IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 308 of 2013

Pinkhem Investment Company Pvt. Ltd. & Ors.
-Vs-
Manali Properties & Finance Private Limited

For the Petitioners : Mr. Uttiyo Mallick

For the Opposite Party : Mr. Avishek Sinha

Judgment on : 27.02.2026

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner for quashing of the proceedings of Case No.C-4100 of 2012, pending before the Learned Judicial Magistrate, 2nd Court, Alipore, under Sections 403/406/418/420/120B of the Indian Penal Code.
2. The petitioner no.1 had been a company incorporated under the Companies Act, 1956 with its registered office at Mumbai conducting its business therefrom. Petitioner no.1 company, was represented by Sri Vinod Bhartiya, had been duly authorized to represent the same through its Board Resolution dated December 04, 2012.

3. Petitioner no.2 had been a company incorporated under the Companies Act, 1956, conducting business from its registered office at Mumbai and was represented by Sri Vinod Bhartiya, who had been duly authorized to represent the petitioner no.2 company through its Board Resolution dated December 04, 2012.
4. Petitioner no.3 was the Chief Finance Officer of the petitioner no.1, working from the office of the petitioner no.1 situated at the address mentioned in the cause title.
5. Petitioner nos. 4, 5 and 6 were the directors of the petitioner no.1 and resided at the respective addresses as stated in the cause title. Petitioner nos. 4 and 5 were also directors of petitioner no.2 company.
6. On or about 23.7.2012 opposite party filed a petition of complaint before the Court of the Learned Chief Judicial Magistrate, South 24-Parganas at Alipore alleging commission of offences by the Petitioners punishable under Sections 403/406/418/420/120B of the Indian Penal Code.
7. The Learned Chief Judicial Magistrate, South 24-Parganas at Alipore, by order dated 23.7.2012, took note of the petition of complaint and transferred the case to the Court of Learned Judicial Magistrate, 2nd Court, Alipore for disposal.
8. The petitioner no.1 company had been arraigned as accused no.1, petitioner no.2 company had been arraigned as accused No.2 while the petitioner no.3 had been arraigned as accused no.3 and petitioner nos. 4, 5 and 6 as directors of the petitioner no.1 were arraigned as accused nos.7, 8 and 9

respectively. Another company which was not related with the petitioner by the name of *Pat Financial Consultants Pvt. Ltd.* was arraigned as accused no.4 and the directors of the accused no.4 had been arraigned as accused nos.5, 6, 10 and 11.

9. The complaint in question narrated the following allegations:-

   a) In or about mid 2011, the complainant/opposite party company was in urgent need of funds for its business and the accused no. 1 company (Petitioner No. 1 company herein) being aware of the same through one of its Directors, discussed the possibilities of sanction of loan in the form of ICD. The accused no. 1 company (Petitioner No. 1 company herein) agreed to provide financial assistance by way of Inter Corporate Deposit (ICD) of Rs.5,00,00,000/- on the condition that the opposite party would provide security by way of equity shares of Falcon Tyres Ltd. in the form of pledge for an amount equivalent to double the amount of ICD on the market value of such security.

   b) On 02.06.2010 the opposite party pledged 11,77,000 equity shares of Falcon Tyres Ltd. which was entrusted as security with the accused no.1 company (Petitioner No.1 company) and a Loan agreement dated 07.06.2011 was executed at the registered address of the opposite party at Kolkata. It was alleged under no circumstances, the accused no. 1 company (Petitioner No. 1 company) could have invoked the said pledge before expiry of the due date i.e. 07.12.2011 because the loan was for a period of 184 days commencing from 07.06.2011 till 07.12.2011.

c) It was also stated the opposite party had issued 3 post-dated cheques in favour of the accused no.1 company (Petitioner No. 1 company herein), of which two were for an amount of Rs.20, 41,644/- towards payment of interest and the other was for Rs.5,00,00,000/- towards repayment of the principal loan amount.

d) Due to fall in price of the security shares, 1,68,000 equity shares of Falcon Tyres Ltd. were additionally pledged with the accused no.1 (Petitioner No.1 company).

e) The opposite party by its letter dated 25.05.2011 requested the accused no. 1 (Petitioner No. 1 company) to retain 2,29,000 equity shares of Falcon Tyres Ltd. for the purpose of topping up the securities which were required for the Loan Agreement between Ruia Sons Pvt. Ltd., a group company of the opposite party, and the accused no. 2 company (Petitioner No. 2 company) and the accused no. 1 company (Petitioner No. 1 company herein) held back 2,50,000 equity shares of Falcon Tyres Ltd. instead of 2,29,000 shares as requested. Therefore the accused no.1 company (Petitioner No. 1 company) was entrusted with 15,95,000 shares of Falcon Tyres Ltd.

f) The first cheque of Rs.20,41,644/- was duly encashed by the accused no.1 company (Petitioner No.1 company) on its due date. It was alleged that on scrutiny, the opposite party came to know that the accused nos.1 and 2 company (Petitioner Nos. 1 & 2 company), in collusion with each other and other accused, had been trading substantial quantity of the shares entrusted with them by the opposite party in the form of pledge, at a very low price amongst their Group Companies, beneficiaries, men and agents in order to procure more shares from the opposite party as per the terms of the loan Agreement by bringing down the market price of the pledged shares.

g) The opposite party belatedly became aware of the fact that the accused no. 1 (Petitioner No. 1 company) invoked the entire shares, entrusted to them by way of pledge on 24.08.2011, which was much before its due date and without prior intimation to the opposite party. The opposite party also claims to have come to know that the accused nos. 1 and 2 company (Petitioner Nos. 1 & 2 companies), in connivance with each other and other accused persons, have dishonestly transferred 6,14,095 shares of Falcon Tyres Ltd. to the accused nos. 4, 5 and 6.

10. The Learned Judicial Magistrate, 2nd Court, Alipore, upon receipt of the said case records, examined representative of the opposite party in terms of the provisions of Section 200 of the Code of Criminal Procedure on 06.08.2012 and observed a *prima facie* case under Sections 403, 406, 418, 420 and 120B of the Indian Penal Code against the accused persons and as such, directed issuance of process in the name of such accused persons. The

Petitioners have thereafter received summons issued by the Learned Magistrate.

11. The petitioners claimed complete innocence not being involved in commission of any criminal offence and the instant proceedings was tainted with *mala fide* and was harassive in nature for which the interference of this High Court was highly solicited.

