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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1614 OF 2025

1. Anil s/o Tarachand Goenka,
Aged about 65 Years,
Occupation : Business,
2. Mrs. Binita w/o Anil Goenka,
Aged 63 Years,
Occupation : Business,
Both Petitioners Nos.1 and 2 are
R/o. Flat No.6, Indu Yash Apartments,
Building No.1, Ramnagar,
Nagpur.

..... APPLICANTS

// VERSUS //

1. State of Maharashtra, through
Police Station Officer, Ambazari
Police Station, Nagpur.
2. Mr. Prashant s/o Gajananrao Tativar,
Aged : 55 Years,
R/o. 103, Sunderlal Rai Marg,
Ramdaspath,
Nagpur – 440010.

.... NON-APPLICANTS

Mr. Sahil Dewani, Advocate and Mr. Shyam Dewani, Advocate for
applicants.
Mr. A. M. Joshi, APP for State.
Mr. Sumedh Kadam, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 01.04.2026
PRONOUNCED ON : 22.04.2026

JUDGMENT :

1. Heard.
2. **Admit.**

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3. Heard finally with the consent of the learned Counsel for the applicants, learned APP for the State and learned counsel for the non-applicant No.2.

4. Present application is preferred by the applicants for quashing of the FIR in connection with Crime No.222/2024 registered with Police Station Ambazari, District Nagpur for the offence punishable under Sections 457, 454, 427, 380, 504 and 506 read with Section 34 of the Indian Penal Code and the consequent proceeding arising out of the same bearing RCC No.4090/2024.

5. The FIR came to be registered in view of the order passed by the learned Chief Judicial Magistrate, Nagpur in Criminal M.A. No.1383/2024 filed under Section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C.'). The respondent No.2 is a power of attorney of Swika Allied Industries Limited and Swika Investments Private Limited. As per the allegation in the FIR, the said companies are the owners of the Flat No.7-A and 7-B of Indu Yash Apartment situated at North Ambazari Nagpur. The present applicants allegedly trespassed the flats during the night hours by breaking bricks wall connected between the two flats. As per the allegations, the applicants illegally and unauthorizedly obtained the possession of the said flats and there were fixtures and furnitures in the said flat amounting Rs.20,00,000/- which

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were also stolen by the present applicants. It is alleged that the petitioners obtained the possession forcibly and running a boutique in the name and style as 'Vastra'. When the non-applicant No.2 inquired about the possession of the said flat, he was abused in filthy language and also threatened by the present applicants, therefore, the non-applicant No.2 approached to the Police Station and lodged a report. Police Officers called both the parties and informed that the matter is civil in nature and no cognizance is taken, therefore, the non-applicant No.2 approached to the learned Chief Judicial Magistrate by filing an application under Section 156(3) of Cr.P.C. In view of the order passed by the learned Chief Judicial Magistrate, the FIR came to be registered. The Investigating Officer carry out the investigation by drawing spot panchnama and recorded the relevant statements of the witnesses and after completion of the investigation and submitted the charge sheet against the present applicants.

6. Heard learned counsel Mr. Dewani for the applicants, who submitted that the complaint was filed on absolutely false foundation and concocted story. After receipt of the notice from the police, the son of the present applicants on 28.10.2023 and 08.11.2023 informed the investigating agency that they are not in town. The applicants were called upon by the police to remain

