Rohini Chowgule and Nathan Chowgule as other Accused.

7. Upon the investigation being completed in the said C.R., chargesheet has been filed under Sections 409, 420, 465, 468, 471 and Section 120-B of IPC, and the proforma chargesheet reveals thus:

> *"During the course of Investigation collected the documents i.e Memorandum of Family Settlement (MOFS) executed on 11.01.2021, certified true copy of the Resolution passed by the Board of Directors of Angre Port Private Limited held on Monday the 7th June 2021 through internet Via Microsoft Teams, Email copy received by Kedar Desai Director Angre Port Private Limited dated 14.07.2021 from main office Mumbai, Email reply by Mr.Kedar Desai, Director Angre Port Private Limited dated 25.07.2021, Certified copy of the loan Account Statement and balance sheet, Copy of VC recording of the Board Meeting dated 07.06.2021, Certified copy of Audit Report of CCPL for the Financial year ending 31st March 2021.*
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> *During the course of investigation and upon the perusal of the documents, it was revealed that the Accused No A1-Mr.Pradep Mahatme is not a Director of the said Company and was engaged as Solicitor/ Financial Advisor and did not attend board meeting of the said Company dated 07.06.2021, however as per the complainant accused no A1 is the mastermind and there is commission of offence by the said accused for*

wrongful loss to the complainant and wrongful gains for themselves. The accused No A2 Mr Vijay Chowgule, A3 Mr Nathan Chowgule and A4 Ms.Rohini Chowgule were directors of the said Angre Port Private Limited and all attended the board meeting of the said Company dated 07.06.2021. The Board meeting, draft of meetings, passing of resolution, creating bogus and fabricated resolution dated 07.06.2021, that they are writing off the loan amount of Rs.336.61 crores which was owed to the complainant was in connivance with all 04 accused persons.

ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONER:

8. Mr. Ponda, the learned Senior Counsel for the Petitioner would submit that a complaint was initially filed with Mormugao Police Station on 31.08.2021 and though an inquiry continued for almost eight months, no FIR was registered, but on the complaint being filed with the same accusations, within few seconds, the FIR was registered, which itself is reflective of non-application of mind. The FIR was thereafter transferred to the Economic Offence Cell (EOC), and it is his submission that the Complainant deliberately suppressed the order passed by the Arbitral Tribunal on the Section 17 Application by a majority of 2:1, which if perused, would reflect the falsity of the claim in the Complainant. Apart from this, it is also pointed out by Mr. Ponda that on 02.01.2023, the EOC, after recording the statement of several witnesses, filed a 'C' closure report, but for the best reasons known on 04.01.2023, an Application was filed for withdrawal of the closure report, and this was also allowed by the Magistrate.

Submitting that though the chargesheet was filed before the competent Court, all of a sudden the material was unearthed, which was absent when the closure report was filed. Mr. Ponda would submit that the filing of the closure report and its withdrawal, clearly depict that the process is driven by external influence for collateral purposes. He would rely upon the decision of the Apex Court in the case of **Haji Iqbal alias Bala Vs. State of U.P. & Others**[2].

9. According to Mr. Ponda, the MOFS clearly provided as to how the business, the shareholdings and the property shall be divided in two groups; 'Group A' and 'Group B'. A specific time limit was provided for implementation of the MOFS, but according to Mr. Ponda, 'Group A' avoided the implementation of the MOFS, and this forced 'Group-B' to invoke arbitration, which is still in progress. Relying upon clause 9 of the MOFS, he would submit that the inter-company loans provided on 31.03.2020, by Companies belonging to one Group to the Companies belonging to the other Group were agreed not to be repaid, and it was agreed that the borrower Company had no obligation to repay this loan.

2 2023 SCC OnLine SC 948

Relying upon the provisions of Section 129 of the Companies Act read with Section 133, he would submit that the provision mandate that the financial statement of the Company shall give a true and fair view of the state of affairs of the Company (Company or Companies) and the accounting standards laid down by the Central Government should be complied with. He would submit that Chapter XXI of the Income Tax Act contemplate imposition of penalties for misreporting or under-reporting of income, and it contemplate offence and prosecution.

