IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2561 of 2014
With
CRAN 10 of 2017 (Old No. CRAN 215 of 2017 and CRAN 20 of 2023)
And
CRAN 22 of 2023
And
CRAN 23 of 2023
And
CRAN 24 of 2024

Viom Networks Limited & Ors.
-Vs-
The State of West Bengal & Anr.

For the Petitioners	: Mr. Debanjan Mondal Mr. Somopriya Chowdhury Mr. S. Trivedi Ms. Iram Hassan Mr. S. Sarangi
For the Opposite Party No. 2	: Mr. Sanjay Banerjee
For the State	: Mr. Ranabir Ray Chowdhury Mr. Mainak Gupta
Heard on	: 03.08.2023, 27.09.2023, 06.12.2023, 05.01.2024, 25.01.2024
Judgment on	: 28.03.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner praying for quashing of the proceeding in C.R. Case No. 169 of 2014 under Sections

406/420/467/468/120B of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Siliguri, Darjeeling and all orders passed therein including the order dated 06th March,2014.

2. The contentions of the petitioners are elucidated as follows:-

The petitioner No. 1 (hereinafter referred to as "the company"), is a company duly incorporated under the provisions of the Companies Act, 1956, having its registered office at D-2, 5th Floor, Southern Park, Saket Palace, Saket, New Delhi – 110017 and corporate office at Plot No. 14A, Sector 18, Maruti Industrial Complex, Gurgaon, Haryana. The petitioner nos. 2 to 6 officials of the company. The company is being represented by Mr. Subhendu Paul, being duly authorized by the company by a Power of Attorney dated 31stMarch, 2014.

3. The company is duly registered and certified as an Infrastructure Provider Category – I (IP-I) by the Ministry of Communication and Information Technology, Department of Telecommunication, Government of India. In the normal course of its business, the company provides passive infrastructure facilities, such as telecom towers, cables etc. to the telecom companies licenced under Section 4 of the Indian Telegraph Act, 1885.

4. The company, having pioneered the concept of telecom infrastructure, is the India's largest independent telecom infrastructure company with a portfolio of over 42,000 towers and over 98,000 tenants across all 22 telecom circles in the country. The company is an ISO 14001:2004 & OHSAS 18001:2007 certified company. The company is known for its integrity and honesty and for the said reason, is enjoying the trust and goodwill of its customers.

5. The petitioner No. 2 is working as Circle Head – West Bengal Circle of the company having its office at P.S.-Srijan Tech Park, 13th Floor, Block D.N.-52, Sector V, Salt Lake City, Kolkata - 700091. The petitioner No. 2 joined the company on 7th January, 2013 and is devoid of any criminal antecedent. The petitioner No. 2, being the Circle Head of the company for West Bengal circle, is responsible for operation of all the passive infrastructure services being provided by the company to the mobile operators in West Bengal. The petitioner No. 2 is constantly engaged in visiting the entire circle all over the State of West Bengal and has to hold meetings with all external and internal stakeholders for keeping up their commitments for ensuring hundred per cent network coverage for the mobile operators all over the State of West Bengal.
6. The petitioner No. 3 is the Chief Executive Officer of the company and is working for gain at its corporate office at Gurgaon. The petitioner No. 3 joined the company on 2nd July, 2012 and is devoid of any criminal antecedent. The petitioner No. 3, being the Chief Executive Officer of the company, is constantly engaged in visiting various circles all over India for operational purposes and has to attend meetings with all external and internal stakeholders for keeping up their commitments for ensuring hundred per cent network coverage for the mobile operators all over India.
7. The petitioner No. 4 is the Chief Operating Officer of the company and is responsible to ensure 100 per cent uptime of all passive infrastructure services provided by the company to the different mobile operators. The petitioner No. 4 joined the company only on 1stJuly, 2013 and is devoid of any criminal antecedent.

8. The petitioner No. 5 is the Operations Head of the company and is responsible for ensuring proper operation and maintenance of passive infrastructure services provided by the company to different mobile operators in all 22 telecom circles of the country. The petitioner No. 5 joined the company only on 26thAugust, 2013 and is devoid of any criminal antecedent.

9. The petitioner No. 6 is working as the Head – Supply Chain Management of the company and is responsible for planning and finalizing different vendors for different services which the company may require for providing passive infrastructure services to its customers. The petitioner No. 6 joined the company on 16thJanuary, 2014 and is devoid of any criminal antecedent.

10. The complainant/opposite party No. 2, claimed to be one of the partners of M/s. M. S. & Company, a partnership firm registered under the Partnership Act, having its former office at Udayan Colony, No. 1 Debgram, Siliguri, P.O. & P.S.-Siliguri, District- Darjeeling and having office at 43 G.M. Road Siliguri, District- Darjeeling. The said partnership firm was dissolved and business was continued as a proprietorship entity. At present, complainant/opposite party No. 2 is the proprietor of the said proprietorship firm M.S. & Co. and has taken over all right and liabilities of the said erstwhile partnership firm. M/s M.S. & Company and carries on business of construction and also provides services to various private telecom companies and other government departments.

11. The opposite party No. 2 had approached Wireless TT Info Services Ltd. (WTTIL) and Quippo Telecom Infrastructure Ltd. (QTIL) representing that the opposite party No. 2 had necessary infrastructure and expertise in providing operations and maintenance at the cell sites and on the basis of such

representation of the opposite party No. 2, two separate O&M Service & Diesel Provider Agreements (Agreements) were entered into between WTTIL and MS & Co. and QTIL and MS & Co., both dated 1st July, 2010. Subsequently QTIL merged their passive infrastructure businesses with WTTIL vide a scheme of arrangement under Section 391-394 of the Companies Act, 1956. Later on, the name of WTTIL was changed to Viom Networks Limited. After expiry of the agreements, the company issued a Letter of Intent dated 30thAugust, 2011 to MS & Co. which was valid till 30th September, 2011. Further, the opposite party No. 2 represented himself as partners and signatories of M/s. MS & Co.

12. As per the agreements, the opposite party No. 2 was, inter alia, required to provide operations and maintenance services including diesel filling services at cell sites of the company in West Bengal circle by using the Petro Cards of IOCL provided by the company to the opposite party No. 2. The opposite party No. 2 had issued three cheques bearing number 004356, 004355 and 004357 for Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) each drawn on Standard Chartered Bank, Mukherjee House, Hill Cart Road, Siliguri – 734001 in favour of the company as security for use of Petro Cards, which were agreed to be used in discharge of the liabilities of the opposite party No. 2.

13. As the performance of opposite party No.2 was gradually deteriorating for which different customers of the Company had imposed heavy penalty on it due to outages and down of services, the Company was compelled to terminate the Agreements and LOI issued to MS & Co. on or about 19th September, 2011. The Company had also from time to time sent letters/emails to opposite party No.2 for reconciliation of accounts and

closing of the debit notes and outstanding, however opposite party No.2 had neither reconciled the accounts nor cleared its outstanding.

14. For recovery of dues and liabilities of the opposite party No.2, the Company presented the aforesaid three cheques on 13th June, 2012 with its banker namely HDFC Bank Ltd., 1st Floor, Kailash Building, 26, K.G. Marg, New Delhi-110 001. However, to the utter distress of the Company, all the three cheques were returned unpaid with remark "Payment stopped by Drawer" in the respective Memos issued by the Banker of the Company on 15th June, 2012.

15. Right from the entering into the Agreements and issuing said three cheques, the opposite party No.2 had the intention to cheat the Company as the opposite party No.2 failed to pay and discharge its liabilities despite the repeated requests made by the Company.

16. In the aforesaid background a notice under Section 138 of the Negotiable Instruments Act, 1881 was issued on or about 20th June, 2012 to the opposite party No.2 and its partners.

17. In response to the said notice, the opposite party No.2 through its Learned Lawyer raised frivolous claim and denied the contents of the notice under Section 138 of the Negotiable Instruments Act.

18. In view of the facts that in spite of receipt of the notice, the opposite party No.2 did not make any payment to the Company within the time specified therein, the Company was compelled to initiate a proceeding under Section 138 of the Negotiable Instruments Act before the Learned Additional Chief Judicial Magistrate at Siliguri being No.C.R.477/2012.

19. The opposite party No.2 and other accused persons therein were issued summons by the Court and they appeared before the Learned Court in 2014.

20. During the pendency of the aforesaid proceeding, as a counterblast to the proceeding initiated under Section 138 of the Negotiable Instruments Act, the opposite party No.2 filed the instant proceeding under Sections 406/420/467/468 and 120B of the Indian Penal Code against the petitioners.

21. The aforesaid complaint was filed before the Learned Additional Chief Judicial Magistrate at Siliguri on 6thMarch, 2014 and by an order dated6thMarch, 2014, cognizance was taken by the Learned Additional Chief Judicial Magistrate, Siliguri and the case record was transferred to the Learned Judicial Magistrate, 4thCourt for disposal.

22. On 1stApril, 2014 the complainant and one Kaustav Biswas were examined under Section 200 of the Code of Criminal Procedure. On the basis of the petition of complaint and the deposition of the said witnesses, the Learned Judicial Magistrate, 1st Class, 4th Court, Siliguri issued summons against the petitioners.

23. Upon receipt of the summons the petitioners filed an application under Section 205 of the Code of Criminal Procedure before the Learned Magistrate on or about 7thJuly, 2014 and the next date was fixed on 7th August, 2014 for hearing of the said application.

24. Petitioners were totally taken aback to know the false allegations of opposite party No. 2, as the petitioners were innocent and in no way connected with the commission of the alleged offences at all even if the allegations of opposite party No. 2 are taken on their face value, though no such alleged offences were committed by anyone but have been falsely implicated in the case. The

institution of the criminal complaint had been an attempt of the opposite party No. 2 to pressurize the said Company and its officers to withdraw their claim.