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present in the office for recording their statements. Subsequently, the applicants approached to the Police Station and informed about the factual situation. It is further submitted by him that as soon as the non-applicant No.2 approached to the Police Station and filed a complaint, the investigating agency found that the dispute is of a civil nature. In fact, the application filed by the non-applicant No.2 before the Magistrate was not supported with the affidavit. The learned Magistrate has not taken into consideration that there is a violation of direction given by the Hon'ble Apex Court in **Priyanka Srivastava and another Vs State of Uttar Pradesh and others** reported in **(2015) 6 SCC 287**. It is further submitted by him that even accepting the allegation as it is, it is apparent that the dispute between the parties is civil in nature. The said flats were purchased by the Mr. Nishit in the year 1995, however, in the year 2000, Mr. Nishit had decided to permanently change his residence from Nagpur to Bangalore and after shifting to Bangalore Mr. Nishit had willingly handed over the possession of the flats in favour of the petitioners in the year 2005 owing to the consideration already paid by the applicant No.1 to Mr. Nishit for the purpose of purchasing the said flats. In fact, it was Mr. Nishit who has not completed his part of the obligations for completing the sale and the said flats still technically remained in the name of the said companies, and therefore, civil dispute is

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already pending between the present applicants and the companies. It is submitted by him Mr. Nishit is the owner of the said company, who has already handed over the possession of the said companies to the present applicants. However, the respondent No.2 has falsely claimed that the Directors used to frequently visit Nagpur and stay at the said flats till the year 2020, and thereafter, the applicants have taken the forceful possession of the said flats. In fact, since 2005 till lodging of the report, the present applicants were in possession of the said flats. The public notice was issued by the proposed purchasers through Advocate Mr. Mayur V. Patil, which was immediately replied by the present applicants stating therein that the legal possession of the said flats is with the present applicants. It was further cautioned by the present applicants by the counter notice which was published in the newspapers Hitvada, Lokmat and Navbharat Times that they are being peaceful and legal possession of the said flats since 2005 and nobody shall enter into any kind of transaction with the company as far as the said flats are concerned. Thus, he submitted that from the entire communication, it can be demonstrated that the dispute between the present applicants and the non-applicant No.2, who is the power of attorney holder for the said companies is civil in nature and no criminal offence is committed by the present applicants. In support of his contentions, he placed reliance on the decision

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of **Rajnish S/o Ashok Khanorkar vs. The State of Maharashtra** in **Criminal Application (APL) No.581/2025 decided on 30.01.2026** and **Criminal Application (APL) No.192/2023 [Bharat s/o Chandusingh Chavhan and others Vs. The State of Maharashtra and another]** decided on **13.03.2026**.

7. Per contra, learned APP strongly opposed the said contention and submitted that the entire investigation papers discloses that the present applicants have obtained the illegal possession of the said flats behind the back of the owner. They have broken the bricks wall between the two flats and connected both the flats and taken illegal possession and running the business. During the course of investigation, it revealed that the petitioners and owners of Swika Allied Industries Limited had money transaction between them. As the owner of Swika Allied Industries Limited, namely, Nishikant Swika shifted to Bangalore for business purpose, taking advantage of their shifting, the applicants by trespassing their flat Nos.7-A and 7-B situated in Indu Yash Apartment took forcible possession. Thus, the present applicants are trespassers. They have dishonestly and fraudulently taken the possession of the said flats and also made an alterations in the said flats and also taken the furniture which was already there in the said flats and thereby committed an

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offence. Not only this, on inquiry by the non-applicant No.2, who is the power of attorney holder of the original owner, he was abused in a filthy language and also threatened, and therefore, the offence under Sections 504 and 506 of IPC is also made out. In view of that, the application deserves to be rejected.

8. Learned counsel for the complainant/non-applicant No.2 Mr. Sumedh Kadam filed his written notes of argument and submitted that the said flat was owned by Swika Allied Industries Private Limited and Swika Investment Private Limited. The owner of the said flat Mr. Nishikant Swika executed a power of attorney in favour of the non-applicant No.2 and non-applicant No.2 was looking after the affairs of the said flats. The present applicants forcibly taken the possession of the said flats by trespassing in it and also made an alterations in the said flats and also committed a theft of the furniture and fixtures which were in the flats. Thus, *prima facie* case is made out against the present applicants, and therefore, the application deserves to be rejected. In support of his contention, he placed reliance on:

(i) Anurag Bhatnagar and another Vs. State (NCT of Delhi) and another in Special Leave Petition (Criminal) No.18084/2024 decided on 25.07.2025.