10. Based upon the implications of the statutory provisions, the learned Senior Counsel would submit that the Petitioner was of the opinion that in light of clause 9 of MOFS, Rs.336 crores should be returned back to the financial statement of the Company, so that it reflects true and fair view of its affairs or else the Company run the risk of violating the provisions of Companies Act, 2013 and also the provisions of the Income Tax Act, which may call for penalties and prosecution.

It is therefore, categorically submitted by him that the accounting team of APPL, made appropriate journal entries and entries in its balance sheet as on 31.03.2021, which had the effect of the liability of APPL being reduced by Rs.336 crores and Rs.336 crores being added to the income of APPL, thereby increasing its reserve.

11. Mr. Ponda would submit that at this stage, the role of the Petitioner came to an end as he only participated till the stage of advising 'Group B' to which he was committed, as a Chartered Accountant as he is entitled to advise, and he did so. However, the calling of the Board meeting, finalising the agenda, the conduct of the meeting, preparation of its minutes, was not his prerogative as it fell within the domain of the Company Secretary and the Chairman of the Company and he is not aware as to what was the agenda of the meeting, which was scheduled 07.06.2021 nor is he privy to the discussion which took place in the meeting.

However, on the basis of the chargesheet, he had reflected upon the statements of various witnesses including the statement of Ms. Shantal Nayak, the Company Secretary, Darshan Karekar, Vishal Karande, Niranjan Daga, who were present in the meeting, at the culmination of which, the minutes were prepared, which were signed by Vijay Chowgule, which contain a resolution for write-back and this has a reference to the presentation by Mr. Vishal Karande in respect of the write-back and the specific accounting entry giving effect to the write-back in the balance sheet.

12. According to Mr. Ponda, the role of the Petitioner as a Chartered Accountant, had come to an end when he advised the Company and its Chairman and he cannot be prosecuted for his advise, despite a specific accusation in the chargesheet that it was on his advise, the loan was returned back. In any case, Mr. Ponda would submit that he never guided 'Group-B' to take the Board resolution, nonetheless to record the write-back of the loan in the said resolution as he was of the specific opinion that the Board resolution was not at all necessary as per the provisions of the Companies Act, but it was the sole decision of Mr. Vijay Chowgule to incorporate the same in the minutes as none of the Directors had objected to the write-back already carried out in the accounts and the effects explained by Mr. Karande and therefore, there was no requirement of the resolution, but it was a mere voluntary act.

13. In any case, the chargesheet contain an accusation of forgery in the preparation of final minutes of the meeting by incorporating an additional agenda and the relevant decision of writing-back, at the most, it is relatable to the management, as according to Mr. Ponda, the Petitioner was not even present at the meeting, therefore, there was no question of the Petitioner forging any document. Therefore, it is the submission of Mr. Ponda that he cannot be made to face a trial for the offences under Section 120-B of IPC, and by its aid, roping him under the alleged offences under Sections 409, 420, 465, 468 and 471 of IPC.

14. When we specifically asked Mr. Faldesai to point out the material in the chargesheet against the Petitioner, he would rely upon certain statements, but when specifically asked about how the offence is made out against him and which of the acts of the Petitioner would justify invocation of Sections 409, 420, 465, 468 and 471 of the IPC, he would submit that since the Petitioner is a part of the conspiracy and faces accusation under Section 120-B of IPC, he is also liable for the principal offences with which the other Accused are charged.

ARGUMENTS ADVANCED ON BEHALF OF RESPONDENT NO. 4-COMPLAINANT:

15. Mr. Merchant, the learned Counsel representing the Complainant would invite our attention to the chargesheet, which has included the MOFS as well as the complaint dated 02.02.2022. According to him, the complaint addressed to the Senior Police Inspector, Mormugao Police Station, specifically allege that the Accused, Nathan Chowgule, had filed an affidavit on behalf of APPL falsely stating that the loans of APPL had been returned back and approved by the Board of Directors and the affidavit contain forged and fabricated resolution purportedly passed by the Board of Directors in its meeting conducted on 07.06.2021.

According to Mr. Merchant, the forged and fabricated Board resolution recorded that the loans extended by the Complainant to the Accused-Company to the tune of approximately Rs.336 crores were returned back and APPL had no liability to CCPL and the suspicious nature of the resolution called for an inquiry into its authenticity.

16. According to Mr. Merchant, the crime of forgery and cheating is invariably made out on the basis of (a) email dated 25.07.2021 of Mr. Kedar Desai, the Ex-Director of APPL, (b) minutes of the meeting dated 07.06.2021 circulated by APPL and (c) recording of the Microsoft Teams Virtual Meeting conducted on 07.06.2021.