25. The Ld. Advocate for the petitioners submitted as follows:-

i. <u>The impugned proceeding was a counterblast to the case instituted under Section 138 of the Negotiable Instruments Act, 1881.</u>

a) The Opposite Party No. 2 had instituted the instant proceedings as a counterblast, much after receiving the notice under Section 138 of the Negotiable Instruments Act, 1881 and after the summons were issued in the proceedings under Section 138 of the Negotiable Instruments Act, 1881 and after surrendering and obtaining bail in the proceeding under Section 138 of the NI Act;

b) It was no longer res integra that when a proceeding alleging cheating, forgery, or criminal breach of trust in relation to a cheque was instituted by a person who was facing a proceeding under Section 138 of the Negotiable Instruments Act for the self-same cheque; such proceedings could not be termed anything except an abuse of the process of court.

27. In this regard, the Ld. Advocate for the petitioners relied upon the following judgments:

i. In ***Sunil Kumar v. Escorts Yamaha Motors Ltd.*** reported in ***(1999) 8 SCC 468*** where the Hon'ble Supreme Court held the following***:-***

> *"2. The decision of the Division Bench of the Delhi High Court, quashing FIR No. 285 of 1998 at PS Rajouri Garden for offence under Sections 420/406/468 IPC is under challenge in this appeal by the informant. The appellant informant filed the FIR alleging*

therein that the respondents by an act of conspiracy committed criminal breach of trust by presenting blank cheques signed by the appellant for withdrawing money for a purpose for which it had not been given and by so doing, they have caused a loss of Rs 8982 inasmuch as this was the commission which the appellant had to bear. The gravamen of the appellant's case in the FIR is that certain cheques had been given to the respondents, more particularly, the Commercial Manager with the specific understanding that these cheques can be presented against delivery of future vehicles and not for any past liability or dues, but the respondents presented the same which of course could not be encashed in view of the directions given by the appellant drawer. However the appellant had to sustain the loss of Rs 8982 as commission charges. The respondents filed application in the Delhi High Court for quashing of the FIR, inter alia, on the ground that the averments in the FIR do not make out the offence of either Section 406 or Section 420 as the necessary ingredients under Sections 405 and 415 IPC have not been indicated. The respondents also took the ground that the criminal proceedings pursuant to the FIR have been initiated with an ulterior motive and thereby there has been a gross abuse of the process of law and as such the FIR should be quashed. The High Court on consideration of the case of the parties and on the materials was of the opinion that the informant himself has already resorted to civil remedy for adjudication by an arbitrator and thereafter having lodged the complaint must be held to have abused the process of law and, therefore, the FIR should be quashed in the interest of justice.

3. Mr P.C. Jain, learned Senior Counsel appearing for the appellant contended before us that the assertions made in the FIR do constitute a cognizable offence and as such the same could not have been quashed in the light of the judgment of this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and the judgment of this Court in Rajesh Bajaj v.

State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401 : JT (1999) 2 SC 112] .

4. Mr H.N. Salve and Mr Arun Jaitley, learned Senior Counsel appearing for different accused persons on the other hand contended that the assertions made in the FIR even taken on face value do not satisfy the ingredients of the offence alleged to have been made and on the other hand it manifestly indicates that the complainant has instituted the criminal proceedings with an ulterior motive for wreaking vengeance and to pre-empt the filing of the criminal complaint against him under Section 138 of the Negotiable Instruments Act and, therefore, the High Court rightly came to the conclusion that allowing the criminal proceedings to continue would result in manifest injustice and as such quashed the FIR, and this Court, therefore, would not be justified in interfering with the same in exercise of power under Article 136 of the Constitution. According to the learned counsel, issuance of process should not be allowed to be an instrument of oppression or needless harassment. Responsibilities and duties on the magistracy lie in finding out whether the alleged accused would be legally responsible for the offence charged for. The court at that stage could be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration lest it would be an instrument in the hands of the private complaint as vendetta to harass the person needlessly. The learned counsel relied upon the decision of this Court in Punjab National Bank v. Surendra Prasad Sinha [1993 Supp (1) SCC 499 : 1993 SCC (Cri) 149] .

5. Bearing in mind the law laid down by this Court in the cases referred to earlier and the contentions raised by the learned counsel appearing for the parties and on examining the allegations made in the FIR, we are persuaded to accept the submission of Mr H.N. Salve and Mr Arun Jaitley, appearing for the respondents that the necessary ingredients of the offence of cheating or criminal

breach of trust have not been made out and on the other hand the attendant circumstances indicate that the FIR was lodged to pre-empt the filing of the criminal complaint against the informant under Section 138 of the Negotiable Instruments Act. The High Court, therefore, was well within its power in quashing the FIR as otherwise it wouldtantamount to an abuse of the process of court. We, therefore, see no justification for our interference with the impugned decision of the High Court in exercise of power under Article 136 of the Constitution.

6. This appeal accordingly fails and is dismissed."

ii. In ***Mahindra & Mahindra Financial Services Ltd. v. Rajiv Dubey*** reported in ***(2009) 1 SCC 706***, the Hon'ble Supreme decided the following:-

"3. In the complaint it was inter alia alleged as follows:

The complainant as the Managing Director of Team Finance Company (P) Ltd., Janpath Tower, Bhubaneshwar had availed hire-purchase finance from Mahindra & Mahindra Financial Services Ltd., Appellant 1-accused with the consent and knowledge of its Managing Director, Appellant 2-accused in respect of a vehicle for a sum of Rs 1,89,000,00. He had given seven blank cheques drawn on Canara Bank, Main Branch, Bhubaneshwar in favour of Appellant 1-accused in the year 1994 when the agreement had been executed between the parties with mutual understanding that the said cheques would not be presented for encashment by the appellant-accused, but then payments would be made through demand drafts regularly till the entire amount was repaid. According to the complainant, in consonance with the said understanding the entire dues were repaid by him through demand drafts and after repayment he wrote a letter to Appellant l-accused for returning the blank cheques to him. However, without doing so, the appellant-accused mischievously and with ulterior motive

presented the cheques in the bank, a fact he learnt after receiving communication from the Bank concerned, as sufficient money was not available in his account. The cheques were presented in Bank by the appellant-accused even though their entire amount had been repaid by the complainant. This was done with a motive to cheat and harass the complainant and makes out offences under Sections 406 and 420 IPC. The court below after recording the initial statement of the complainant under Section 200 of the Code of Criminal Procedure, 1973 (in short "the Code") perusing the materials produced before him and being prima facie satisfied about commission of the aforesaid offences took cognizance thereof.

....

10. In the meanwhile, in order to pre-empt the impending proceeding under Section 138 of the Act, the respondent filed a criminal complaint, CC No. 210 of 2000 against the appellants under Sections 406, 420, 294, 506, 34 IPC before the SDJM, Bhubaneshwar on 11-5-2000, inter alia, claiming that the cheques issued by the respondent were towards an outstanding amount of Rs 1,89,000 and the said payment has already been made by the respondent by way of a demand draft of which no number, date or any other details are provided in the complaint. The appellants became aware of institution of such a case only later when the process was issued on 18-4-2001 and the same was received by the appellants.

...

18. It is interesting to note that the respondent does not dispute issuance of cheques. Even a casual reading of the complaint does not show that the ingredients of Section 406 IPC are in any event made out. It is also not understandable as to how Section 294 has any application to the facts of the case much less Section 506 IPC. In addition to this, perusal of the complaint apparently shows the ulterior motive. It is clear that the proceeding initiated by the respondent clearly amounted to abuse of process of law.

19. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] , it was, inter alia, observed as follows : (SCC pp. 378-79, para 102)

"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 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."

The case at hand falls under Category (7).

…

20. Therefore, in view of what has been stated in Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] , the proceedings in ICC No. 210 of 2000 before the learned SDJM, Bhubaneshwar stand quashed. The appeal is allowed."

iii. In ***Ashok Kumar Gupta v. State of U.P.*** reported in **(2017) 11 SCC 239** the Hon'ble Apex Court held as follows:-

"4. *The appellant sought quashing of the said complaint on the ground that the criminal complaint was a counterblast to the notice of dishonour of cheque upon which a summoning order had been passed and proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated by the appellant. The appellant relied on notice of dishonour, a copy of Criminal Complaint No. 135 of 2010 filed on 16-10-2010 and order of the Court dated 4-11-2010. Reliance has been placed on the judgments of this Court in Eicher Tractor Ltd. v. Harihar Singh [Eicher Tractor Ltd. v. Harihar Singh, (2008) 16 SCC 763 : (2010) 4 SCC (Cri) 425] , Mahindra and Mahindra Financial Services Ltd. v. Rajiv*

Dubey [Mahindra and Mahindra Financial Services Ltd. v. Rajiv Dubey, (2009) 1 SCC 706 : (2009) 1 SCC (Civ) 321 : (2009) 1 SCC (Cri) 603] apart from Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283] .

…

***7.** After hearing the learned counsel for the parties and perusing the records, we are satisfied that the complaint filed by the complainant is clear abuse of the process of law."*

iv. In ***Eicher Tractor Ltd. v. Harihar Singh*** reported in **(2008) 16 SCC 763** for consideration where the Hon'ble Supreme court held the following:-

***"8.** In January 2001, Respondent 1 issued a cheque bearing No. 628701 dated 30-12-2000 for Rs 50,00,000 (fifty lakhs) discharging his liability towards the debt incurred against Appellant 1. In January 2001 the appellant presented the cheque bearing No. 628701 to his bank for withdrawal. On 23-1-2001, the bank returned the cheque with an endorsement on the return memo i.e. refer to the drawer.*

***9.** On 5-2-2001, the appellant issued a legal notice under Section 138, Negotiable Instruments Act, 1881 (in short "the NI Act"). In January 2001, the appellant filed a complaint under Sections 138/142 read with Section 141 of the NI Act before the Court of Judicial Magistrate I, Faridabad. On 12-4-2001, the trial court after considering the complaint and the pre-summoning evidence took cognizance and issued summons against the respondent. Respondent 1 appeared and subsequently was released on bail.*

***10.** On 4-10-2002, Respondent 1 filed a private complaint under Section 200 CrPC before the Civil Judge, (JD)/Judicial Magistrate, R.S. Ghat, District Barabanki alleging that the officials of Petitioner 1 herein had stolen the cheques bearing Nos. 0628701 to 0628704. It was further mentioned by him in the complaint that in the year 1998, he had informed Bank of Baroda, Barabanki that he has lost the aforesaid*

cheques and also reported the same to the SHO, Barabanki. He further alleged that the appellants herein forged the cheque bearing No. 0628701 and presented the same in the bank at Faridabad, and thereby alleged that they had committed an offence under Sections 468 and 471 IPC.