12. The petitioners had narrated certain facts delineated as follows:-

a) "The Chairman and controlling person of the Complainant, Mr. Pawan Kumar Ruia ("Pawan Ruia") is the chairman and person in control of various entities that form a part of the "Ruia Group" which includes the Complainant, Dunlop India Limited, Falcon Tyres Limited and Ruia Sons Private Limited. Pawan Ruia approached Petitioner No. 2 company, through a broker viz. Mr. Padam Singhania partner of Enarr Capital, expressing need for an Inter Corporate Deposit ("ICD") of Rs.5,00,00,000/- and offered shares of Dunlop India Limited and Falcon Tyres Limited (both companies controlled by Pawan Ruia) as security.

b) Pawan Ruia represented that the companies of the Ruia group were financially sound and being part of the promoter group of two listed companies, namely Dunlop India Ltd and Falcon Tyres Ltd., were also in a position to offer substantial security in the form of shares of the said listed companies towards repayment of amounts.

c) To summarize his assurances, Pawan Ruia showed the Petitioner No. 1 and its officers a website of the Ruia Group which listed out several companies as well as various business articles in which Pawan Ruia claimed to have assets in excess of 5,000 Crores.

d) Since the Petitioner No. 2 company did not have any prior dealings with the opposite party and expressed its hesitation to make such a large deposit, opposite party and Pawan Ruia requested the Petitioner No. 2 company to advance a deposit of Rs.5,00,00,000/- for 365 days and offered to give postdated cheques towards discharge of their payment obligations. In order to test the financial strength and commitments of the opposite party and Pawan Ruia and unaware of their true design, the Petitioner No. 2 company gave an inter corporate deposit of Rs.5,00,00,000/- to Ruia Sons Private Limited ("Ruia Sons"), a company controlled by Pawan Rula. Documents in this respect were entered into by the parties relying on the personal assurances of Pawan Ruia and shares of Falcon Tyres Ltd and Dunlop Tyres Ltd pledged by the opposite party. This was done by way of a loan agreement dated 21.07.2010 for a period of 365 days bearing interest @15% p.a. Petitioner No. 1 company further on the request of Ruia Sons Pvt. Ltd. renewed the same amount for 184 days vide a loan agreement dated 21.07.2011.

e) Ruia Sons in discharge of their legally enforceable debts and liabilities issued three postdated cheques in favour of petitioner no.2 company, *two of which were towards payment of interest and third cheque was towards repayment of the principal amount.*

f) *The sister concern of the opposite party (Ruia Sons) regularly paid all interests due on the deposit without any default during the first tenure of 365 days.*

g) *In the interregnum, due to fall in the value of security pledged to Western India Garments Pvt. Ltd, the petitioner no.1 company (whose one earlier ICD stood repaid and against which the petitioner no.1 company was still holding 6,92,000 shares of Falcon Tyres Limited), was requested by opposite party on behalf of Ruia Sons by its letter dated 25.05.2011 to assign part of the shares pledged by it to Petitioner No.1 Company amounting to 2,29,000 shares of Falcon Tyres Ltd. as security to Western India Garments Pvt. Ltd. However, due to further fall in security, additional shares were required totaling to 21,000 shares and accordingly 2,50,000 shares were pledged as security for the deposit given by Petitioner No. 2 company. The opposite party issued two letters to this effect of which one has been concealed in order to make out a false case of retention of valuable security without authority.*

h) *On the due date of repayment of the principal amount of the ICD, cheque dated 21.01.2012 for an amount of Rs.5,00,00,000/- on being presented on 15.05.2012 was returned on 16.05.2012 with the remarks “account closed”. Since Ruia Sons and Pawan Ruia did not* *honour the cheque even after the issuance of the statutory notice on 25.05.2012, which was duly received by Ruia Sons and Pawan Ruia, the petitioner no.2 company has initiated criminal proceedings against Ruia Sons, Pawan Ruia and other Directors of Ruia Sons under Section 138 of the Negotiable Instruments Act, 1881. The said complaint being Criminal Complaint No.5379 of 2012 was pending adjudication before the Court of Learned Metropolitan Magistrate at Mazgaon, Mumbai.*

i) Around the time that the Petitioner No. 2 extended its ICD by 184 days in July, 2011, the opposite party in May-June 2011 approached the Petitioner No.1 through the same broker, for an ICD of Rs.5,00,00,000/- as the opposite party was once again in need of funds. Since at that point of time in 2011, the ICD transaction between Petitioner No. 2 and Ruia Sons was on track, the Petitioner No. 1 not knowing the malafide intentions of Pawan Ruía and his companies agreed to place another deposit of Rs.5,00,00,000/- with the opposite party and Pawan Ruia for deposit tenure of 184 days, which deposit was secured by 11,77,000 shares of Falcon Tyres Ltd equaling approximately twice the amount deposited as per the prevalent market price at the time. The opposite party also undertook to maintain the security at this level and to pledge additional shares in the event prices of the shares fell and in the event of a drastic fall, the petitioner no.1 company would be at liberty to invoke the shares and sell the same. The understanding between the parties as well as the representations *and undertakings of the opposite party were duly recorded in loan agreement dated 07.06.2011.*

j) *Opposite party in discharge of their legally enforceable debts and liabilities issued three postdated cheques in favour of petitioner no.1 company, two of which were towards payment of interest and third cheque was towards repayment of the principal amount.*

k) *The opposite party also undertook in the aforesaid agreement to provide additional shares without any requirement of notice as the opposite party and Pawan Ruia, being persons in management and control of these companies, were well aware of the share prices.*

l) *Accordingly on a further fall in share prices of Falcon Tyres Ltd within 15 days of making the deposit, the opposite party and Pawan Ruia without any notice for the same by the Petitioner No. 1 company, pledged a further quantum of 1,00,000 shares of Falcon Tyres Ltd on or about 24.06.2011 and another 68,000 shares of Falcon Tyres Ltd on or about 10.12.2011 to ensure that the value of the security stayed at twice the amount of the deposit.*

m) *Sometime in July 2011, the share prices of Falcon Tyres Ltd fell further such that the market price now fell by more than 30% of the market price at the time of disbursement.*

n) *In August, 2011 the share prices of Falcon Tyres Ltd fell further so that the market price fell by more than 50% of the market price at the time of disbursement.*

o) *Faced with a chronic failure on the part of the opposite party and Pawan Ruia to pledge additional shares, or make up for the shortfall in security in cash in accordance with the terms of the contract by way of prudence and abundant caution, by virtue of the rights granted to it under the Inter-corporate Deposit Agreement, the Petitioner No. 1 company invoked the pledge on 13,45,000 shares of Falcon Tyres Ltd and caused the same to be retained in its depository account.*