According to him, in this whole episode, the Petitioner is the mastermind as he is at the helm of negotiating, initiating and/or instituting any cause of action and/or proceedings for and on behalf of the Accused. It is the specific submission of Mr. Merchant that the document was prepared to cause wrongful loss to the Complainant and ensuing wrongful gains for the Accused persons as no resolution was ever passed in the meeting held on 07.06.2021 and the act of forgery and fabrication extinguishing the legal liability of the Accused, attracts an offence under Sections 463 and 464 of IPC. According to him, the criminal act has resulted in wrongful loss of approximately Rs.73 crores to the Complainant in the form of additional income tax, which is a liability shown on 'Group-A'. This act of creating bogus, forged and fabricated Board resolution, according to Mr. Merchant, is with specific intent to prevent CCPL from utilizing the long term capital loss of Rs.310 crores approximately, which otherwise would have been set off against the future long-term capital gain and the total loss that would be ensued by the Complainant is estimated approximately to Rs. 73 crores.

17. Mr. Merchant would invite our attention to the statements of various witnesses compiled in the chargesheet, which include the statement of Ms. Shantal Ramdas Naik, the Company Secretary, Mr. Vishal Karande along with Mr. Niranjan Daga, Chartered Accountants, Mr. Kedar Desai, the Director of APPL, Mr. Sandip Gupta, Incharge of Operations with APPL, Mr. Darshan Karekar, Mr. Hasmukh Dedhia, who were somehow connected with the meeting in which the resolution was never passed and according to him, they are the witnesses to the fact that the subject of write-back of the unsecured loan was neither on the agenda nor there was any discussion on the said subject and therefore, there was no question of passing of the resolution to that effect.

By relying on their statements, it is an attempt of Mr. Merchant to show that there was no discussion on that subject and the resolution was never passed at all, but it was false and fabricated subsequently, and in the whole episode, he put the blame on the Petitioner as an Advisor, as he would submit that Ms. Shantal Nayak had specifically given a statement that she was told to consult the Petitioner on any aspect relating to the

Company and she was looking at Mr. Mahatme as a troubleshooter, whenever she was required to do so.

By pointing out to the specific statement of Mr. Vishal Karande, it is sought to be argued that the Board was briefed by him about the impact of write-back of unsecured loans obtained from CCPL as per MOFS, but there was no discussion held by the Directors nor any resolution was passed during the said Board meeting.

In short, relying upon the said statement, it is the submission of Mr. Merchant that the write-back was at the instance of the Petitioner, and it was a conspiracy hatched against the Complainant so as to cause wrongful loss to them and wrongful gain to the other group.

18. Mr. Merchant would place reliance on the decision of the Apex Court in the case of **Firozuddin Basheeruddin & Others Vs. State of Kerala**[3]. to rely upon the following observations:-

> *"Conspiracy is not only a substantive crime. It also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission.*

3 (2001) 7 SCC 596

The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendants liability than the fact that the crime was performed as a part of a larger division of labor to which the accused had also contributed his efforts."

OUR ANALYSIS AND CONCLUSION:

19. We have perused the FIR as well as the chargesheet, which has compiled the material collected by the Investigating Officer during the investigation.

20. The four accused persons, the Petitioner being arrayed as Accused No. 1, are charged of hatching a criminal conspiracy in connivance with each other in creating bogus and fabricated resolution dated 07.06.2021, which include writing of loan amount of Rs.336 crores which was owed to the Complainant-Company i.e. CCPL and it is alleged that the said resolution was placed before the learned Arbitral Tribunal on affidavit and an advantage was derived therefrom and this act has attracted an offence of criminal breach of trust and cheating.

To establish the above charge, statements of several employees of APPL are recorded and form part of the chargesheet.

21. The chargesheet has included the statement of Ms. Shantal w/o Ramdas Nayak, who in the capacity of the Company Secretary had attended the Board meetings of APPL and in her statement recorded on 29.03.2022, she specifically set out the procedure to be followed in a Board meeting and also state that in case if a resolution is to be passed, then such draft resolution is included in the Agenda points, but in some cases, it is not included and when the draft resolution is not included in the Agenda, but is discussed in the meeting of the Board and if there is no objection, then such resolution is reduced in writing.