(ii) Arun P. Gidh Vs. Chandraprakash Singh and others, (2024) SCC OnLine Bom. 1028.

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(iii) H. N. Rishbud and Inder Singh Vs. The State of Delhi (1955 AIR 196).

(iv) Rajiv Thapar and others Vs. Madan Lal Kapoor (2013) 3 SCC 330.

(v) Sadiq B. Hanchinmani vs The State of Karnataka and Ors, Special Leave Petition (Criminal) No.11336/2022 along with the connected petition decided on 04.11.2025.

(vi) Ramdev Food Products Private Limited Vs. State of Gujarat reported in **AIR 2015 SC 1742.**

(vii) Anil Kumar & Ors vs. M. K. Aiyappa & Anr. Criminal Appeal No.1590-1591/2013 decided on 01.10.2013.

(viii) S. N. Vijayalakshmi & Ors. Vs. State of Karnataka & Anr., Special Leave Petition (Criminal) No.8626/2024 decided on 31.07.2025.

(ix) Rajesh Bajaj Vs. State NCT Delhi and others AIR 1999 SC 1216.

(x) Criminal Application No.1616/2020 (Suneel Balkishan Gove (Bhavsar) and Ors. Vs. The State of Maharashtra and Anr.) decided on 24.02.2021.

(xi) M/s Neeharika Infrastructure Private Limited Vs. State of Maharashtra and others AIR 2021 SC 1918.

9. After hearing both sides and on perusal of the entire investigation papers, it reveals that FIR came to be registered against the present applicants on the basis of the directions given by the learned Chief Judicial Magistrate, Nagpur in the application filed under Section 156(3) to register the FIR. As per

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the allegations, in the said complaint which was filed by the power of attorney holder of Swika Allied Industries Private Limited and Swika Investment Private Limited that these two companies are duly incorporated under the Companies Act. The Company have executed a registered special power of attorney in favour of the non-applicant No.2, which is duly registered. These companies are the owner of apartment 7-A and 7-B situated in Indu complex building No.186, by way of registered sale deed. On 12.02.2024 when non-applicant No.2 visited the said properties, he found that the present applicants have taken the possession of the said flats and running the business in the said flat. Therefore, he approached to the police, but police have not taken the cognizance and therefore, he filed application in the Court of learned Chief Judicial Magistrate, Nagpur. The learned Chief Judicial Magistrate has directed the investigation by registering the FIR.

10. Before entering into the merits of the matter, it is necessary to consider the background of the said FIR. Admittedly, the FIR came to be lodged on 04.04.2024. The occurrence of the incident shown by the non-applicant No.2 is on 12.02.2024. The first information received by the investigating agency on 29.03.2024, whereas the FIR came to be lodged on 04.04.2024. The documents filed on record by the applicants

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shows that prior to registration of the FIR, the applicant No.1 preferred a Civil Suit bearing No.1266/2023 against M/s Swika Investment Private Limited and M/s Swika Allied Industries Private Limited, for declaration and permanent injunction. In the said suit, the applicant No.1 has pleaded that Apartment No.7-B, admeasuring 84.31 Square Meters built up area along with open terrace area 72.27 Square Meters and one room over it admeasuring 4.20 Square Meters on fourth floor of Indu Yash Complex constructed on Plot No.186 Mouza Ambazari and Apartment 7-A admeasuring of 77.72 Square Meters built up area along with open terrace area 72.27 Square Meters on third floor of the Indu Yash Complex constructed on Plot No.186 of Mouza Ambazari is in possession of the applicants since 2005. The said possession still continues which was undisturbed possession. The suit came to be filed by them as Advocate Mayur V. Patil had published the public notice in news papers "Hitavada – City Lines", and "Navbharat Nagpur Edition" dated 26.08.2023 intending to purchase the suit property and thereby calling for objections from the objectors. Therefore, the present applicant No.1 replied the said notice dated 29.08.2023, contending that they are in possession of the suit property since 2005 which was given by the defendant companies to the plaintiffs arising out of the financial transactions. As the companies has not completed the financial transaction, they are