p) *In September 2011, even though the opposite party and Pawan Ruia failed to make good on their assurances to give additional shares as security, the first cheque dated 07.09.2011 due for interest payable on deposit was duly credited to the account of the petitioner no.1 company. The opposite party and Pawan Ruia, however stressed on their assurances of offering additional shares, failed to make good such promises.*

q) *Relying upon the assurances of the opposite party and Pawan Ruia, the Petitioner No. 1 company continued to retain the pledged shares in its depository account and did not sell the same.*

r) *In December 2011, despite completion of tenure of the deposit and the interest thereon becoming due on 08.12.2011, the opposite party and Mr. Ruia requested the Petitioner No. 1 to hold back on depositing the cheques and assured the Petitioners that the same would be honored within three weeks and that the opposite party and Pawan Ruia would pay additional interest for the period of delay.*

s) Petitioner No. 1 acceded to the said request of the opposite party and Pawan Ruia. Accordingly, the second cheque towards interest on 08.12.2011 and the third cheque towards the principal amount of the ICD, dated 08.12.2011 for an amount of Rs.5,00,00,000/- were presented after three weeks on 28.12.2011. However the same were returned unpaid on 29.12.2012 with the remarks "payment stopped".

t) Opposite party and Pawan Ruia failed to honour the cheques even after issuance of statutory notices on 06.01.2012 and 12.01.2012 respectively, which were duly received by opposite party and Pawan Ruia.

u) On or about 27 February 2012, the petitioner no.1 company has initiated criminal proceedings against opposite party, Pawan Ruia and other Directors of opposite party under Section 138 of the Negotiable Instruments Act, 1881. The said complaint being criminal complaint no.302 of 2012 and criminal complaint no.156 of 2012 are pending adjudication before the Court of Learned Metropolitan Magistrate at Mazgaon, Mumbai.

v) The Opposite Party and Pawan Ruia in reply to the aforesaid notices on 24.01.2012 and 06.02.2012 for the first time started claiming that the Petitioner No. 1 had wrongly invoked the pledge and they had dealt with the shares, both being factually incorrect and illegal statements and for the first time claiming that, based on the incorrect invocation, the opposite party and Pawan Ruia directed their bank to stop *payment on the cheques. Notably, the liability was admitted by the opposite party and no claim was made that the opposite party or Pawan Ruia was not responsible.*

w) Pawan Ruia despite various directions by the Trial Court, Sessions Court and High Court at Bombay failed to appear and non bailable warrants were issued against Pawan Rula on several occasions and were successfully evaded. It was only after proclamation was issued against Pawan Ruia that he appeared and took bail.

x) Notably, Pawan Ruia repeatedly sought indulgence and relief from the courts of Mumbai by filing a criminal revision before the district judge and before the hon High Court and was denied relief and directed to join investigation and intentionally avoided/ subverted the orders of the Mumbai courts.

y) On or about 8 May 2012, the Petitioner No. 1 company filed a suit for recovery against the opposite party and others being companies that are part of the Ruia Group. All the parties have appeared in the proceedings through their Counsel. In fact, opposite party has filed pleadings and regularly appears in the said proceedings. Notably, during these proceedings opposite party has at no point of time revealed that it has filed any proceedings of a criminal nature and has actually engaged in fraudulent concealment with the intention to mislead the courts of Mumbai."

13. The Learned Advocate representing the petitioners stated of various proceedings pending between the parties in Mumbai as follows:-

a) Criminal Complaint Number 302 of 2012 under Sections 138 and 141 of the Negotiable Instruments Act pending before the Learned Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai.

Filed by Petitioner No.1 on 27 February 2012. Non-bailable warrants issued against Pawan Ruia and bailable warrants issued against persons in control of opposite party.

b) CRR 225 of 2012 filed by Pawan Kumar Ruia against issue of process in Criminal Complaint No.302 of 2012.

Filed on or about 25 June 2012 in the court of the district judge. No relief granted to Pawan Ruia.

c) Criminal Complaint Number 156 of 2012 under Section 138 and 141 of the Negotiable Instruments Act pending before the Learned. Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai. Filed by Petitioner No.1 on 17 February 2012.

d) Criminal Complaint No. 5379 of 2012 under Section 138 and 141 of the Negotiable Instruments Act pending before the Learned. Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai.

e) Filed by Petitioner No.2 on 10 July 2012.

f) Suit no. 1267 of 2012:-

The Petitioner No. 1 filed a suit for recovery in the Hon'ble High Court at Mumbai. The said suit, being numbered as 1267 of 2012, was filed on 08.05.2012. The opposite party company along with Soumitra Ghosh and Pawan Kumar Ruia entered appearance on 11.05.2012 and submitted undertakings not to transfer shares held by them.

Independently, Accused No.4 Company has also initiated civil proceedings against opposite party as well as Falcon tyres Ltd, sometime in May 2012. Opposite party appears in the said suit regularly and was bound by the orders of the Hon'ble Mumbai High Court.

Notably, in all these proceedings before the Mumbai courts, till date, opposite party has concealed the fact that it has filed a complaint petition.

g) After appearing in the aforesaid proceedings, opposite party has now filed the following two proceedings in Kolkata behind the back of the Mumbai courts as well as your petitioners, which are:-

i. Suit no. 264 of 2012:- Desperately evading non bailable warrant and absconding from justice, Soumitra Ghosh and Pawan Kumar Ruia in a surreptitious and clandestine manner, caused filing of a suit being Suit No. 264 of 2012, through the opposite party, for declaration and mandatory injunction seeking to restrain the Petitioner No.. 1 and others from dealing in the pledged shares and from giving effect to the invocation of pledge. Notably, the invocation took place on 24th of August 2011, proceedings in relation to the transaction were initiated in January, 2012, criminal complaints lodged in Mumbai in February 2012 and civil proceedings for recovery initiated in May 2012 and a false and frivolous suit has been brought in Kolkata on 27.08.2012 in Kolkata. In the suit, in an Illegal attempt to avoid collateral estoppel, opposite party has willfully suppressed the fact of pendency of proceedings on the same cause of action in Mumbai.