In her statement, Ms. Shantal Nayak state that after she joined APPL, she was introduced to Mr. Pradip Mahatme by the Chairman of the group, Mr. Vijay Chowgule, as a Consultant of their group and she was informed that in case, any assistance is required or if there are any queries related to the Company, then she should seek his guidance and therefore, whenever she required any guidance/opinion/expertise, she consulted Mr. Pradip Mahatme.

22. Referring to the Board meeting dated 07.06.2021, she state that she joined the Microsoft Team, in which, all the Directors and other invitees also participated and this included Mr. Vijay Chowgule as Chairman, Mr. Kedar Desai and Mr. Nathan Chowgule as Directors and she in the capacity as Company Secretary along with Mr. Vishal Karande from Accounts

Department, Mr. Sandip Gupta from operation and Mr. Niranjan Daga as Chief Financial Officer. In her statement, she categorically state that while discussing Agenda No. 9 i.e. to review Quarter-IV, the presentation regarding operations was presented before the Board by the Head of the operation, Sandip Gupta and the financial part was presented by Mr. Vishal Karande, who gave a clear picture about the financial position of the Company for the said quarter. According to her, Mr. Vishal Karande also briefed the Board regarding the expenses incurred, creditors, debtors, dredging work that was taken up, write-back of the loan etc. According to her, he also presented slides where there was a point mentioned about the write-back of loan given to APPL by CCPL.

In the ultimate paragraph of the statement, she specifically state during Board meeting that no resolution of write-back of loan was put forth and no discussion took place as regards the passing of the resolution but the resolution was prepared as per the direction of the Chairman in consultation with Vishal Karande of Accounts Department, Mr. Gadkari of Legal Department, Mr. Niranjan Daga and the Financial Consultant, Mr. Pradip Mahatme and thereafter, it was presented for approval of the Chairman, Mr. Vijay Chowgule, who signed it.

23. From the above statements, one thing is clear that the Petitioner was not present in the meeting, but according to this witness, the resolution was prepared with his advise.

Her supplementary statement recorded on 05.04.2022 is also part of the chargesheet, where she state that in the draft minutes prepared by her, there was no mention of write-back of loans and the Chairman told her that there was no mention of the same and therefore, corrections were made in the draft minutes, which was finalized and signed by the Chairman. She categorically state that she do not remember about passing of the resolution regarding write-back of the loan in the final minutes of the meeting.

24. In sync with the statement of this witness, the statement of Mr. Vishal Karande is included in the chargesheet, where he confirmed that in the Board meeting, he had briefed the Board on the issue of write-back with regard to the reserves and surplus in the balance sheet. He categorically state that he never met Mr. Pradip Mahatme, but the issues pertaining to the finances of the Companies were dealt as per the advise of Mr. Pradip Mahatme by Mr. Vijay Chowgule.

25. Further, the statement of Mr. Niranjan Daga, the Chartered Accountant, recorded on 14.05.2022, confirm that Vishal Karande presented the financial part of the Company and briefed about the effect of write-back of the loan as on 31.03.2021. He also stated that while briefing about the effect of write-back of loan on the financial status of the Company, Mr. Vishal Karande was also audible while discussing the Quarter-IV review, saying that write-back of loan is done as per MOFS and as per the instructions of Mr. Pradip Mahatme. However, he clarified that he does not remember whether any such instructions were given to him by Mr. Pradip Mahatme, whether verbal or written.

26. Mr. Kedar Desai, in his statement dated 19.05.2022, with reference to the query posed in respect of the presentation of Mr. Vishal Karande regarding the impact of write-back, did not dispute that the presentation did take place, but he state that "no resolution" was passed. He also clarified that if a particular subject is not included in the Agenda, then such a subject is taken up at the end of the meeting. To a particular question put up as Question No. 11, he gave the following response:-

> *"Question No. 11:- During interrogation Mr. Vijay Chowgule stated that he had called up all the directors before the meeting, held on 7th June 2021 and had told them about the issues which will be taken up for discussion, especially regarding write back of loan. Did he discussed the said issue i.e. write back of loan prior to the meeting ?*
> *Ans: - No, before this meeting there was no discussion about write back of loan with Mr. Vijay Chowgule. However few days after the said meeting, I got a call from Mr. Vijay Chowgule, informing that, we need to do this write back, for which I said ok. But I was presuming that, they would circulate a resolution and would have another meeting to do the write back.*

However I did not have any idea that, they intended to do the write back in the previous meeting."