***11.** On 8-2-2005, the complaint bearing No. 1343 of 2004 filed by Respondent 1 herein came up for hearing before the Civil Judge, (JD)/Judicial Magistrate, R.S. Ghat, Barabanki, Uttar Pradesh, and the learned Magistrate vide his order dated 8-2-2005 took cognizance of the matter and issued summons to the appellants."*

v. In **Capital First Limited v. Shree Shyam Pulses Private Limited,** reported in **2019 SCC OnLine Cal 2149** where the following was held by the Hon'ble Supreme Court:-

***"15.** The gravamen of the allegation in the complaint is that the petitioners converted the blank banking instruments into valuable documents and presented the same for encashment and got the same dishonoured with male fide intention.*

***16.** In the instant case, the factum of issuance of blank cheques by the complainant is admitted. It is also admitted that cheques in question were drawn on an account maintained by the complainant with the banker. It is also an admitted fact that the complainant took loan of Rs. 10,00,000/- from the petitioner by executing a loan agreement on several terms and conditions to repay the same by way of 24 monthly instalment. It is also an admitted fact that the complainant made default in payment of loan i.e. there was existing debt or other liability to make payment. From Clauses 10.07, 10.08, 10.09, 10.10 and Clause 27 of the loan agreement and cheque submission form (CSF), it appears that pursuant to the loan agreement cheques in question were drawn in favour of Capital First Limited i.e. the petitioner no. 1 and the authorized representative Hemant Murarka signed on the cheques as authorized*

representative of M/s. Shree Shyam Pulses Private Limited after knowing the contents of the agreement.

17. *In this connection, Learned Counsel appearing for the petitioners has submitted that in view of Section 20 of the Negotiable Instruments Act the person who has handed over a blank cheque to another person, gives him authority to fill up the contents therein. It is his specific contention that the allegations in the complaint that the petitioners converted the blank cheques as valuable security, fraudulently has no basis at all.*

18. *In this connection, reliance may be placed on the decision of Sunil Kumar v. Escorts Yamaha Motors Ltd. reported in (1999) 8 SCC 468.*

19. *From paragraph 2 of the said judgment, it appears that the allegation in the FIR was that certain cheques had been given to the respondents "with the specific understanding that these cheques can be presented against delivery of future vehicles and not for any past liability or dues, but the respondents presented the same which of course could not be encashed in view of the directions given by the appellant drawer. However the appellant had to sustain the loss of Rs. 8982 as commission charges. The respondents filed application in the Delhi High Court for quashing of the FIR, inter alia, on the ground that the averments in the FIR do not make out the offence of either Section 406 or Section 420 as the necessary ingredients under Sections 405 and 415 I.P.C. have not been indicated. The respondents also took the ground that the criminal proceedings pursuant to the FIR have been initiated with an ulterior motive and thereby there has been a gross abuse of the process of law and as such FIR should be quashed."*

20. *Hon'ble Apex Court dismissed the appeal after observing that the High Court was well within its power in quashing the FIR as otherwise, it would tantamount to an abuse of the process of the Court.*

21. *Similar view was taken by the Hon'ble Apex Court in the decision of Mahindra and Mahindra Financial Services Limited v. Rajib*

Dubey reported in (2009) 1 SCC 706. Paragraph 18 of the said judgment runs as under:—

***"18.** It is interesting to note that the respondent does not dispute issuance of cheques. Even a casual reading of the complaint does not show that the ingredients of Section 406 I.P.C. are in any event made out. It is also not understandable as to how Section 294 has any application to the facts of the case much less Section 506 I.P.C. In addition to this, perusal of the complaint apparently shows the ulterior motive. It is clear that the proceeding initiated by the respondent clearly amounted to abuse of process of law."*

***22.** In paragraph 19 of the said judgment Hon'ble Court made reference to the decision of State of Haryana v. Bhajan Lal and observed that the case at hand falls under category 7. Category seven of the judgment of State of Haryana v. Bhajan Lal is as under:—*

***"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."*

***23.** The factual scenario of the case at hand clearly indicated that the impugned criminal proceedings have been started as a counter blast to the proceedings initiated by the petitioners for dishonor of cheques issued by the complainant.*

***24.** In this connection, another decision of the Hon'ble Apex Court in Eicher Tractor Limited v. Harihar Singh may be mentioned.*

***25.** In paragraph 14 of the said judgment the Hon'ble Apex Court was pleased to observe as under:—*

*"**14**. The case at hand squarely falls within the parameters indicated in Category (7) of Bhajan Lal case. The factual scenario as noted above clearly shows that the proceedings were initiated as a counterblast to the proceedings initiated by the appellants. Continuance of such*

proceedings will be nothing but an abuse of the process of law. Proceedings are accordingly quashed."

26. *The above discussions lead me to observe that in the case at hand, the uncorroborated allegations made in the complaint do not prima facie constitute the commission of the alleged offences and the impugned criminal proceedings are the counterblast of the proceedings initiated against the complainant under the provisions of Negotiable Instruments Act.*

27. *In my opinion, the case at hand comes within parameters (7) of the decision of Hon'ble Supreme Court in State of Haryana v. Ch. Bhajan lal reported in (1992) 1 SCC 318 : AIR 1992 SC 664 and in other subsequent cases regarding exercise of inherent power under Section 482 of the criminal procedure. The impugned criminal proceeding being complaint case no. 588 of 2017 requires to be quashed against the petitioners.*

28. *I am of the view that continuance of the criminal proceedings pending against the present petitioner would amount to an abuse of the process of the Court. Criminal proceedings being C. No. 588 of 2017 is hereby quashed.*

vi. In ***Jetking Infotrain Ltd. v. State of U.P.*** reported in **(2015) 11 SCC 730** where the Hon'ble Supreme Court decided the following matter based on the following principles: -

"3. *Succinctly, facts of the case are that the appellant is Manager (Accounts) with M/s Jetking Infotrain Ltd. There was a franchise agreement between the appellant's Company and M/s SVS Computers Ltd., of which Respondent 2, Vishal Sharma (complainant) is one of the Directors. The said franchise agreement expired on 29-6-2011. There was some dispute as to the clearance of outstanding dues of M/s Jetking Infotrain Ltd., due to which, it appears that it sent a notice for payment before renewal of the agreement of franchise. It is pleaded before us that Respondent 2 tendered two cheques towards franchise*

fee for the year 2013-2014, on behalf of M/s SVS Computers Ltd. Out of the two cheques, one bearing No. 63873 dated 27-6-2013 drawn on Union Bank of India, Noida, for an amount of Rs 7,86,641, when presented before the bankers, was dishonoured on account of "payment stopped by the drawer" endorsement. However, another cheque for an amount of Rs 1,10,400 was honoured. On this, the appellant's Company issued notice dated 13-7-2013 to Respondent 2 calling upon to make payment of dishonoured cheque on behalf of M/s SVS Computers Ltd. When Respondent 2 ignored the same, on behalf of M/s Jetking Infotrain Ltd. Criminal Complaint Case No. 630 of 2013 was filed against Respondent 2 Vishal Sharma, before the Metropolitan Magistrate, Karkardooma Courts, Delhi, in respect of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "the Act").

4. *It is stated that after the above complaint was filed, Respondent 2, as a counterblast, filed allegedly frivolous Criminal Complaint Case No. 1446 of 2013, relating to offences punishable under Sections 420, 467, 468, 471 and 406 IPC, before the Additional Chief Judicial Magistrate 4, Meerut, against the appellant and other Directors of the appellant's Company. It is further pleaded that filing of the complaint in question, subsequent to the complaint filed by the appellant, is nothing but harassment and abuse of process of law on the part of Respondent 2. As such, the appellant filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") before the Allahabad High Court for quashment of the proceedings before the Additional Chief Judicial Magistrate 4, Meerut, which was dismissed by the said Court. Hence this appeal through special leave.*

5. *The learned counsel for the appellant argued that the High Court has erred in law in ignoring the fact that a criminal complaint was already filed against Respondent 2 in respect of offence punishable under Section 138 of the Act. It is contended that the said fact is admitted between the parties. It is further contended that to pressurise the appellant in the said criminal case, impugned criminal proceedings were initiated at Meerut which is nothing but abuse of process of law.*

6. *Per contra, the learned counsel for the respondent, defending the impugned order, submitted before us that the High Court has rightly observed that the appellant can raise the objections as to whether offences alleged against him are made out or not at the time of framing of charge before the trial court. It is further pointed out that the High Court has already protected the interest of the appellant by observing that if he appears before the trial court within thirty days, his bail would be disposed of expeditiously, if possible, on the same day.*

7. *We have carefully considered the rival submissions made before us. From a bare perusal of Section 482 of the Code, it is clear that the object of exercise of power under the section is to prevent abuse of process of law, and to secure ends of justice. In Rajiv Thapar v. Madan Lal Kapoor [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] , this Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 of the Code as under: (SCC pp. 348-49, para 30)*

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

8. *In Rishipal Singh v. State of U.P. [Rishipal Singh v. State of U.P., (2014) 7 SCC 215 : (2014) 3 SCC (Civ) 680 : (2014) 3 SCC (Cri) 17] , explaining the law in the similar circumstances, as in the present case, this Court observed, in para 17, as under: (SCC p. 222)*

"17. It is no doubt true that the courts have to be very careful while exercising the power under Section 482 CrPC. At the same time we should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold."