An application under Section 10 of the Civil Procedure Code has been moved by your petitioners.

ii. CC number 4100 OF 2012:- Wary of its own illegalities, the opposite party company also filed a complaint under Section 200 of the Code of Criminal Procedure being CC No. 4100 of 2012 raising allegations of alleged criminality in relation to a transaction which was civil in nature and which transaction was already sub judice in the Courts at Mumbai. As if not satisfied with these acts of concealment, the opposite party and others have concealed facts from Mumbai High court inasmuch as not a whisper was made by them in any of the proceedings before the High Court at Mumbai about pendency of these proceedings. It was pertinent to mention that the opposite party, Mr. Ghosh and Mr. Ruia have appeared before the Mumbai Courts on 1.9.2012, 4.9.2012, 26.9.2012 and 30.10.2012 and in none of these proceedings did they disclose that they have filed proceedings in relation to the same cause of action in Kolkata.

The instant petition was preferred against the said criminal complaint proceedings.

14. The Learned Advocate representing the petitioner submitted the disputes between the parties were civil in nature in terms of the following clauses in the loan agreements as stated:-

Clause 2. *"2. The borrower agrees to keep at all times during the currency of the ICDs, securities to be approved by the lender of 2 times the value of loan including interest accrued thereon i.e. security worth Rs.200/-for every Rs.100/- of the loan amount. In the event that the share price of M/S Falcon Tyres Limited falls by more than 30% compared to the share price as at the Disbursement date. i.e. 07.06.2011 all further top ups would necessitate through additional payment of Cash/Fund only until the pledge margin is restored to 2 times of the ICD within 3 business days. In the event of top up is not made in accordance to above, the consequences of default will follow and entire ICD is called off & amount is immediately payable without any further notice."*

Clause 6 – "*6. If at any time the value, of the said securities falls so as to create a deficiency in the coverage required under clause 2 thereof, the Borrower on being asked by the lender shall deposit Immediately with the lender additional securities which may be acceptable to the lender or repay short fall amount, failing which the lender shall be at liberty at its discretion to sell, dispose of or otherwise* *realize any or all of the said securities without being liable for any loss or damage or diminution in value sustained thereby and adjust the proceeds towards dues of the lender. In case the sale proceeds of the securities are not sufficient to liquidate the ICDs and interest thereon and all charges payable to the lender by the borrower, the borrower shall remain liable to pay the remaining ICDs amount; interest and other charges with interest as provided under clause 4 hereinbefore.*

The Lender shall be at liberty to invoke pledge without notice, take the shares into his beneficiary account and sell the pledged shares in the event of any default in payment of principal amount of the Deposit, interest or charges connected therewith, or any other default or non-compliance of the terms & conditions contained herein which inter alia include the following:-

a) Default in repayment of principal, interest and cost incidental to ICD/pledge of shares on due date.

b) Shortfall in excess of 10% of the required security margin as specified herein above (clause 2)

c) If any undertaking or assurance given or the declaration made herein is found to be incorrect or at any stage the lender has any reason to believe that in his opinion security given to him or repayment of amounts due to him under this ICD will be adversely affected.

In the event of default as specified herein, the lender shall, in addition to his other rights under this agreement, be entitled to have *the pledged shares transferred in his name or in the name of his nominee or deal with the said shares in any manner he may deem fit."*

The aforesaid clauses 2 and 6 of the loan agreement reveal the following:-

a) Security (in the form of shares of Falcon Tyres Ltd.) was to be 2 times the value of the loan and interest taken together.

b) Any shortfall in the security margin, occasioned by a drop in share prices of Falcon Tyres Ltd., was to be replenished within 3 days.

c) Security shortfall in excess of 10% was categorized as an event of default, with the ensuing consequence of the loan being recalled without notice and the borrower being entitled to sale etc. of the pledged shares towards satisfaction of the loan amount,

d) The aforesaid clauses 2 and 6, relate inter alia to the security of shares and the margin to be maintained therein and the consequences of failure to maintain the requisite margin.

e) The aforesaid clauses are additional to clause 7, which provide for the modalities of the satisfaction of the debt, in the event the same remains unpaid on the due date. Clause 7 does not relate to shortfall in the security margin or the consequences thereof.

f) Needless to state, the agreement provides for two eventualities, the first being a shortfall in the security margin, which if not replenished within 3 days, shall constitute an event of default.

g) The second event of default is where the debt remains unsatisfied on the due date.

h) Both the events of default provide the consequence of the loan being recalled without notice and the borrower being entitled to sale etc. the pledged shares towards satisfaction of the loan amount.

In the instant case, the price of shares of Falcon Tyres Ltd. fell precipitously as a result whereof there was a shortfall in the security margin much in excess of 10%. The relevant shares price history of Falcon Tyres Ltd., as annexed hereto, would also demonstrate the same. It was apparent from the complaint, that the Opposite Party did not replenish the security margin and it fell much below the 10% shortage limit, thereby triggering the consequences of default on 24.08.2011.

Thus, the crux of the allegation relates to disputes raised by the opposite party against the operation of the terms of the loan agreement. Pertinently, on the one hand the opposite party has taken the benefit of the loan amount in terms of the loan agreement, and on the other hand the opposite party has attempted to renege on the covenants made by it governing the events of default in terms of the loan agreement and has thereby attempted to avoid the liability under the loan agreement.

The disputes if any, are thus purely civil. Pertinently, the opposite party had also filed a civil suit, being T.S. 264 of 2012, seeking to injunct the petitioner no.1 from dealing in the shares. The interim order passed initially in the said suit, was subsequently vacated, by which time the value of the shares had completely eroded and subsequently SEBI had delisted the shares on 27.11.2015.

i. **Complaint did not disclose ingredients of offences:-** The actions of the petitioner no.1 being entirely within the ambit of the admitted loan agreement dated 07.06.2011, the instant complaint fails to disclose the ingredients of the alleged offences, as has been elaborated during the course of the oral submissions and in the comprehensive written notes.

ii. **Vicarious Liability not applicable to Indian Penal Code offences**:- Vicarious liability was not applicable to the penal provisions under the Indian Penal Code. While petitioner nos. 1 and 2 are juristic entities, being companies registered under the appropriate laws, petitioner nos. 3, 4, 5 and 6 are individuals against whom the petition of complaint as also the statement of the witness does not disclose any role in the factual matrix of the instant case. As no person can be made vicariously liable for any offence, therefore the case against the petitioner nos. 3, 4, 5 and 6 is liable to be quashed on such score alone.

iii. Instant proceedings a counterblast to the Section 138 of the Negotiable Instruments Act proceedings:-

The instant proceeding was engineered by Malice and was a Counterblast to proceedings under Section 138 of the Negotiable Instruments Act filed earlier by the petitioner no.1 against the Opposite Party. The instant proceeding was the defence version of the opposite party to the proceedings under Section 138 of the N.I. Act.