27. Another relevant statement is of Sandip Gupta, in charge of Port Operation, who was also present in the meeting held on 07.06.2021 in virtual mode, and he referred to the items of the Agenda, which were taken up for discussion. The 9th Agenda item according to him, was of review of Quarter-IV and he state that he presented the presentation before the Board members and after that, Mr. Vishal Karande started his presentation on Accounts and Finance and thereafter, he reduced the volume as he was not concerned with the financial presentation, however, he had seen the slides presented by Mr. Vishal Karande regarding the balance sheet.

28. From the reading of the aforesaid statements, which are part of the chargesheet, it is evidently clear that in the said meeting, the Petitioner, was not admittedly present. Now, what he is accused of is advising Mr. Chowgule of preparing the minutes regarding write-off, but even this inference cannot be reached by reading any of the statements, which are included in the chargesheet.

From the statements, it is evidently clear that in the meeting, there was a presentation by Mr. Vishal Karande in respect of the write-back, and the specific accounting entry giving effect to the write-back in the balance sheet has emerged, and it emerges with a clarity that the accounting entry in the balance sheet was done in Quarter-IV review.

No objection was raised by any of the Directors in respect of the said Quarter-IV review and the accounting entry effected in respect of the write-back. The endorsement by the Board, including Mr. Kedar Desai, in the balance sheet in the manner explained by Vishal Karande, which effected the write-back on the basis of instructions of Mr. Pradip Mahatme, is also not in dispute.

29. Mr. Ponda has specifically urged before us, and we find substance in his submission that as an Advisor to the Company, Mr. Mahatme had advised the Company about the mode of dealing with the finances of the Company, but it was not his advise to pass a resolution of write-back and confirmation or modification of the minutes. As a Consultant, he had given an advise to the Chairman of the Company, but he had no role to play in the manner in which the decision was taken by the Company in the form of a resolution of write-back or as alleged forging of the minutes of the meeting.

The chargesheet attribute no specific role of the Petitioner regarding the fabrication of the resolution or the preparation of the final minutes of the meeting. It is only Shantal Nayak, who in her statement dated 29.03.2022 state that the write-back resolution was prepared as directed by the Chairman in consultation with Mr. Vishal Karande, Mr. Niranjan Daga, Mr. Gadkari and Mr. Mahatme, but this statement is a general statement as she has not depicted as to how and when the Petitioner has advised that the resolution, even if not passed in the meeting, should be fraudulently prepared in a particular manner. In fact in her own statement dated 05.04.2022 she had stated that the corrections to the draft minutes were finalized and signed by the Chairman, Mr. Vijay Chowgule.

30. The statements of the aforesaid witnesses by no stretch of imagination attribute forgery of the document to the present Petitioner, as even he was not present in the meeting, nor is there any evidence to establish that the resolution which was prepared was replaced and as alleged, was forged and this was done by the Petitioner. It cannot be disputed that since Mr. Pradip Mahatme was an Advisor to the Company, he had advised to write-back the loan, but it was not his suggestion that the Board resolution should be passed and in fact, it is the case of the Petitioner that no resolution of the Board was necessary for writing-back of loan in terms of the provisions of the Companies Act, 2013 and it was a decision solely taken by Mr. Vijay Chowgule to incorporate the same in the minutes and none of the Directors objected to the write-back, which was already done in the accounts and the effects of which were explained by Mr. Vishal Karande. Therefore, the passing of the resolution was not a statutorily contemplated act, but a mere voluntary act on the part of the Chairman, to which the Petitioner is not a privy.

31. The accusation in the subject FIR of forgery is premised in the backdrop of the preparation of the final minutes of the meeting, which incorporated an additional agenda with regard to the write-back of the loan and the chargesheet allege that no discussion took place in the Board meeting and the subject was incorporated in the final minutes of the meeting. This forgery if committed, is attributed to the Chairman or the Members of the Board of Directors, but as the Petitioner never participated in the meeting, however, definitely advised the write-back of loan, but since he has no role to play in preparation of the minutes of the Board, no offence can be attributed to him. The act of forgery, cheating or breach of trust, in any case, is not alleged in respect of Agenda of Quarter-IV review or the balance sheet discussed, but it is limited to the write-back of loan of Rs.336 crores, which is mentioned in the final minutes of the meeting and the extract of resolution, for which the Petitioner is not responsible.