In Rishipal Singh [Rishipal Singh v. State of U.P., (2014) 7 SCC 215 : (2014) 3 SCC (Civ) 680 : (2014) 3 SCC (Cri) 17] , the complainant, who was an accused in connection with an offence punishable under Section 138 of the Act, had filed a criminal complaint relating to offences punishable under Sections 34, 379, 411, 417, 418, 467, 468, 471 and 477 IPC.

9. *In view of the above position of law, and having regard to the facts and circumstances of the case in hand, and after going through the criminal complaint filed against Respondent 2 and thereafter, one filed by him against the appellant, we are of the view that it is a clear case of abuse of process of law on the part of Respondent 2.*

10. *Therefore, we are of the opinion that this appeal deserves to be allowed. Accordingly, the same is allowed. The impugned order dated 4-3-2014, passed by the High Court of Judicature of Allahabad in D.P. Gulati v. State of U.P. [D.P. Gulati v. State of U.P. Application under*

Section 482 CrPC No. 6667 of 2014, order dated 4-3-2014 (All)] is hereby set aside. The impugned proceedings of Criminal Complaint Case Nos. 1446/9 of 2013, pending before the Additional Chief Judicial Magistrate 4, Meerut, between the parties, are hereby quashed in respect of offences punishable under Sections 420, 467, 468, 471 and 406 IPC."

vii. It was further submitted that a party was always within its rights to deposit security cheques for encashment:

a) One of the principal contentions of the Ld. Advocate of Opposite Party No. 2 was that the cheques, which were issued as security, had been misused by petitioner No. 1s' Company.

b) In this regard, it was submitted that security cheques had been acknowledged as cheques within the meaning of Section 138 of the Negotiable Instruments Act.

c) The whole purpose of a security chequeswas to ensure that in case of the failure of a party to pay its dues, the other party would be entitled to put the cheques for encashment and it was no longer res integral that if security cheques were dishonored, the same would attract culpability under Section 138 of the Negotiable Instruments Act.

ix. In this connection reliance was placed upon the case of ***Don Ayengia v. State of Assam*** reported in **(2016) 3 SCC 1** where the following was held by the Hon'ble Supreme Court:-

"12. *The difficulty arises only because the promissory note uses the words "security" qua the cheques. This would ordinarily and in the context in which the cheques were given imply that once the amount of rupees ten lakhs was paid, the cheques shall have to be returned. There would be no reason for their retention by the complainant or for their presentation. In case, however, the amount was not paid within the*

period stipulated, the cheques were liable to be presented for otherwise there was no logic or reason for their having been issued and handed over in the first instance. If non-payment of the agreed debt/liability within the time specified also did not entitle the holder to present the cheques for payment, the issuance and delivery of any such cheques would be meaningless and futile, if not absurd."

Therefore, merely because security cheques were put in for encashment, and proceeding under Section 138 of the Negotiable Instruments Act were instituted for dishonor of such cheques, the same, per se, could not give rise to a cause of action for cheating, forgery or breach of trust.

x. <u>It was further contended that there was no vicarious liability for the petitioner no. 2 to 6 as the concept of vicarious liability was unknown to criminal jurisprudence:</u>

a) It was no longer res integra that unless a statute specifically provides for vicarious liability, the said liability could not be read into a penal provision;

b) It was submitted that Sections 406, 420, 467 and 468 of the Indian Penal Code, 1860did not provide for any vicarious liability;

c) On accepting the complaint as a whole, the allegation of misuse of cheque was directed against the petitioner No.1s' company and no specific individual role had been attributed against the petitioners no.2 to 6;

d) Without any allegation of any individual specific act, the petitioners No.2 to 6 could not be made vicariously liable on behalf of the petitioner no.1s' Company. In this regard, the Ld. Advocate for the petitioners relied upon the following judgments:-

xi. In ***S.K. Alagh v. State of U.P.*** reported in **(2008) 5 SCC 662** where the Hon'ble Supreme Court held the following:-

> ***"16.*** *The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence.*
>
> *…*
>
> ***18.*** *Ingredients of the offence under Section 406 are:*
>
> *"(1) a person should have been entrusted with property, or entrusted with dominion over property;*
>
> *(2) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;*
>
> *(3) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."*
>
> *…*
>
> ***20.*** *We may, in this regard, notice that the provisions of the Essential Commodities Act, the Negotiable Instruments Act, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, etc. have created such vicarious liability. It is interesting to note that Section 14-A of the 1952 Act specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the Explanations appended to Section 405 of the Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Penal Code vicarious liability has been held to be not extendable to*

the Directors or officers of the company. (See Maksud Saiyed v. State of Gujarat [(2008) 5 SCC 668 : (2007) 11 Scale 318] .)"

xii. In ***Shiv Kumar Jatia v. State (NCT of Delhi)*** reported in **(2019) 17 SCC 193,** the following was held by the Hon'ble Supreme Court of India:-

"19. *The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] . In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.*

20. *Though there are allegations of negligence on the part of the hotel and its officers who are incharge of day-to-day affairs of the hotel, so far as appellant-Accused 2 Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 IPC. Taking contents of the final report as it is we are of the view*

that, there is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Ltd., which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent, so far as appellant-Accused 2. Applying the judgment in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] we are of the view that the said view expressed by this Court, supports the case of appellant-Accused 2.

21. *By applying the ratio laid down by this Court in Sunil Bharti Mittal [Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further held that statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.*

22. *In the judgment of this Court in Sharad Kumar Sanghi v. Sangita Rane [Sharad Kumar Sanghi v. Sangita Rane, (2015) 12 SCC 781 : (2016) 1 SCC (Cri) 159] while examining the allegations made against the Managing Director of a Company, in*

which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 CrPC. In the case on hand principally the allegations are made against the first accused company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is Accused 2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures. Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day-to-day affairs of the company. In the absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned."

xiii. In ***Maksud Saiyed v. State of Gujarat*** reported in **(2008) 5 SCC 668** pronounced by the Hon'ble Supreme Court:-

> ***"13.*** *Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite*

allegations which would attract the provisions constituting vicarious liability."

xiv. Filling up of blanks in a cheque does not amount to forgery:

a) It was submitted that the principal allegation of the Ld. Advocate of the Opposite PartyNo.2 was that forgery was committed by filling up of blanks in the cheques issued by him;

b) While interpreting Section 20 of the Negotiable Instruments Act, 1881,it was established that a holder in issuing a cheque or negotiable instrument was empowered to fill up the blanks and the drawer could not avoid the responsibility of issuing a cheque merely because that the cheques had been filled up by somebody else. On this point, the Ld. Advocate for the petitioners relied upon the following judgments:- viz.

Nita Kanoi v. Paridhi reported in **2015 SCC OnLine Cal 1262**:-

"In the case at hand the signature in the cheques has not disputed by the petitioner as that of him, but he claimed that the name of the payee and the cheque amount was not filled up by him. The Section 20 of the Negotiable Instrument Act defined such a cheque an "inchoate stamped instrument". According to the said provision, where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instrument, either wholly blank or having written thereon, an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it, a negotiable instrument for any amount specified therein and not exceeding amount covered by the stamp. The provision further provides the person so signing shall be liable upon such instrument, in the capacity in which he signs the same, to any holder in due course for such amount: Provided that no person other than a holder in due course

shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

On a plain reading of the aforesaid provisions, it is abundantly clear even if an incomplete negotiable instrument, signed by the drawer delivers to anyone, it authorizes the holder thereof to make or complete the same as the case may be and also the person so signing shall be liable upon such instrument, in the capacity in which he signed the same to any holder thereof in due course for payment of such amount. Therefore, even if a bill of exchange, which includes a cheque, if delivers to any person singed by the drawer, no payment against such cheque can be denied on the plea the same was delivered to the person was partially blank. Since the signature in the cheque has not been disputed there is no need for verification of the handwriting by which the name of the payee and the amount has been filled up. The learned Magistrate very rightly rejected the petitioner's prayer."

xv. In ***Bir Singh v. Mukesh Kumar*** reported in **(2019) 4 SCC 197** the Hon'ble Supreme Court held the following:-

"32. *The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.*

33. *A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may*

have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.

34. *If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.*

35. *It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.*

36. *Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.*

37. *The fact that the appellant complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.*

38. *In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant complainant, it may reasonably be presumed that the cheque was filled in by the appellant complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act."*

xvi. Order issuing process dated April 1, 2014had been passed in violation of Section 202 and 204 of the Code of Criminal Procedure, 1973:

a) It was no longer res integra that when one or more of the accused persons implicated in a criminal complaint were based outside the territorial jurisdiction of the Learned Magistrate, the said Magistrate was duty bound to conduct an inquiry under Section 202 of the Code of Criminal Procedure;

b) The order dated April 1, 2014did not reflect that any inquiry under Section 202 of the Code of Criminal Procedure was conducted by the Learned Magistrate;

c) The Opposite Party No.2 and one witness produced on his behalf, namely, Kaustav Biswas was examined under Section 200 of the Code of Criminal Procedure. Neither any witness wasexamined under Section 202 of the Code of Criminal Procedure, nor any document was perused for the purpose of Section 202 of the CRPC;

d) The order of the Learned Magistrate must reflect that there had been a compliance ofSection 202 of the Code of Criminal Procedure and the result of such inquiry must be reflected in the order. The Learned Magistrate must apply his mind to each of the facades of the case and the documents.

e) If the order does not reflect such application of mind supported by reasons and the result of inquiry under Section 202 of the Code of Criminal Procedure; the order was liable to be set aside and quashed.