The opposite party/persons responsible had caused appearance in the said cases on 08.06.2021 and 23.05.2021 in the respective cases. The present application was filed much later on 23.07.2012 only to spite the petitioners in order to avoid legal consequences of their acts.

It was trite law that where the impugned proceeding was a counterblast and the defence to a proceeding under Section 138 of the N.I. Act, the same cannot be permitted to stand and was liable to be quashed by this Hon'ble Court any leverage given or allowing the prosecution to continue in such cases would only encourage the loan defaulters and other habitual offenders to abuse the judicial process.

iv. **Section 202 Cr.P.C., not complied with**:- Process has been issued in the instant case without complying with the mandatory procedure of law envisaged under Section 202 of the Code of Criminal Procedure, 1973. The learned Magistrate neither postponed the issuance of process in order to conduct an inquiry in terms of Section 202 of the Cr.P.C., nor conducted the inquiry, which was mandatory as the accused reside beyond the territorial jurisdiction of the Learned Magistrate.

v. **SEBI action against group companies of the complainant:-** Securities and Exchange Board of India (SEBI) has banned the officials of Falcon Tyres Ltd., one of the sister concerns of Opposite Party who was the promoter entity, and its officials/Directors from operating and accessing the security markets due to blatant manipulations and malpractices of converting loans provided by group entities into preferential allotments in order to avoid the minimum public shareholding requirement.

Pertinently, the opposite party had pledged the shares of the same Falcon Tyres Ltd. win respect of the loan of Rs.5,00,00,000/- taken by it. It would thus be apparent that while on the one hand the Opposite party had offered the shares of Falcon Tyres Ltd. as security, on the other hand it was manipulating its price and engineering a fall in it. This coupled with the fact that the opposite party did not repay the loan of Rs.5 crores to the petitioner no.1, brings out the inherent fraud and deception practised by the Opposite Party.

15. The Learned Advocate for the petitioner further submitted as follows:–

i. The complaint further did not disclose the roles played by the directors/employees of the company and directors/employees cannot be made vicariously liable as a matter of course when the statute did not provide for the same.

ii. Furthermore, the present case was a counterblast to the Section 138 Negotiable Instruments Act, 1881 proceedings initiated by the accused company against the opposite party/complainant and moreover instant malicious proceedings effectively would lead to a serious impediment for any financial institution to recover its dues which admittedly in the present case has remained unpaid till date. Furthermore, it was submitted that a party who consciously enters into an agreement being completely aware of the consequences cannot deny its terms and take illegally take aid of malicious proceedings to avoid the obligations. It was agreed that lender would give ICDs to borrower up to Rs.5,00,00,000/- (Rupees 5 Crores) @ 18% p.a. for the period 7th June 2011 to 7th December 2011 (184 Days) against pledge of 11,77,000 shares of Falcon Tyres subject to, value of securities pledged with the lender are sufficient to give coverage of at least 2 times the value of ICD including interest accrued thereon, at all times during the currency of the ICDs.

It was further agreed to give coverage of at least 2 times the value of ICD, the borrower provided additional securities of Falcon Tyres Ltd. (INE511801024) 68,000 shares were pledged on 22nd June 2011 and Falcon Tyres ltd (INE511801024) 1,00,000 shares were pledged on 08th August June 2011. As on Dated 8th August 2011, borrower had pledged total Falcon Tyres Ltd. (INE511801024) 13,45,000 shares as securities against ICDs.

16. The Learned Advocate representing the opposite party submitted as follows:-

i. The primary allegation contextually stated after entering into the loan agreement the Accused no.2 being Western India Garments Pvt. Ltd., the holding company of accused no.1 Pinkhem Investment Co. Pvt. Ltd., from whom a group company of the complainant had borrowed Inter Corporate Deposit of Rs.5,00,00,000/- Crores had been selling the pledged shares entrusted to them in substantial quantities, in the market before the maturity even without any intimation to the Complaint's group company. On such information the Complainant requested the accused no.1 not to invoke the shares entrusted with them by the way of pledge before the expiry of the due date under the loan agreement. On further enquiry it came to the knowledge of the Complainant that accused no.1 and 2 in collusion with the other accused persons namely Gyan Prakash Sinha, Minal B Patel, Bharat Jayantilal Patel, Ajay Girdhari Lal Bhartiya, Shilpa Ajay Bhartiya, Sushil Girdhari Lal Bhartiya, Prashant Jayanti Lal Patel, Pankaj Jayanti Lal Patel and PAT Financial Consultants Pvt. Ltd., with mala-fide intention and ulterior motive with an intention to cause an undue loss to the complainant had been trading substantial quantities of shares entrusted with them by the Complainant in the form of pledge, at very low price amongst themselves/their group companies, beneficiaries in order to procure more shares to the Complainant as per terms of the loan agreement by bringing down the market price of the pledged shares in order to take control by cornering the shares of Falcon Tyres Ltd which was a blue chip company and under the control, of the complainant group.

ii. This deliberate and mala-fide intention of lowering the share price of Falcon Tyres was in itself an offence. The aforesaid steps were taken cunningly by the accused persons so that resultantly the share price goes below the threshold limit and the Complainant Company becomes liable to handover more shares according to the loan agreement.

iii. From very inception all the accused had the intention to disturb the affairs of the Falcon Tyres Ltd., through acquiring its shares by such wrongful illegal invocation and to acquire more such stocks from the Complainant and from the open market by deceiving the stock market by keeping the stock price at a very lower side and also to abstain the prospective speculators/investors from participating in trading of the said stock.

iv. The statement of the Holding dated 07.05.2012 issued by the National Securities Depository Limited made it clear that 3,73,475 number of equity shares of the said Falcon Tyres has been transferred in the favour of PAT financial Consultants Pvt. Ltd., and 2,40,620 number of equity shares had been transferred in the joint names of Minal B Patel and Bharat Jayantilal Patel.

v. Reference to the specific paragraphs of the loan agreement between the parties were indicated:-

a) Para 2 of the loan agreement states in the event if the shares of Falcon Tyres Pvt Ltd falls to more than 30% compared to the share price at the disbursement date i.e, 07.06.2011, further top ups would be necessary through additional payment of cash/ funds until the pledge margin was restored to two times of the ICD within three business days. In the event of top up was not made in accordance to above, the consequence of default would follow and entire ICD was called off and amount was directly payable without any further notice.