32. The learned Counsel Mr. Merchant has placed reliance upon the decision in the case of **Firozuddin Basheeruddin** (supra) in support of his contention that since Section 120-B is invoked, which prescribe the punishment for criminal conspiracy, criminal conspiracy being defined in Section 120-A, to the effect that when two or more persons agree to do, or cause to be done, an illegal act or an act which is not illegal by illegal means, such an agreement amount to a criminal conspiracy. It is his specific submission that, it is in the wake of this offence being invoked in the chargesheet, all other offences, which are invoked in the chargesheet are automatically invoked against the Petitioner, including the offence under Sections 409, 465, 468, 471 and 420 of IPC. It is no doubt true that conspiracy is not only a substantive crime, but it also serves as the basis for holding a person liable for the crimes of others, in cases where application of usual doctrines of complicity would not render that person liable. The logic involved is clear that the criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon encouragement and support from the group as a whole to warrant treating each member as an agent of each act.

33. However, we must note that even the offence of conspiracy against the present Petitioner is not made out from the chargesheet as we find that he being an Advisor, he advised the Company-APPL and its Chairman in the capacity of professional Chartered Accounts and no specific role is ascribed to him qua the transactions except referring to him as "mastermind". There is no material in the chargesheet to establish that the Petitioner was part of decision making though it is not in dispute that he did advise APPL management and Accountants that in the circumstances of the matter, writing-back of loan would be most appropriate, but since he is a Chartered Accountant, who render his services for a fee, definitely will not make him criminally liable for the advise given in the course of his consultancy.

34. Pertinent to note that the Petitioner is neither a Director nor a shareholder of APPL and did not even attend the Board meeting of APPL held on 07.06.2021. The involvement of the Petitioner is described by him as he had sided the elder members of the Chowgule family against Padma Chowgule and therefore, the quashing of the FIR is sought before us on the ground that the proceedings are manifestly attended with malafide and are maliciously instituted with an ulterior motive for getting vengeance and to settle the personal grudge.

35. By taking an overall view of the material compiled in the chargesheet, which indicate that a discussion of write-back took place in the meeting of APPL held on 07.06.2021 and the Petitioner was not even present in the meeting, merely because he has advised to the Company to write-back the loan, is not sufficient to foist the criminal liability upon him.

It being a settled position of law that the Courts shall exercise its inherent jurisdiction under Section 482 of Cr.P.C. to prevent abuse of the process of Court and secure ends of justice, particularly when the allegations in the FIR do not *prima facie* constitute an offence and/or make out any case against an Accused, we are inclined to invoke our inherent jurisdiction as from the material placed in the chargesheet, we are of the view that it failed to make out an offence of forgery, cheating and/or forging of the documents and even criminal breach of trust qua the Petitioner.

We are of the view that the Petitioner has been wrongly roped into the proceedings and the investigating agency has mechanically and perfunctorily filed the chargesheet, despite knowing well that the material is not sufficient to fasten the Petitioner with criminal charges.

The Petitioner has been summoned by the Magistrate without applying its mind to the nature of the allegations in the complaint and the evidence, both oral and documentary, in support thereof, and this has been done as a matter of course, without any application of mind. In fact, on one occasion, Form 'C' was filed for closure of the FIR, but immediately thereafter, the same was withdrawn despite the fact that there was no change in the circumstances. In any case, even now when the chargesheet is filed, which lacks the necessary material to make out an offence against the present Petitioner, we deem it appropriate to quash and set aside the Chargesheet No. 02/2023 arising out of FIR No. 11/2022 qua the Petitioner as we find that the material compiled therein has failed to make out any case against the Petitioner and his prosecution would be nothing short of abuse of process of law which we intend to prevent.

36. In the wake of the aforesaid, the Writ Petition is allowed by quashing FIR No. 11/2022 registered against the Petitioner as well as Chargesheet No. 2/2023 filed in the Court of Judicial Magistrate First Class, Vasco-da-Gama invoking Sections 409, 420, 465, 468, 471 and 120-B of IPC, only as far as the Petitioner is concerned.

NIVEDITA P. MEHTA, J. **BHARATI DANGRE, J.**