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still in possession of the said property which is within the knowledge of the said companies. They have also replied the public notice issued by Advocate Mayur V. Patil contending that they are in possession of the suit property since 2005. As the applicants were apprehending that they may dispossess by the companies. The suit was filed for permanent injunction and declaration. The notices of the said suit were issued to the defendant companies therein. Learned counsel for the applicants also invited my attention towards an affidavit filed by one Mrs. Shashi Shashtri stating that the present applicants are using the flats 7-A and 7-B. The said affidavit further shows that in the year 2000 Mr. Nishit Swika and his family left the said flats and had decided to permanently change his residence address from Nagpur and since then the present applicants are residing in the said flats.

11. The public notice issued by Advocate Mayur Patil is also on record showing the intention of his clients to purchase the property from M/s. Swika Allied Industries. The caution notice was also published by the present applicants through Advocate Rohit Chaughale. Thus, the affidavit and caution notice shows that the present applicants who were in possession of the said flats. Thereafter, the FIR came to be lodged alleging therein that present applicants have obtained the forceful possession of the

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said flats by taking disadvantage of the absence of the owner of the said flats. It was alleged that the present applicants have made alterations in the said flats and two flats were amalgamated by breaking the wall between the two flats. The Investigating Officer has also drawn the panchanama. The panchnama nowhere substantiates that the wall was broken by the present applicants. On the contrary, the map which is shown on the last page of the panchnama shows that two flats are shown separately, the flat No.7-A on the third floor and flat No.7-B on the fourth floor. The statements of the witnesses Dinesh Kanyalal Jain, Shailsh Agrawal shows that since 2005, the present applicants are in possession of the said flats. Thus, considering the investigation papers, it reveals that as per allegations, the said flats were illegally possessed by the present applicants on 12.02.2024 in the absence of the owners of the said flats is falsified by the civil suit filed by the present applicants. An affidavit filed by one of the flat owners in the said building, the public caution notice issued by the present applicants and the statements of the witnesses which are recorded during the investigation.

12. Admittedly, the directions for registration of the FIR were issued by the Magistrate, after receipt of the complaint/application filed by the non-applicant No.2. The

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allegations which are already mentioned were pleaded in the said applications. In the said application, it is contended that the non-applicant No.2 approached to the Police Station as also Higher Police Officials or Police Department i.e. Deputy Commissioner of Police, Zone No.2, Nagpur on 14.02.2024 thereby requesting them to register the FIR. Admittedly, the copies of the same applications are not filed on record. But, the documents which are filed on record shows that notices were issued to the present applicants to remain present in the Police Station for inquiry. Immediately, the said notices were replied by the son of the present applicants contending that the present applicants are out of India and unable to remain present. The said notice issued by DCP, Sitabardi Division to the present applicants stating that he has received the complaint from non-applicant No.2 and they should remain present. The son of the present applicant Mr. Karan Goenka by communication dated 22.11.2023, communicated that his parents are not in India and as soon as they reach in India, he will keep them present. Thus, it is apparent that prior to lodging of the FIR, the application was filed by the non-applicant No.2 with the Police.

13. Learned counsel for the applicants vehemently submitted that application under Section 156(3) of the Code is not supported by the affidavit which is a mandate in view of decision

of **Priyanka Srivastava and another** (referred supra), wherein the Hon'ble Apex Court has considered the scope of Section 156(3) of Cr.P.C. and observed that "When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

14. It is further observed that the clear position in view of Section 156 is that the Judicial Magistrate, before taking cognizance of the offence, can order investigation. If he does so,

he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

15. The Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The section itself states that a police officer can start investigation when he has "reason to suspect the commission of an offence". Therefore, the requirements of launching an

investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code.