The Ld. Advocate for the petitioners on this point, relied upon the following judgment:

xvii. In ***Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd.*** reported in **(2019) 16 SCC 610** and the following was held by the Hon'ble Supreme Court

> ***"30.*** *Under the amended sub-section (1) to Section 202 CrPC, it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused.*
>
> ***31.*** *The by Code of Criminal Procedure (Amendment) Act, 2005, in Section 202 CrPC of the principal Act with effect from 23-6-2006, in sub-section (1), the words*
>
> > *"… and shall, in a case where accused is residing at a place beyond the area in which he exercises his jurisdiction…."*
>
> *were inserted by Section 19 of the Criminal Procedure Code (Amendment) Act, 2005. In the opinion of the legislature, such amendment was necessary as false complaints are filed against persons residing at far off places in order to harass them. The object of the amendment is to ensure that persons residing at far off places*

are not harassed by filing false complaints making it obligatory for the Magistrate to enquire. Notes on Clause 19 reads as under:

> *False complaints are filed against persons residing at far off places simply to harass them. In order to see that the 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."*

32. *Considering the scope of amendment to Section 202 CrPC, in Vijay Dhanuka v. NajimaMamtaj [Vijay Dhanuka v. NajimaMamtaj, (2014) 14 SCC 638 : (2015) 1 SCC (Cri) 479] , it was held as under : (SCC p. 644, para 12)*

> *"12. … 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."*

Since the amendment is aimed to prevent persons residing outside the jurisdiction of the court from being harassed, it was reiterated that holding of enquiry is mandatory. The purpose or objective behind the amendment was also considered by this Court in Abhijit

Pawar v. Hemant Madhukar Nimbalkar [Abhijit Pawar v. Hemant Madhukar Nimbalkar, (2017) 3 SCC 528 : (2017) 2 SCC (Cri) 192] and National Bank of Oman v. Barakara Abdul Aziz [National Bank of Oman v. Barakara Abdul Aziz, (2013) 2 SCC 488 : (2013) 2 SCC (Cri) 731] .

33. *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. The application of mind has to be indicated by disclosure of mind on the satisfaction. Considering the duties on the part of the Magistrate for issuance of summons to the accused in a complaint case and that there must be sufficient indication as to the application of mind and observing that the Magistrate is not to act as a post office in taking cognizance of the complaint, in Mehmood Ul Rehman [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , this Court held as under : (SCC p. 430, para 22)*

> *"22. … The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent*

abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

(emphasis supplied)

Emphasis had been supplied that sufficient indication has to be borne in the order passed by the Learned Magistrate that he had considered the complaint, the statements recorded and the result of inquiry or the report or investigation under Section 202 of Cr.P.C.

xviii. In ***Mehmood Ul Rehman v. Khazir Mohammad Tunda*** reported in **(2015) 12 SCC 420** the Hon'ble Apex Court held the following:-

"22. *The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statementsand he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and*

when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment."

xix. In ***Aroon Poorie v. Jayakumar Hiremath*** reported in **(2017) 7 SCC 767** the following was observed by the Hon'ble Supreme Court:-

"2. *The above apart, from the materials on record it appears that the appellant-accused in the present appeals have and maintain residence beyond the local jurisdiction of the learned trial court. Under the provisions of Section 202(1) CrPC, it was, therefore, mandatory for the learned Magistrate to hold an inquiry either by himself or direct an investigation by the police prior to the issuance of process. Admittedly, the same had not been done. If the aforesaid mandatory provisions of Section 202(1) CrPC had not been followed, the learned trial court would not have the jurisdiction to issue process/summons as has been done.*

3. *We have also taken note of the complaint petition and the averments made therein and the necessary ingredients to attract the offence(s) alleged which is under Section 295-A read with Section 34 IPC.*

4. *On such consideration, we interfere with the orders [Aroon Purie v. Jayakumar Hiremath, 2015 SCC OnLine Kar 8719] , [Mahendra Singh Dhoni v. Jayakumar Hiremath, 2015 SCC*

OnLine Kar 8718] of the High Court; allow the appeals and set aside and quash the proceedings qua the appellants as a whole including the summoning order dated 17-1-2015."

The Hon'ble Supreme Court of India quashed the entire proceeding for non-compliance of Section 202 of the Code of Criminal Procedure as well as on the ground that prima facie offence is not disclosed.

xx. <u>The ingredients of Section 406 of the Indian Penal Code was completely absent:-</u>

a) It was submitted that the *sine qua non* for attracting the penal provision of Section 406 of the Indian Penal Code, 1860was that there must be a consequent wrongful gain and wrongful loss between the parties.

b) It wasn't the case that the cheques, which had been issued by the Opposite Party, had been put in for encashment and thereafter encashed against the consent of the Opposite Party No.2.

c) Therefore, no amount of money was transferred from the account of the Opposite Party No.2 to the account of the petitioner No.1 in lieu of the concerned cheques which were dishonoured;

d) When a cheque isdishonoured there cannot be a criminal breach of trust within the definition of Section 405 of the Indian Penal Code, 1860 as there is no dishonest misappropriation or conversion resulting in wrongful loss to the Opposite Party No.2 within the meaning of Section 23 of the Indian Penal Code, 1860;

The Ld. Advocate for the petitioners in this connection relied upon the following judgment:

xxi. In ***Binod Kumar v. State of Bihar*** reported in **(2014) 10 SCC 663** where the following was held by the Hon'ble Supreme Court:-

> ***"15.*** *Section 405 IPC deals with criminal breach of trust. A careful reading of Section 405 IPC shows that a criminal breach of trust involves the following ingredients:*
>
> *(a) a person should have been entrusted with property, or entrusted with dominion over property;*
>
> *(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;*
>
> *(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.*
>
> ***16.*** *Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:*
>
> *(i) that the accused was entrusted with property or with dominion over it; and*
>
> *(ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.*
>
> *The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.*
>
> ***17.*** *Section 420 IPC deals with cheating. The essential ingredients of Section 420 IPC are:*
>
> *(i) cheating;*

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) mens rea of the accused at the time of making the inducement.

18. *In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust."*

xxii. The Ld. Advocate for the petitioners distingushed the judgment relied by the opposite party no. 2:

It was submitted that the judgment of ***Suryalakshmi Cotton Mills Ltd. vs. Rajvir Industries Ltd. & Ors.*** reported in ***(2008) 13 SCC 678*** which was relied upon by the Ld. Advocate of the Opposite Party No. 2 was factually distinguishable as followed:

i. In the said case, blank signed cheques were handed over by the Managing Director of Suryalakshmi Cotton Mills to the

other directors of the same company to run the operational costs of the Mahboobnagar factory; as the Managing Director was based at Hyderabad, which was far away from the factory;

ii. This Mahboobnagar factory got demerged from Suryalakshmi Cotton Mills and was vested with another company namely Rajbir Industries.

iii. But the cheques continued to be retained by the other directors and they misused the same when the relation between Managing Director and them turned sour;

iv. So it was not a case where any commercial relation pursuant to contractual obligation existed between the parties having respective rights and obligations;

V. Since there was no such contractual relation, there was no question of an existing debt or liability;

vi. Moreover in spite of an earlier request made by the Managing Director to the other directors to return the cheques, they did not return and put the said cheques for encashment filling up their names;

vii. An FIR was lodged by the Managing Director for misuse of the cheques and a counterblast to the proceedings under Section 138 of NI Act was instituted by the other party. The Ld. Advocate for the petitioners submitted that this was completely opposite to their case.

viii. It was in this situation that the Hon'ble Supreme Court considered the charges under Section 406 of the Penal Code on account of misuse of the cheque.

a) It was concluded that the submissions made hereinabove, the impugned proceeding had been instituted manifestly attended with mala fide intention and in gross abuse of process of court as a clear counterblast to the proceeding under Section 138 of the Negotiable Instruments Act, 1881.

b) For the aforesaid reasons, it is submitted that this Hon'ble Court may be graciously pleased to quash the impugned proceeding along with orders of cognizance and process.

26. The Ld. Advocate for the Opposite Party No. 2 submitted that:-

i. The case of the opposite party no. 2 had been that in terms of the two "O&M Service & Diesel Provider Agreements" dated 1st July 2010, the partnership firm of the opposite party no. 2 entrusted the three signed, undated cheques in compliance withClause 5 (Petro Card) of such agreements. The said Clause 5 says:-

a. All diesel fillers / service providerswill submit 3 cheques without mentioning any date duly signed by either the Director, partner or proprietor of the service provider:

b. These cheques can be presented immediately on the happening of the following which are called "trigger points";

c. The trigger points are:-

i. The bills of first cycle is not delivered to the circle officer/ concerned O&M person before the expiry of 45 days of first billing cycle:

ii. If any time found filling adulterated diesel:

iii. If any time found that he has not filled up the diesel of last diesel filling cycle:

iv. If it is found that the petro card issued to him is misused or transferred to third parties.

d. Admittedly, the petitioner no. 1 presented those entrusted cheques "towards recovery of your dues and liabilities" for quashing (notice of demand) and "cheques were issued by the accused persons for discharging their debt and liability towards complainant company" at page 227 of the petition of complaint at paragraph 7 of the complaint under Section 138 of the N.I. Act.

e. Thus it was an admitted fact that the cheques were mis-utilized. The cheques were neither any security cheques nor issued against any debt or liability. Those were entrusted to the petitioner no. 1 explicitly in terms of Clause 5 referred to above and could have been presented only if any of the "trigger points" arose. During the hearing of the case and neither in their pleadings, the petitioners could not name which of such trigger points arose compelling the petitioner no. 1 to present those entrusted cheques. On the contrary, it was admitted by

the petitioners that those cheques were presented against the "debts and liabilities" of the petitioner.