Accordingly, to invoke the aforesaid clause two things were to be proved. Firstly, that the share prices had gone down by more than 30% and secondly, the complainant company has failed to make additional payments as had been required under the agreement. However, all these issues were questions of fact and as such could not be considered at this stage invoking Section 482 of Code of Criminal Procedure without going through the process of trial.

b) The 3rd clause of the loan agreement stated without prejudice to the provisions hereinabove, ICD's facilities would be available for a period of 184 days, i.e., from 07.06.2011 to 07.12.2011 and the borrower should repay on due date. In view of such aforesaid clause the Complainant Company was not liable to repay before 184 days. As such invoking the aforesaid clause by the accused persons much prior to the due date by selling the shares handed over to them as security at a much lower price and thereby bringing down the share price of the Falcon Tyres to illegally obtain more shares of Falcon Tyres was per se a criminal offence.

vi. In addition to the role played by accused companies' specific averments as well allegations and roles have been attributed against all the other accused persons besides the juristic persons. Hence the plea of the accused persons that the rest of the accused were not vicariously liable and had no legs to stand.

In the backdrop of the aforesaid discussion it could safely be concluded that it could not be said that complaint did not disclose any offence. Further, most of the grounds taken by accused/petitioners were question of facts and that had to pass the test of trial. In view of the same it was submitted that it was not a fit case to invoke inherent jurisdiction of the High Court and as such the present revisional application should be dismissed.

17. The Hon'ble Supreme Court in the case of ***DELHI RACE CLUB (1940) LIMITED AND OTHERS* vs. *STATE OF UTTAR PRADESH AND ANOTHER***[1] has observed as follows: -

"Scope of inquiry under Section 202CrPC

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[1](2024) 10 SCC 690

12. *It is by now well-settled that at the stage of issuing process it is not the duty of the court to find out as to whether the accused will be ultimately convicted or acquitted. The object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. Mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation.*

13. *If, however, a bare perusal of a complaint or the evidence led in support of it shows essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, then of course, the complaint is liable to be dismissed at that stage only.*

14. *What the Magistrate has to determine at the stage of issue of process is not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what is stated can be true unless the prosecution allegations are so fantastic that they cannot reasonably be held to be true. [See : D.N. Bhattacharjee v. State of W.B. [D.N. Bhattacharjee v. State of W.B., (1972) 3 SCC 414 : 1972 SCC (Cri) 564]]*

15. *Further it is also well-settled that at the stage of issuing process a Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its inherent jurisdiction* *which is to be sparingly used. The scope of the inquiry under Section 202CrPC is extremely limited — only to the ascertainment of the truth or falsehood of the allegations made in the complaint — (i) on the materials placed by the complainant before the Court, (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.*

16. *In fact in proceedings under Section 202CrPC, the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not. It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The discretion given to the Magistrate on this behalf has to be judicially exercised by him. Once the Magistrate has exercised his discretion, it is not for the High Court or even the Supreme Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in the conviction of the accused.*

17. *These considerations are totally foreign to the scope and ambit of an inquiry under Section 202CrPC which culminates into an order under Section 204. [See : Nagawwa v. Veeranna Shivalingappa Konjalgi [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] .] It is no doubt true that in this very decision this Court has enumerated certain illustrations as to when the order of the Magistrate issuing process against the accused can be quashed or* *set aside. These illustrations are as under : (Nagawwa case [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , SCC p. 741, para 5)*

> *"5. … (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;*
>
> *(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;*
>
> *(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and*
>
> *(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."*

"

18. The Hon'ble Supreme Court in the case of ***UDAI SHANKAR AWASTHI* vs. *STATE OF UTTAR PRADESH AND ANOTHER***[2] has observed the following: -

> ***"40.*** *The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent*

[2](2013) 2 SCC 435

persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases. (See also Shivjee Singh v. Nagendra Tiwary [(2010) 7 SCC 578 : (2010) 3 SCC (Cri) 452 : AIR 2010 SC 2261] , SCC p. 584, para 11 and National Bank of Oman v. Barakara Abdul Aziz [(2013) 2 SCC 488 : JT (2012) 12 SC 432] .)

19. The Hon'ble Supreme Court in the case of ***NATIONAL BANK OF OMAN* vs. *BARAKARA ABDUL AZIZ AND ANOTHER***[3] has observed the following: -

> ***"8.*** *We find no error in the view taken by the High Court that the CJM, Ahmednagar had not carried out any enquiry or ordered investigation as contemplated under Section 202 CrPC before issuing the process, considering the fact that the respondent is a resident of District Dakshin Kannada, which does not fall within the jurisdiction of the CJM, Ahmednagar. It was, therefore, incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 CrPC before issuing the process.*
>
> ***9.*** *The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 CrPC is, therefore, limited to the*

[3](2013) 2 SCC 488

ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

10. *Section 202 CrPC was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:*

"and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,"

The notes on clauses for the abovementioned amendment read as follows:

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The amendment has come into force w.e.f. 23-6-2006 vide Notification No. S.O. 923(E) dated 21-6-2006.

11. *We are of the view that the High Court has correctly held that the abovementioned amendment was not noticed by the CJM, Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended Section 202 CrPC. Since it is an admitted fact that the accused is residing outside the* *jurisdiction of the CJM, Ahmednagar, we find no error in the view taken by the High Court.*

12. *All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 CrPC.***"**

20. The Hon'ble Supreme Court in the case of ***VIJAY DHANUKA AND OTHERS VS. NAKIMA MAMTAJ AND OTHERS***[4] has observed the following: -

"9. *Under Section 200 of the Code, on presentation of the complaint by an individual, other than public servant in certain contingency, the Magistrate is required to examine the complainant on solemn affirmation and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, if any, various options are available to him. If he is satisfied that the allegations made in the complaint and statements of the complainant on oath and the witnesses constitute an offence, he may direct for issuance of process as contemplated under Section 204 of the Code. In case, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to dismiss the complaint under Section 203 of the Code. If on examination of the allegations made in the complaint and the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to postpone the issue of process and either inquire the case himself or direct the investigation to be made by a police officer or by any other person as he thinks fit. This option is also available after the examination of the complainant only.*

10. *However, in a case in which the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction*

[4](2014) 14 SCC 638

whether it would be mandatory to hold inquiry or the investigation as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding, is the question which needs our determination. In this connection, it is apt to refer to Section 202 of the Code which provides for postponement of issue of process. The same reads as follows:

> *"**202.Postponement of issue of process**.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> *Provided that no such direction for investigation shall be made—*
>
> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
>
> *(b) where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.*
>
> *(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*
>
> *Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*
>
> *(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the*

powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."