16. The Hon'ble Apex Court in **Priyanka Srivastava and another** (referred supra) in paragraph No.26 observed that "at this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same."

17. In paragraph No.27 is further observed that "in our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in

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a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the

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cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in **Lalita Kumari** are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

18. Though learned counsel for the non-applicant No.2 placed reliance on the decision of **Anurag Bhatnagar and another Vs. State (NCT of Delhi) and another** (supra) and submitted that it is observed by the Hon’ble Apex Court that much water has been flown as the investigation is completed charge sheet is filed and therefore, no interference is called for. However, after going through the judgment of **Anurag Bhatnagar and another Vs. State (NCT of Delhi) and another** (supra) the question framed for determination by the Hon’ble Apex Court is:

Whether an application under Section 156(3) CrPC could have been filed without approaching the police authorities?

19. The Hon’ble Apex Court observed in paragraph No.19 “It is a settled law that one of the modes for setting criminal law into motion is by giving information to the police authorities in accordance with Section 154 CrPC whereupon if a cognizable offence is *prima facie* made out to the satisfaction of the police, it may investigate into the offence even without the permission of the Magistrate. The information so given is ordinarily called

the “First Information”, though this terminology has not been used under the CrPC.”

20. Section 154 of CrPC, *inter alia*, provides that the information relating to the commission of a cognizable offence can be given orally or in writing to the officer-in-charge of the police station and if it is given orally, it shall be reduced in writing, which shall then be read out to the person giving the information and shall be signed by him. A copy of the information so received and reduced into writing, upon being entered into the book kept for the purpose, shall be given forthwith to the informant.

21. Sub-section (3) of Section 154 CrPC lays down that if the information of a cognizable offence given to the officer-in-charge of the police station is not being recorded or is being refused to be recorded, the informant may send the substance of the said information to the Superintendent of Police concerned in writing and by post, who upon being satisfied that such information discloses a cognizable offence will either direct for the investigation of the offence or may himself investigate the same.

22. A plain and simple reading of Section 154 CrPC as a whole makes it imperative upon the informant to first approach the officer-in-charge of the police station for the purposes of

lodging an FIR in respect of a cognizable offence and where the Police refuses to record such information, the remedy is to approach the concerned Superintendent of Police. It is only when no action is taken even by the Superintendent of Police and the information of commission of a cognizable offence is not being recorded by the officer-in-charge of the police station or even by the Superintendent of Police, that the person aggrieved or the informant may move the court of the Magistrate concerned to get the FIR registered and lodged with the concerned police station.

23. Sub-section (3) of Section 156 CrPC simply empowers the Magistrate to order an investigation of a cognizable offence.

24. Section 190 of the CrPC empowers the Magistrate to take cognizance of an offence in three contingencies, namely: (i) upon receiving a complaint of facts constituting the offence; (ii) upon a police report of such facts; and (iii) upon information received from any person other than the police officer or upon his own knowledge that such an offence has been committed.

25. In view of the provisions of Section 190 read with Section 156(3), the Magistrate is empowered to take cognizance of any offence not only on the basis of the police report submitted under Section 173 of the CrPC consequent to the investigation

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pursuant to the FIR but also upon receiving a complaint of facts from any person, other than the police officer or on his own motion.

26. On a conspicuous reading of the provisions of Sections 154, 156 and 190 of the CrPC together, it is crystal clear that an informant who wants to report about a commission of a cognizable offence has to, in the first instance, approach the officer-in-charge of the police station for setting the criminal law into motion by lodging an FIR. However, if such an information is not accepted by the officer-in-charge of the police station and he refuses to record it, the remedy of the informant is to approach the Superintendent of Police concerned. It is only subsequent to availing the above opportunities if he is not successful, he may approach the Magistrate under Section 156(3) CrPC for necessary action or of taking cognizance in accordance with Section 190 of the CrPC."