ii. In the impugned complaint as well as in the initial deposition recorded by the Learned Magistrate, the Opposite Party No. 2 had explained the delay in lodging the impugned complaint. *"On 10.06.2012 they (VIOM Network) sent us a notice regarding the dishonour of those three (03) undated cheques. We immediately replied the notice vide a letter dated 14.07.2012, saying that those three (03) undated cheques were given as security but not against any debt or liability. The same was only a guarantee and therefore asked Viom Network to return thosecheques. Receiving our reply. They verbally assured us to return the said three cheques. But,certainly in January 2014 we have received a notice from Viom Network that they have instituted a case against us for dishonour of cheques u/s 138 N.I.Act"*

iii. It was further submitted by the Ld. Advocate of Opposite Party No. 2 that the Hon'ble Apex Court ***in SuryalakshmiCottom Mills Limited vs Rajvir Industries and others*** reported in ***(2008) 13 SCC 678*** had stated in paragraph 31 that *"However, a case for proceeding against the respondents under Section 406 has, in our opinion, been made out. A cheque being a property, the same was entrusted to the respondents. If the said property has been misappropriated or has been used for a purpose for which the same had not been handed over, a case under Section 406 may be found to have been made out. It may be true that even in a proceeding under Section 138 of the Negotiable Instruments Act, the appellant could raise a defence that the cheques were not meant*

to be used towards discharge of a lawful liability or a debt. but the same by itself in our opinion would not mean that in an appropriate case, a complaint petition cannot be allowed to be filed."

iv. The petitioner nos. 2 to 6 who were admittedly the Circle Head West Bengal, Chief Executive Officer, Chief Operating Officer, Operations Head and Head Supply Chain Management of thepetitioner no. 1 respectively (paragraphs 4 to 8 of the quashing application) have alleged that they were not in service of the petitioner no. 1 at the time of commission of the offence. They had relied upon their "joining report" in support of such averment. The "joining reports" were not documents of an unimpeachable nature and their allegations were disputed questions of fact and could only be decided during the trial by leading evidence.

v. The Ld Advocate for Opposite Party No. 2 submitted that the judgments relied upon by the Ld. Advocate for the petitioner were not relevant to the present proceedings.

a. ***Mahindra & Mahindra Financial Services Ltd. (Supra)*** :- The cheques in this case were presented after dues had accrued. The case under Section 420/406 of the Indian Penal Code. 1860 was also based on disputed questions of fact.

b. ***Eicher Tractor Ltd. (Supra)*** *:-*This case centered around stolen cheques, which was also a disputed question of facts.

c. ***Bir Singh (Supra)*** *:-* This case dealt with presumption under Section 138 of the NI Act.

d. ***Nita Kanoi(Supra):-***This dealt with only Section 138 of the NI Act and not any complaint under Section 406 of the Indian Penal Code, 1860.

vi. It was submitted by the Ld. Advocate for Opposite Party No. 2 that the averments made in the complaint clearly disclosed the offence defined in Section 405 and punishable under Section 406 read with Section 120B of Indian Penal Code being committed by the petitioners. The examination of the complainant and his witness and the documentary evidence produced before the Learned Magistrate was sufficient for the Learned Magistrate to infer commission of offence by the petitioners. At the stage of issuing process the Learned Court was to merely satisfy itself of the existence of the primary ingredients to constitute a criminal offence It was not necessary for the Learned Court to dig into the truthfulness of the averments made in the complaint at the stage of issuance of process. From a plain reading of the complaint, the essential ingredients of a criminal conspiracy being hatched by the petitioners for attempting to commit criminal breach of trust of property worth Rs.75,00,000/- was clearly established.

vii. The petitioner nos. 2 to 6 had not been made vicariously liable for the offence committed. Admittedly these petitioners was at the helm of the management of the Petitioner no 1s' Company. The undated Cheques were entrusted to the petitioner no 1 which was being managed by the other petitioners. The petitioner no 1, being a company and a juristic person, did not have hands or feet or the mind to conduct business. The petitioner nos. 2 to 6 were the proverbial limbs and mind of the

petitioner no 1 and the affairs of the petitioner no. 1 were conducted as per the advice of these petitioners, who admittedly were the Circle head- West Bengal, Chief Executive Officer, Chief Operating Officer, Operations Head and Head/Supply Chain of the petitioner no 1 respectively. Therefore, they could not deny that they were the persons-in-charge of the day-to-day management of the petitioner no. 1. They could not be permitted to hide behind the corporate veil. Admittedly, the petitioner and the opposite party no. 2 had claims and counter claims against each other. Under the circumstances it was not expected on the part of the petitioners to fill-in the undated cheques and attempt to embezzled a sum of Rs.75,00,000/- without first ascertaining the rightful dues, if at all, of the petitioner specially when such cheques were admittedly issued as a security for the "trigger points" and not against any debt or liability. The said criminal proceeding was in no way meant to be a counterblast to the proceeding under Section 138 of the Negotiable Instruments Act, 1888 initiated by the petitioner against me. In any event, allegations of mala fide are no ground for quashing criminal proceedings when the ingredient of a distinct offence is disclosed in the complaint.

viii. Under such circumstances there was no ground to interfere in the impugned proceedings which must be dismissed under Section 482 of the Code of Criminal Procedure, 1973.

27. Section 420 of the Indian Penal Code provides for punishment for the offence of cheating. Providing false and fraudulent representations to the aggrieved by the accused at the inception of the transaction is an essential ingredient of

the offence. However, from a perusal of the petition of complaint and the materials on record, it would be apparent that there was no averment which reflected that the petitioners had provided any false or fraudulent representations to the opposite party No. 2 at the inception of the transaction and even thereafter..

28. The complaint did not mention any specific allegation against any of the individual petitioners with regard to the alleged offence.

29. It is settled law that the penal statute is to be construed strictly and a person cannot be held vicariously liable for acts committed by a company.

30. Section 406 of the Indian Penal Code states as follows:-

> ***"406. Punishment for criminal breach of trust.—****Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

31. Section 420 of the Indian Penal Code states as follows:-

> ***"420. Cheating and dishonestly inducing delivery of property.—***
>
> *Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

32. Section 467 of the Indian Penal Coe states as follows:-

> ***"467. Forgery of valuable security, will, etc.—***

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

33. Section 468 of the Indian Penal Code states as follows:-

"468. Forgery for purpose of cheating.—
Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

34. Section 120B of the Indian Penal Code states as follows:

*"**Section 120B.-Punishment of criminal conspiracy** -*

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [2][imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

35. The Hon'ble Supreme Court in the judgment ***Vishal Noble Singh vs State of Uttar Pradesh and Anr.*** held the following:-

"17. On a reading of the FIR as well as the charge-sheet, we do not find that the offences aforestated is made out at all. We do not find any criminal breach of trust nor any cheating by impersonation. There is also no cheating and dishonestly inducing delivery of property, nor has any documents referred to any forgery or security or any forgery for the purpose of cheating. There is no reference to any document which has been forged so as to be used as a genuine document and much less is as there any criminal conspiracy which can be imputed to the appellants herein in the absence of any offence being made out vis-a-vis the aforesaid Sections.

18. In this regard, our attention was drawn to paras 42-44 and 46 of Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1, dealing with Sections 420 and 467 IPC, which are extracted hereunder with regard to Section 420 IPC, it was observed thus:

> *"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.*
>
> *43. We shall now deal with the ingredients of Section 467 IPC.*

44. The following ingredients are essential for commission of the offence under Section 467 IPC:

1. the document in question so forged;

2. the accused who forged it;

3. the document is one of the kinds enumerated in the aforementioned section. X X X

46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 CrPC though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained. (emphasis by us)

19. On a careful consideration of the aforementioned judicial dicta, we find that none of the offences alleged against the Accused-Appellants herein is made out. In fact, we find that the allegations of criminal intent and other allegations against the Accused-Appellants herein have been made with a malafide intent and therefore, the judgment of this Court in the case of Bhajan Lal and particularly sub-paragraphs 1, 3, 5 and 7 of paragraph 102, extracted above, squarely apply to the facts of these cases. It is neither expedient nor in the interest of justice to permit the present prosecution to continue.

20. This Court, in Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692, reasoned that the criminal process cannot be utilized for any oblique purpose and held that while entertaining an application for quashing an FIR at the initial stage, the test to be applied

is whether the uncontroverted allegations prima facie establish the offence. This Court also concluded that the court should quash those criminal cases where the chances of an ultimate conviction are bleak and no useful purpose is likely to be served by continuation of a criminal prosecution. The aforesaid observations squarely apply to this case.

21. We find that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud.

42. In ***M N G Bharateesh Reddy v. Ramesh Ranganathan*** reported in ***2022 SCC OnLine SC 1061*****,** the Hon'ble Supreme Court held the following:-

"13. *The ingredients of the offence of cheating are spelt out in Section 415 of the IPC. Section 415 is extracted below:*

"415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation - A dishonest concealment of facts is a deception within the meaning of this section."

14. *The ingredients of the offence under Section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce the person so deceived to (i) deliver any property to any person; or (ii) to consent that any person shall retain any property; or (iii) intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so*

deceived and such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.

15. *Section 420 deals with cheating and dishonestly inducing delivery of property. It reads as follows:*

"420. Cheating and dishonestly inducing delivery of property - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being capable of converting into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

16. *In Hridaya Ranjan Prasad Verma v. State of Bihar[4], a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:*

> ***"14.*** *On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.*
>
> *15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said*

to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(emphasis supplied)

17. *In Dalip Kaur v. Jagnar Singh*[5] *a two-judge bench of this Court held that a dispute arising out of a breach of contract would not amount to an offence of cheating under section 415 and 420. The relevant extract is as follows:*

"9. The ingredients of Section 420 of the Penal Code are:

"(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. ***If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code****. (See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])"*

(emphasis supplied)

20. *Section 405 of the IPC deals with criminal breach of trust and reads as follows:*

"405. Criminal breach of trust *- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."*

21. *The offence of criminal breach of trust contains two ingredients : (i) entrusting any person with property, or with any dominion over property; and (ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.*

22. *In Anwar Chand Sab Nanadikar v. State of Karnataka*[6] *a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words:*

> ***"7.*** *The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime."*

23. *In Vijay Kumar Ghai v. State of West Bengal*[7] *another two-judge bench held that entrustment of property is pivotal to constitute an offence under section 405 of the IPC. The relevant extract reads as follows:*

> ***"28.*** *"Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to*

entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code."