11. *Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.*

12. *The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:*

> *"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."*

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The *use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate.*

13. *In view of the decision of this Court in Udai Shankar Awasthi v. State of U.P. [(2013) 2 SCC 435 : (2013) 1 SCC (Civ) 1121 : (2013) 2 SCC (Cri) 708] , this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment: (SCC p. 449, para 40)*

> *"40. The Magistrate had issued summons without meeting the mandatory requirement of Section 202 CrPC, though the appellants were outside his territorial jurisdiction. The provisions of Section 202 CrPC were amended vide the Amendment Act, 2005, making it [**Ed.**: The matter between the two asterisks has been emphasised in original as well.] mandatory to postpone the issue of process [**Ed.**: The matter between the two asterisks has been emphasised in original as well.] where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused before issuing summons in such cases."*

(emphasis supplied)

14. *In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2(g) of the Code, the same reads as follows:*

> *"**2. (g)** '**inquiry**' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;"*

*It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.***"**

21. The address of the petitioners are replicated as follows:-

i. Pinkhem Investment Company Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 5th floor, Aryavarta, 351, The Bharat Villa Co-operative Housing Society Ltd., 351, Narayan Dhabolker Road, Mumbai – 400 006;

ii. Western India Garments Private Limited, a company incorporated under the Companies Act, 1956 having its Registered Office at Block No.22(1) Mumbai Cotton Mills Compound, Dattaram, Kalachowki, Mumbai – 400 033;

iii. Gyan Prakash Sinha, Chief Finance Officer, Pinkhem Investment Company Pvt. Ltd., having its registered office at 5th floor, Aryavarta, 351, The Bharat Villa Co-operative Housing Society Ltd., 351, Narayan Dhabolker Road, Mumbai – 400 006;

iv. Ajay Girdharilal Bhartiya,

v. Shilpa Ajay Bhartiya,

Both Common Directors of Pinkhem Investment Company Pvt. Ltd., residing at 5, Aryavarta, Narayan Dabholkar Road, Off Nepean Sea Road, Mumbai – 400 006;

vi. Sushil Girdharilal Bhartiya, Director of Pinkhem Investment Co. Pvt. Ltd., residing at 61-8, Jolly Maker Apts No.1, Cuffe Parade, Mumbai – 400 005.

22. Section 202 of the Code of Criminal Procedure states that any Magistrate, on receipt of a complaint which has been made over to him under Section 192, shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there was sufficient ground for proceeding. It was thus apparent that in cases where the accused persons reside and/or work outside the territorial jurisdiction of the Court of the Magistrate, the Learned Magistrate was required to either inquire himself or to direct investigation by a police officer or any other person deemed fit by

the Magistrate. The said requirement of law needs to be respected and complied with care and caution and not to be treated as a mere empty formality. From a perusal of the orders passed by the Learned Magistrate, it was apparent that the Learned Magistrate recorded the statement of the complainant/opposite party under Section 200 of the Code of Criminal Procedure but thereafter did not take any further steps, as envisaged under Section 202 of the Code of Criminal Procedure. In view of the mandatory nature of the provisions of Section 202 of the Code of Criminal Procedure relating to issuance of process against persons residing outside the jurisdiction of the Court of the Learned inquiring Magistrate, it was apparent that the issuance of process by the Learned Magistrate was not in accordance with law.

23. Summoning of an accused in a criminal case was a serious matter. Criminal Law cannot be set into motion as a matter of course. The order of the learned Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The learned Magistrate also has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and determine as to whether the same would be sufficient for the complainant to succeed in bringing home the charge of the accused. The learned Magistrate also has to carefully scrutinize the evidence brought on record and then examine if any offence had been committed by any of the accused.

24. The Hon'ble Supreme Court in the case of ***CENTRAL BUREAU OF INVESTIGATION*** **vs.** ***ARYAN SINGH AND OTHERS***[5]have observed the following: -

> ***"5.*** *Having gone through the impugned common judgment and order [Aryan Singh v. CBI, 2022 SCC OnLine P&H 4158] passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482CrPC and/or in exercise of the powers under Article 226 of the Constitution of India.*
>
> ***6.*** *From the impugned common judgment and order [Aryan Singh v. CBI, 2022 SCC OnLine P&H 4158] passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned trial court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482CrPC, the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency.*
>
> ***7.*** *Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the*

[5](2023) 18 SCC 399

*investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482CrPC, the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".***"**

25. The Hon'ble Supreme Court in the case of ***STATE OF ODISHA* vs. *PRATIMA MOHANTY AND OTHERS***[6] has observed the following: -

"3.1. *It is submitted that while quashing the criminal proceedings against the respondent-accused the High Court has exceeded its jurisdiction vested under Section 482CrPC.*

3.2. *It is submitted that the High Court has not at all appreciated and considered the fact that at the stage of considering the application under Section 482CrPC, the minute details of the case are not required to be gone into at all. It is submitted that in the present case it was found that the allotment of the 10 plots were made by the accused in connivance with each other arbitrarily and the plots were allotted to the relatives of the accused—public servants. It is submitted that no advertisement was issued by the BDA inviting the applications from intending purchasers. The accused—officers deliberately concealed the matter from the general public and thus avoided competition. It is submitted that it was found that on the undated applications the plots were allotted to the relatives of the accused herein and public servants. It is submitted that therefore, the first information report was filed by the Vigilance Cell against the accused for the aforesaid offences. It is submitted that after a thorough investigation a charge-sheet has been filed before the learned Special Judge (Vigilance), Bhubaneswar. It is submitted that having found prima facie case and being satisfied that a case for the offences under Section 13(2) read with Section 13(1)(d) of the Act and Section 420 read with Section 120-BIPC was made out, the*

[6](2022) 16 SCC 703

learned Special Judge (Vigilance), Bhubaneswar has taken cognizance. It is submitted therefore the High Court ought not to have exercised the powers under Section 482CrPC and not ought to have quashed the criminal proceedings.

3.3. *It is submitted that as such the High Court quashed the criminal proceedings by scrutinising the FIR/material on record in detail as if the High Court was conducting a mini-trial which is not permissible at the stage of exercising the powers under Section 482CrPC. It is submitted that the aforesaid approach is wholly impermissible as per the law laid down by this Court in a catena of decisions.*

.....

8. *As held by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , the powers under Section 482CrPC could be exercised either to prevent an abuse of process of any court and/or otherwise to secure the ends of justice. In the said decision this Court had carved out the exceptions to the general rule that normally in exercise of powers under Section 482CrPC the criminal proceedings/FIR should not be quashed. Exceptions to the above general rule are carved out in para 102 in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] which reads as under : (SCC pp. 378-79)*

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible*

guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the 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 Act concerned (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 Act concerned, 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."

8.2. *It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.*

....