27. It is further observed by the Hon'ble Apex Court that "It is well recognized in law that the person aggrieved must first exhaust the alternative remedies available to him in law before approaching the court of law. In other words, he cannot ordinarily approach the court directly."

28. While summing up the issue, the Hon'ble Apex Court observed "To sum up, the Magistrate ought not to ordinarily entertain an application under Section 156(3) CrPC directly unless the informant has availed and exhausted his remedies provided under Section 154(3) CrPC, but as the Magistrate is otherwise competent under Section 156(3) CrPC to direct the registration of an FIR if the allegations in the application/complaint discloses the commission of a cognizable offence, we are of the opinion that the order so passed by the Magistrate would not be without jurisdiction and would not stand vitiated on this count."

29. Thus, the Hon'ble Apex Court has taken similar view as taken in **Priyanka Srivastava's** case (supra).

30. In view of the above observations, it has to be seen whether complaint application filed by the complainant satisfy the said test. The copy of the application filed on record shows that application is filed by the complainant. Below that verification is given by the complainant which are reproduced are as under:

"I, Shri Prashant S/o. Gajanan Tatiwar, Aged 55 Years, Occupation : Business, Resident of 103, Sundarlal Rai Marg, Ramdaspath, Nagpur - 440010 Harsh S/oLaxman Nanwani, the POA Holder of Complainant

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Companies herein do hereby take oath and state on solemn affirmation:

1. That, the instant complaint has been drafted by my counsel as per my instructions and the same is read over and explained to me in vernacular.

2. That, the contents of the above paras 1 to 18 are true and correct to my personal knowledge and belief as far as the same are pertaining to facts of the case. The contents based on the law are advised by our counsel which I believed to be true and correct.

Hence, verified & signed on this 2nd day of March, 2024 at Nagpur."

31. Learned counsel for the complainant and the learned APP for the State submitted that it is an affidavit in support of the application filed by the complainant. An affidavit is a voluntarily written statement of fact, sworn or affirm under oath before an authorized official. The said affidavit does not comply with the requirement as an affidavit. As already observed that an affidavit is a voluntarily written statement of facts. An affidavit under the Code is written sworn statements of facts.

32. Thus, affidavit means sworn statement in writing made especially under oath or an affirmation before an authorized officer or magistrate. Though expression "affidavit" has not been defined in the Code, it is considered as declaration of facts made in writing sworn before a person having authority to administer

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oath. Every affidavit should be drawn up in the first person and should contain only facts and not inferences. The essential elements of an affidavit are; it must be a declaration made by a person; it must relate to facts; it must be in writing; it must be in the first person, and must be sworn or affirmed before a Magistrate or any other authorized officer. An affidavit should be confined to such facts as the deponent is able to prove to his personal knowledge. Rule 3(1) of Order XIX of CPC states that the affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

33. As observed earlier, an affidavit is a voluntarily written statement of fact, sworn or affirm under oath before an authorized official. By applying the said law the solemn affirmation given below the application by the non-applicant No.2 does not comply with the same and therefore, the contention of the learned counsel for the complainant and learned APP for the State that it is an affidavit in support of the complainant is not sustainable.

34. Coming to the facts of the present case, it is alleged that the present applicants have trespassed in the flats owned by the complainant Swika Allied Industries Private Limited and Swika

Investment Private Limited. Undisputedly, there was a monetary transactions between the present applicants and the said companies. Out of the said monetary transactions, as per the contention of the present applicants, the possession of the said flats were handed over to them by the owner of the said company i.e. Nishikant Swika. It is further stated by them as Nishikant Swika shifted to Bangalore for business purpose. The other investigation papers also discloses that the non-applicant No.2 initially filed an application with the police. In response to the said application, notice was given to the present applicants. The present applicants were out of the county and therefore, the son of the present applicants, intimated the investigating agency that they are unable to come. It is further reveals that one Advocate Mayur V. Patil has published one public notice contending that M/s. Swika Allied Industries Private Limited intending to sale flats 7-A and 7-B and invited the objections. The present applicants immediately responded the same and contended that the said flats were in possession of the present applicants. Thus, caution was issued on 19.10.2023. It further reveals from the investigation papers that prior to that the present applicants have filed a civil suit against the Swika Allied Industries Private Limited and Swika Investment Private Limited for declaration and permanent injunction bearing Civil Suit No.1266/2023 on 22.11.2023. This fact was not mentioned by