24. *None of the ingredients of the offence of criminal breach of trust have been demonstrated on the allegations in the complaint as they stand. The first respondent alleges that the Appellant caused breach of trust by issuing grossly irregular bills, which adversely affected his professional fees. However, an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment. No element of entrustment has been prima facie established based on the facts and circumstances of the present matter. Therefore, the ingredients of the offence of criminal breach of trust are ex facie not made out on the basis of the complaint as it stands.*

25. *In the above view of the matter, there is a patent error on the part of the High Court in setting aside the judgment of the Additional Sessions Judge and by holding that cognizance was correctly taken of the offence punishable under Sections 405, 415, and 420 of the IPC."*

43. The Hon'ble Supreme Court in ***Indian Oil Corpn. v. NEPC India Ltd.*** reported in ***(2006) 6 SCC 736***held the following:-

"12. *The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State*

NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the

nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. *While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)*

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. *While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent*

parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

15. *Coming to the facts of this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. It has filed CS No. 425 of 1997 in the Madras High Court and OS No. 3327 of 1998 in the City Civil Court, Chennai seeking injunctive reliefs to restrain NEPC India from removing its aircrafts so that it can exercise its right to possess the aircrafts. It has also filed two more suits for recovery of the amounts due to it for the supplies made, that is, CS No. 998 of 1999 against NEPC India (for recovery of Rs 5,28,23,501.90) and CS No. 11 of 2000 against Skyline (for recovery of Rs 13,12,76,421.25) in the Madras High Court. IOC has also initiated proceedings for winding up NEPC India and filed a petition seeking initiation of proceedings for contempt for alleged disobedience of the orders of temporary injunction. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy.*

17. *The High Court was, therefore, justified in rejecting the contention of the respondents that the criminal proceedings should be quashed in view of the pendency of several civil proceedings.*

Re: Point (ii)

18. *This takes us to the question whether the allegations made in the complaint, when taken on their face value as true and correct, constitute offences defined under Sections 378, 403, 405, 415 and 425 IPC? Learned counsel for the appellant restricted his submissions only to Sections 405, 415 and 425, thereby fairly conceding that the averments in the complaint do not contain the averments necessary to make out the ingredients of the offence of theft (Section 378) or dishonest misappropriation of property (Section 403).*

19. *Section 378 defines theft. It states:*

"378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

The averments in the complaint clearly show that neither the aircrafts nor their engines were ever in the possession of IOC. It is admitted that they were in the possession of NEPC India at all relevant times. The question of NEPC committing theft of something in its own possession does not arise. The appellant has therefore rightly not pressed the matter with reference to Section 378.

20. *Section 403 deals with the offence of dishonest misappropriation of property. It provides that "whoever dishonestly misappropriates or converts to his own use any movable property", shall be punished with imprisonment of either description for a term which may extend to 2 years or with fine or both. The basic requirements for attracting the section are: (i) the movable property in question should belong to a person other than the accused; (ii) the accused should wrongly appropriate or convert such property to his own use; and (iii) there should be dishonest intention on the part of the accused. Here again the basic requirement is that the subject-matter of dishonest misappropriation or conversion should be someone else's movable property. When NEPC India owns/possesses the aircraft, it obviously cannot "misappropriate or convert to its own use" such aircraft or parts thereof. Therefore Section 403 is also not attracted.*

21. *We will next consider whether the allegations in the complaint make out a case of criminal breach of trust under Section 405 which is extracted below:*

"405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

22. *A careful reading of the section shows that a criminal breach of trust involves the following ingredients: (a) a person should have been entrusted with property, or entrusted with dominion over property; (b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; (c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. The following are examples (which include the illustrations under Section 405) where there is "entrustment":*

(i) An "executor" of a will, with reference to the estate of the deceased bequeathed to legatees.

(ii) A "guardian" with reference to a property of a minor or person of unsound mind.

(iii) A "trustee" holding a property in trust, with reference to the beneficiary.

(iv) A "warehouse keeper" with reference to the goods stored by a depositor.

(v) A carrier with reference to goods entrusted for transport belonging to the consignor/consignee.

(vi) A servant or agent with reference to the property of the master or principal.

(vii) A pledgee with reference to the goods pledged by the owner/borrower.

(viii) A debtor, with reference to a property held in trust on behalf of the creditor in whose favour he has executed a deed of pledge-cum-trust. (Under such a deed, the owner pledges his movable property, generally vehicle/machinery to the creditor, thereby delivering possession of the movable property to the creditor and the creditor in turn delivers back the pledged movable property to the debtor, to be held in trust and operated by the debtor.)

23. *In Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore Cochin [(1952) 2 SCC 392 : AIR 1953 SC 478 : 1954 Cri LJ 102] this Court held: (AIR p. 484, para 21)*

"[T]o constitute an offence of criminal breach of trust it is essential that the prosecution must prove first of all that the accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted, there was dishonest misappropriation or dishonest conversion or dishonest use or disposal in violation of a direction of law or legal contract, by the accused himself or by someone else which he willingly suffered to do.

It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."

(emphasis supplied)

***24.** In Jaswantrai Manilal Akhaney v. State of Bombay [1956 SCR 483 : AIR 1956 SC 575 : 1956 Cri LJ 1116] this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is "entrustment". It, however, clarified: (SCR p. 499)*

"But when Section 405 which defines 'criminal breach of trust' speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event."

44. In ***Raju Krishna Shedbalkar v. State of Karnataka***reported in ***2024 SCC OnLine SC 200***, the following was held by the Hon'ble Supreme Court:-

***"8.** In the case of Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168, this Court held as under:*

***"15.** In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this*

subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(Emphasis supplied)

9. *Further, in the case of Indian Oil Corporation v. NEPC India Ltd. (2006) 6 SCC 736 this position was reiterated in the following manner:*

33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no "cheating". The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

45. The Hon'ble Supreme Court held the following in ***Jaswant Singh vs. State of Punjab and Ors.*** reported in ***[2021] 6 SCR 1100***:-

> *"15. The power Under Section 482 Code of Criminal Procedure is to be exercised to prevent the abuse of process of any Court and also to secure the ends of justice. This Court, time and again, has laid emphasis that inherent powers should be exercised in a given and deserving case where the Court is satisfied that exercise of such power would either prevent abuse of such power or such exercise would result in securing the ends of justice. In the case of S.W. Palanitkar and Ors. v. State of Bihar and Anr.: (2002) 1 SCC 241. Shivraj V. Patil, J., in paragraph 27 of the report, has laid similar emphasis. The same is reproduced below:*
>
> *Para 27:*
>
> *.....whereas while exercising power Under Section 482 Code of Criminal Procedure the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under Code of Criminal Procedure, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power Under Section 482 Code of Criminal Procedure should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court Under Section 482 Code of Criminal Procedure to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.*
>
> *16. A seven-Judge Bench in the case of P. Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578, also laid down the same principles for use of*

the power Under Section 482 Code of Criminal Procedure in a case where the Court was convinced that such exercise was necessary for whatever reason in order to prevent abuse of the process of any Court or to secure the ends of justice. Lahoti, J., speaking for himself and Bharucha, Quadri, Santosh Hegde, Ruma Pal and Arijit Pasayat, JJ., observed as follows in paragraph 21:

Para 21. "... In appropriate cases, inherent power of the High Court, Under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction Under Section 482 Code of Criminal Procedure for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in A.R. Antulay case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.

46. *17. A three-Judge Bench of this Court in Gian Singh v. State of Punjab (2012) 10 SCC 303 again summarized the legal position which emerged regarding powers of the High Court in quashing criminal proceedings in exercise of power Under Section 482 Code of Criminal Procedure. R.M. Lodha, J., (as he then was) speaking for the Bench, clearly*

observed in paragraph 61 of the report that criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute."

36. Admittedly, the petitioners are residing outside the jurisdiction of Learned Additional Chief Judicial Magistrate. In view of the mandatory provision of Section 202 of the Code of Criminal Procedure, as amended, which has come into force prior to issuance of process against the petitioners, who are residing beyond the jurisdiction of the Learned Magistrate, it is mandatory and incumbent upon the Learned Additional Chief Judicial Magistrate or the Learned Judicial Magistrate, 4th Court to conduct an enquiry under Section 202 of the Code of Criminal Procedure before issuance of process against the petitioners and the Learned Additional Chief Judicial Magistrate should have complied with the said provisions.

37. The opposite party No.2/complainant in his complaint and deposition has admitted that the cheques were issued by him and only the dates have been inserted by the Company. In view of the facts that the complainant has admitted his signature on the cheques, irrespective of the fact that the date has been allegedly inserted by the Company, it shall be presumed under Section 118 of the Negotiable Instruments Act that the cheque was made or drawn for consideration on the date which the cheque bears. Thus it can be

said that mere inserting a date in the cheque does not make out any case under Section 467/468 of the Indian Penal Code.

38. The narration in the petition of complaint clearly disclosed a long term transaction between the parties, which was continuous. The element of deception at the very inception is absent. The petitioners did not induce the opposite party No. 2 to deliver any property constituting the offence of cheating as defined under Section 420 of the Indian Penal Code.

39. In the petition of complaint there was no averment/allegation of facts which constituted any nexus between the petitioners and the alleged offence and/or connects the petitioners with the alleged offence in any way so as to justify the process issued against them. In the absence of any such averment or allegation of fact constituting the offence and/or connecting the petitioners with the alleged offence in the petition of complaint, process should not have been issued against the petitioners in respect of the offences alleged, as no prima facie case was made out against the petitioners nor was there any ground, far less sufficient ground for proceeding against the petitioners, as required under Section 204 of the Code of Criminal Procedure, 1973.

40. The allegations against the petitioners do not make out a prima facie case under Section 420 of the Indian Penal Code in as much as there are no cogent materials to show that there was initial dishonest intention from the very inception on the part of the petitioner to cause wrongful loss to the opposite party No. 2, or any dishonest motive on the part of petitioners. The actions of the petitioners were purely based on the terms and conditions of the agreement beyond the purview of the offence punishable under Section 420 of the Indian Penal Code.