11. *While quashing the criminal proceedings the High Court has not at all adverted to itself the aforesaid aspects and has embarked upon an enquiry as to the reliability and genuineness of the evidence collected during the investigation as if the High Court was conducting the mini-trial. Therefore, as such the impugned judgment and order [Pratima Mohanty v. State of Odisha, 2019 SCC OnLine Ori 305] passed by the High Court quashing the criminal proceedings against the respondents herein—original Accused 4, 5 and 3, Smt Pratima Mohanty, Shri Prakash Chandra Patra and Shri Rajendra Kumar Samal is unsustainable, both, in law and/or facts and the same deserves to be quashed and set aside.***"**

26. The Hon'ble Supreme Court in the case of ***MAHENDRA K C* vs. *THE STATE OF KARNATAKA & ANR.***[7]has observed the following: -

> *"**16**.... At the stage when the High Court considers a petition for quashing under Section 482 of the CrPC, the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of trial. The High Court in the present case has virtually proceeded to hold a trial, substituting its own perception for what it believed should or should not have been the normal course of human behavior. This is clearly impermissible. "*
>
> *...*
>
> ***27.*** *... "The High Court has evidently travelled far beyond the limits of its inherent power under Section 482 CrPC since instead of determining whether on a perusal of the complaint, a prima facie case is made out, it has analysed the sufficiency of the evidence..."*

27. The Hon'ble Supreme Court in the case of ***NEEHARIKA INFRASTRUCTURE PVT. LTD.* vs. *STATE OF MAHARASHTRA AND OTHERS*[8],** has observed the following: -

> ***"13.5.*** *While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.*

[7]2021 INSC 700
[8](2021) 19 SCC 401

> ***13.6.*** *Criminal proceedings ought not to be scuttled at the initial stage.*
>
> ***13.7.*** *Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.*
>
> *….."*

28. The Hon'ble Supreme Court in the case of ***MUSKAN* vs. *ISHAAN KHAN(SATANIYA) AND OTHERS*[9],** has observed the following:-

> ***"22.*** *On the aspect of the powers of the Courts under Section 482 of the Cr.PC, it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 of the Cr.PC with respect to quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised."*

29. Several issues have been raised by the disputants enumerated as follows:-

   a) The opposite party admitted the commercial nature of the transaction.

   b) The opposite party admits to have not repaid money inasmuch as it has admitted to the existence of pending proceedings under Section 138 of the Negotiable Instruments Act.

   c) The opposite party admits that the transaction took place between two companies and whilst the petition of complaint lay out claims against individuals, for none of the individuals does the petition of

[9] 2025 INSC 1287

complaint provide any specific instance of an act in furtherance of commission of an offence.

d) The petition of complaint does not layout any single fact that establishes any relationship between the two accused companies and their Directors.

e) The petition of complaint arrays the accused from the list of directors without even once identifying which director was responsible for any particular act, even further, not even a single act has been identifiably attributed to any director.

f) The allegations of loss caused to the opposite party at the highest can be was that a loss of control was (supposedly) intended by accused and that damages (might) will be caused. A loss of control or a claim for damages cannot be the subject matter of a criminal prosecution under the Sections invoked by the opposite party.

g) The complaint filed before the Learned Magistrate was accompanied by an agreement which forms the basis of the opposite party's case and this very document was not even signed by the Petitioner No. 1 or its representative and as such, the said document cannot form the basis of prosecuting the accused persons when cognizance of it was barred by law as it was not signed by the party against whom it was asserted.

h) Not a single allegation of any ingredient of an offence has been alleged against any of the accused, including the Petitioners. In such circumstances, the Learned Magistrate cannot issue summons against the accused persons when no allegation has been made against them.

i) When it was an admitted case of the complainant that proceedings under Section 138 of the Negotiable Instruments Act have been initiated by the accused companies against the complainant/opposite party, the Learned Magistrate was obligated to call for an explanation or to direct that the scores be taken up before the court already seized of the matter.

j) Whilst the opposite party arrays Petitoner No. 2 company as an accused (accused no.2), the opposite party does not disclose the fact that other business dealings have taken place between the parties and other relevant to the circumstances but are intentionally concealed in order to create a false scenario.

k) The principle of vicarious liability has no manner of application in respect of offences under the Indian Penal Code. It was only when an officer of a company was personally liable for commission of an offence done in exercise of his official duties that such officer of the erring company can also be hauled up for commission of such offence. The petition of complaint as also the statement of the representative of the opposite party company do not in any manner reveal any part played by the Petitioner Nos. 3 to 6 which justifies their arraignment as accused in the instant case.

l) Where dealings between the parties are admittedly of a civil and commercial nature, courts will not allow a party to abuse criminal process in furtherance of its commercial interests. In such circumstances, the proceeding impugned was liable to be quashed.

m) Where specific acts were not pleaded, actus reus, an essential ingredient of a crime was absent and a complaint lacking such facts cannot be taken cognizance of. In such circumstances, the proceeding impugned was liable to be quashed.

n) Where the primary allegations are against the Corporation absent an enabling provision imposing liability on Directors, no cognizance of offence against a Director can be taken unless specific facts are pleaded against such Director. In such circumstances, the proceeding impugned was liable to be quashed.

o) When admittedly civil proceedings in relation to a cause of action pending between the parties are pending adjudication before competent civil courts, criminal proceeding initiated by a party to such proceeding will generally be quashed in the absence of any substantial grounds justifying the maintenance of the same. (where there are multiple documents exchanged.

p) In the light of the growing trend amongst litigants to use criminal proceeding as a method of extracting benefits, courts will generally frown upon and discourage criminal proceedings.

q) The impugned proceeding was manifestly attended with mala fide with a view to wreck vengeance on the Petitioners and to spite them out of private and personal grudge.

30. The facts agitated in the instant revisional application cannot be decided at this juncture without assessment of evidence being adduced in trial for the complicity of the petitioners in terms of their liability and indictment. Several transactions pleaded shall have to be scrutinized and analyzed in terms of deliberate criminal intent to the detriment penalty and pecuniary loss caused to the other contradicting the criteria of entrustment of the shares.

31. In view of the above discussions, the instant criminal revisional application being CRR 308 of 2013 is disposed of.

32. The proceedings of Case No.C-4100 of 2012, pending before the Learned Judicial Magistrate 2nd Court, Alipore under Sections 403/406/418/420/120B of the Indian Penal Code, are not quashed. The Learned Magistrate is to invoke Section 202 of the Code of Criminal Procedure and proceed.

33. There is no order as to costs.

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

35. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)