the non-applicant No.2 while lodging the FIR on 29.03.2024. The applicants in support of the contention also filed an affidavit of one of the flat owner in the said building i.e. Indu Yash Apartment stating that the present applicants are residing in Flat Nos.7-A and 7-B and running their business of boutique in the said flats. The said affidavit is of dated 13.11.2024. Similarly, the Investigating Officer has recorded the various statements of the other flat owners during the investigation. The statements of Dinesh Kanyalal Jain, Shailesh Sureshchandra Agrawal, Anup Manichand Sakala also shows that the present applicants are staying in the said flats since 2005. Thus, the investigating papers especially statements of the various witnesses disclosed that it was the present applicants, who were in possession of the said flats since 2005. It is alleged by the non-applicant No.2 that the occurrence of obtaining the flats and incident of trespass has taken place on 12.02.2024. As per the FIR, the date of occurrence is 12.02.2024, whereas the investigation papers shows that the applicants were in possession of the said property since 2005. The earlier report of the investigating agency after receipt of the application filed by the non-applicant No.2, before filing of the application under Section 156(3). The Investigating Officer concluded that as dispute is of a civil nature, and therefore, no offence is made out. Similarly, after going through the various documents which are on record, which discloses that

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there was a monetary transactions between the M/s. Swika Allied Industries Private Limited and the present applicants, and against the said transactions, the applicants were residing the said flats. It was alleged that present applicants, who obtained the possession of the said flat on 12.02.2024 by breaking open the lock of the said flats and also broken the wall and amalgamated the two flats and also committed the theft of furniture. However, the statements of the witnesses discloses otherwise. As far as the offence punishable under Section 427 of IPC is concerned, which discloses mischief causing damage to the amount of Rs.50/-. The definition of mischief is given under Section 425 which reads as under:

"Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

35. As far as the allegation regarding breaking of the wall is concerned, the spot panchnama nowhere discloses that any wall was broken by the present applicants or there are any signs of the breaking of the wall, therefore, the offence punishable under Section 427 of IPC is not made out.

36. It is further alleged by the non-applicant No.2 that present applicants have committed the offence of criminal trespass. The definition of criminal trespass is given under Section 441 of IPC which reads as under:

"441.Criminal trespass.- Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence is said to commit criminal trespass."

37. Here in the present case, the statements of the witnesses and the filing of the suit by the present applicants, reply to the public notice, specifically disclosed that it was the present applicants, who were in possession of the said flat Nos. 7-A and 7-B, therefore, the offence under Sections 454, 457 of IPC are also not made out.

38. It is alleged by the non-applicant No.2 that there was furniture in the said flats and the present applicants have committed theft of the said furniture. But, neither in the FIR nor in a subsequent, the non-applicant No.2 has described regarding the furniture which was there in the said flats, and therefore, the said allegation is also not substantiated by any material evidence which is collected during the investigation. Thus, none of the offences are made out against the present applicants.

39. In **Paramjeet Batra Vs. State of Uttarakhand & Ors., 2013(11) SCC 673**, wherein the Hon'ble Apex Court observed "While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

40. In **Vesa Holdings Private Limited v State of Kerala, (2015) 8 SCC 293**, wherein also the Hon'ble Apex Court held "It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the

allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 of Criminal Procedure Code to quash the proceedings."

41. It is held in **Usha Chakraborty v State of West Bengal, (2023) 15 SCC 135** that "By non-disclosure the respondent has, in truth, concealed the existence of a pending civil suit between him and the appellants herein before a competent civil court which obviously is the causative incident for the respondent's allegation of perpetration of the aforesaid offences against the appellants. We will deal with it further and also its impact a little later." It is further held that there cannot be any doubt with respect to the position that in order to cause

registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr.P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the alleged offences.

42. The learned counsel for the non-applicant No.2 placed reliance on the judgment of **Rajiv Thapar & Ors vs Madan Lal Kapoor** reported in **2013(3) SCC 330**, wherein also the Hon'ble Apex Court observed that the High Court, in exercise of its jurisdiction under Section 482, must make just and rightful choice. At this stage neither truthfulness of allegations levelled by the complainant can be evaluated nor can weight of defence evidence be determined. Where allegations bring out all ingredients of charge levelled, and material placed before Court *prima facie* shows truthfulness of allegations, trial must proceed even when accused is successful in raising some suspicion or doubt in the allegation levelled. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same.

43. In the case of **Ramdev Food Products Private Limited Vs. State of Gujarat** relied by the learned counsel for the non-applicant No.2, wherein also by referring the judgment of **Pepsi Foods Ltd. vs Special Judicial Magistrate**, the Hon'ble Apex Court observed that "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

44. Thus, in view of the various decisions at the stage of exercising the power under Section 482 of the Code admittedly, requires great caution in its exercise. Court must be careful to see that the decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. It is not necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused persons. The powers possessed under Section 482 of the Code are very wide and the very plenitude of the power requires great caution.

45. A careful reading of the various judgments which makes it clear that High Court should be extremely cautious and slow to

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interfere with the investigation and/or trial of criminal cases and should not stall the investigation or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court.

46. In the light of the above well settled principles and by applying the same to the present case, admittedly, the dispute between the present applicant and the companies i.e. Swika Allied Industries Private Limited and Swika Investment Private Limited, the civil suit was filed by the present applicants for permanent injunction and declaration, wherein it is specifically mentioned that the applicants are in possession of the said flats. The public notice issued by the party intending to purchase the said flats is timely replied by the present applicants showing their possession on the said flats. The various statements recorded during the investigation discloses that since 2005, the present applicants are in possession of the said flats. Thus, the possession of the said flats was with the present applicants, therefore, the entire investigation papers *prima facie* not disclose any offence committed by the present applicants. As none of the

ingredients which required to constitute the offence punishable under Sections 427, 457, 454, 380, 504, 506 of IPC are made out. Admittedly, there is non-compliance while filing the application under Section 156(3) of Cr.P.C. as it was not supported by the affidavit. Learned Magistrate has not taken into consideration the principles laid down by the Hon'ble Apex Court in the case of **Priyanka Srivastava and another** (supra). Even accepting the submissions of the learned counsel for the non-applicant No.2, now investigation is completed and much water has been flown and therefore, this aspect is not required to be taken into consideration. Even accepting the same, on perusal of the investigation papers, it reveals that the dispute between the present applicants and non-applicant No.2 especially the companies i.e. Swika Allied Industries Private Limited and Swika Investment Private Limited is civil in nature. From the entire charge sheet ingredients of the alleged offences are also not made out. The entire charge sheet do not disclose essential ingredients, which required for the constitution of the above said offences. It is apparent that the nature of the dispute is of a civil in nature. There is no disclosure in the said criminal application by the non-applicant No.2 regarding the pendency of the suit before the civil Court. For all above grounds, the application deserves to be allowed. Accordingly, I proceed to pass following order:

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ORDER

(i) The application is **allowed**.

(ii) The FIR in connection with Crime No.222/2024 registered with Police Station Ambazari, District Nagpur for the offence punishable under Sections 457, 454, 427, 380, 504 and 506 read with Section 34 of the Indian Penal Code and the consequent proceeding arising out of the same bearing RCC No.4090/2024, are hereby quashed and set aside to the extent of the present applicants.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)