41. In the petition of complaint there was no specific allegation against any of the petitioners as to any false and fraudulent representation made by him thereby inducing the opposite party No.2 to part with any valuable which is requisite to establish an offence under Section 420 of the Indian Penal Code. In absence of any averment that any false representation has been made by any of the petitioners only basing on which the opposite party No.2 entered into the Agreement, it can be said that no offence under Section 420 of the Indian Penal Code has been made out against the petitioners.

42. Section 420 of the Indian Penal Code provides for punishment for the offence of cheating. The main ingredients of the said Section are –

    a. false and fraudulent representations made by the accused to the aggrieved;
    b. consequent delivery of valuable property by the aggrieved to the accused; and
    c. subsequent misappropriation of the said valuable property by the accused.

    Thus providing of false and fraudulent representations to the aggrieved by the accused at the inception of the transaction is an essential ingredient of The offence. However, from a perusal of the petition of complaint and the materials on record, it would be apparent that there is no averment which reflects that the petitioners have provided any false or fraudulent representations to the opposite party No. 2 at the inception of the transaction and even thereafter. In such circumstances, the Learned Magistrate should have exercised his judicial discretion and should not have taken cognizance under Section 420 of the Indian Penal Code as the

private complaint is veracious and vindictive and such private complaint is clearly not maintainable against the Petitioner.

43. The averments, on the basis of which the present impugned proceeding has been initiated, clearly do not make out a case of false or fraudulent representations being made by the petitioners. The necessary *mens rea*, requisite for bringing into operation a criminal action under Section 420 of the Indian Penal Code, is clearly absent in the instant case. It is apparent that the present impugned proceeding has been initiated with the sole intention of harassing and creating pressure upon the Company in order to coerce them to bow down to the illegal demands of the opposite party No. 2 and settle the untenable claim made by the opposite party No. 2. In such circumstances, where the proceeding impugned is tainted with mala-fide and has been initiated with intention to over-awe and terrorize a person by use of criminal action, it would be absolutely just and proper to quash the instant proceeding, failing which irreparable loss and damage will be caused to the petitioners' reputation, person and property.

44. Admittedly the parties entered into an agreement dated 10th July, 2010 wherein Clause No. 5 mentioned the provision to deposit 3 cheques by the service provider without mentioning any date duly signed either by the proprietor or the partner or the director or any authorized person based on the organization structure of the service provider. The said provision further mentioned the occasions with the nomenclature trigger points whereby the undated cheques could be presented for encashment. The aforesaid agreement was extended for a further period of three months. Clause 13, 14, 15 and 16 elucidated the provision for termination of the agreement. Clause

14.1 stated the unilateral right conferred upon the petitioner (QTIL) to terminate the aforesaid agreement without specifying any reason upon giving 30 days prior written notice to the service provider, i.e. opposite party no. 2. From the Annexure P-9 enclosed with the instant revisional application it appeared that a communication dated 28.09.2011 was issued to the director proprietor of the opposite party for termination of the aforesaid agreement dated 01.07.2010 which is replicated as follows:-

"Clause 5. Petro Card –

Petro card should not be used for purchase of other IOCL product like Lube Oil/Coolant/Petrol including premium diesel.

All Diesel Filler's/Service Provider will submit irrevocable bank guarantee or 3 Cheques without mentioning any date duly signed by either the proprietor or the partner/or the Director or any authorized person based on the Organization Structure of the Service Provider. Unless this criteria is fulfilled the Petro Card will not be issued to the concerned agency.

All Service Provider will submit Service Tax detail, Pan No. & any other documents required. All applicable taxes will be deduced as per govt. norms.

Daily Filling Report should contain 1.Site ID 2.Card No.3 Vehicle No. 4 Time of filling 5. Qty Filled 6. Value of Qty poured.

The BG can be involved immediately or the undate cheques can be presented immediately on happening of following which are called trigger points:-

Trigger Points:-

1. *The bills of first filling cycle is not delivered to the circle office/Concerned O & M person before the expiry of 45 days of first billing cycle.*

2. *If any time found filling adulterated diesel.*
3. *If any time found that he has not filled up the diesel of last diesel of last diesel filling cycle.*
4. *If it is found that petro card issued to him is misused or transferred to third party.*

*Financial Bank Guarantee or without date Cheque to be obtained equivalent to the amount of Petro Card advance required for 21 days of diesel filled. The monthly fill quantity for the said purpose may be reviewed evewry quarter. (21 days * Diesel Procured in last 3 months/91).”*

…..

“13. NOTICES

13.1 Any notice and other communications provided for in this Agreement shall be in writing and shall be first transmitted by e-mail, telex, cable or, facsimile transmission, and then confirmed by prepaid registered post or by nationally recognized courier service, in the manner as elected by the party giving such notice to the following addresses:

(a) In the case of notices to QTIL:

Quippo Telecom Infrastructure Ltd.

4th Floor, GN-37/1, Sector-V, Salt Lake Electronics Complex, Kolkata-700091.

(b) In the case of notices to the Service Provider:

M/s. M. S. & Co.,
UDAYAN COLONY,
NO. 1 DABGRAM,
P.O.- RABINDRA SARANI, SILIGURI,
DIST- DARJEELING, STATE-W.B.
PIN- 734006

13.2 All notices shall be deemed to have been validly given on: (i) the business date immediately after the date of transmission with confirmed answer back, if transmitted by facsimile/electronic transmission: or (ii) the business date of receipt, if transmitted by courier or registered airmail.

13.3 Either Party may, from time to time, change its address or representative for receipt of notices provided for in this Agreement by giving to the other not less than ten (10) days prior written notice.

14. TERMINATION

14.1 QTIL shall be entitled to terminate this Agreement without specifying any reason upon giving 30 days prior written notice to Service Provider. The Agreement shall stand terminated on the expiry of the said period of 30 days relieving both parties of their respective obligations, save such obligations and/or liabilities of the Parties that, by their nature, survive the termination of this Agreement. Notwithstanding the termination of expiry of this Agreement, and unless otherwise stated in the notice of termination, the Term shall automatically be extended until the completion of the last issued Scope of Work, if pending, which extension shall not constitute a renewal Term. No compensation or termination charges or penalties of any nature whatsoever shall be payable by QTIL to Service Provider for termination of this Agreement.

14.2 QTIL may (without prejudice to any of its other rights or remedies under the Agreement or in law) terminate the whole or any part of Service Provider's performance of work under this Agreement or Scope of Work, in any one of the following circumstances:

(i) if Service Provider fails or refused to perform the services or provide the Deliverables within the time specified in this behalf or in the manner and within the time frames agreed in this behalf or abandons the Job; or

(ii) if Service Provider delivers non conforming Services or Deliverables, in whole or in part; or

(iii) if Service Provider fails to provide adequate assurance of Service Provider's ability to meet the quality standards or the time frames of a Statement of Work; or

(iv) the Service Provider, intentionally or unintentionally, disregards or violates applicable laws or applicable permits; or

(v) the Service Provider fails to correct defects and deficiencies in any Services in a timely manner; or

(vi) if any of the representations or warranties provided by the Service Provider are found to be false or incorrect; or

(vii) if the Service Provider braches any other material term of this Agreement.

In the event of the occurrence of any of the above, QTIL may, at its sole discretion, provide Service Provider with written notice of QTIL's intention to terminate for default. In the event Service Provider does not cure such failure within 7 days of such notice, QTIL may, by written notice, forthwith terminate this Agreement.

15. CONSEQUENCES OF TERMINATION

15.1 All the Service Provider's rights under this Agreement shall cease and no payment whatsoever shall be due to the Service Provider for loss of goodwill, anticipated profits and/or any other claims or losses in respect of such termination. The Service Provider hereby waives any claim to receive any compensation whatsoever as a consequence of the termination of this Agreement.

15.2 Unless otherwise agreed in writing by QTIL, any sums payable under this Agreement and which are unpaid at the date of termination shall forthwith become due and payable by the Service Provider.

The provisions of this Agreement shall, to the extent stated or necessarily implied, survive the termination thereof.

Cancellation, termination or expiration of this Agreement shall not relieve or release either party from making payments which may be owing to the other party under the terms of the Agreement.

The Service Provider shall at its own expense promptly return to QTIL all confidential information, documentation and materials software as well as all present/ future marketing plans or present/ future models of QTIL which relate to the Services, together with any copies thereof or any other documents entrusted to the Service Provider by QTIL.

16. ARBITRATION

All disputes and differences between the Parties hereto arising out of this Agreement or in relation to the interpretation or effect of any of the terms and conditions contained in this Agreement or in relation to rights and obligations of the Parties hereto shall be referred to mutually appointed arbitrator and if still not able to settle, then will go for arbitration in accordance with provisions of

Arbitration and Conciliation Act 1996, or any statutory enactment thereof. The place of arbitration shall be New Delhi and the language of arbitration shall be English."

45. The communication dated 28.09.2011 from Viom Networks Limited to the Director/Proprietor of MS & Co. states as follows:-

"To
The Director/Proprietor,
MS & Co
Kind attention: Mr. Subrata Dutta,

Subject: Termination of Operation and Maintenance Service Agreement dated 01.07.2010

Dear Sir,

This is in reference to our e-mail dated 19th September, 2011 (copy enclosed) terminating your services related to your handling of operation and maintenance of cell sites situated at West Bengal on our behalf.

That still you have not taken any necessary measures to cure the failures/problems as referred through e- mail dated 19-09-2011 as expressed earlier we are terminating your services with effect from 1st October 2011 on account of the following:

1. Non acceptance of debit note of Rs 33,32,254 on account of non adherence to mutually agreed and signed diesel CPH.

2. Penalty from our customers on account of disruption to site uptime and network non-availability.

Please ensure that HOTO is carried out smoothly and all sites are handed over to Mahindra & Mahindra immediately and to be completed by 30th September.

You are also requested to submit all your outstanding invoices along with proof of payments where ever applicable by 30th September 2011 so that we can ensure full and final payment of your dues. We would like to thank you for the business association with us.

Please acknowledge on the duplicate copy as a token of receipt of this letter.

Thanking You.

Yours faithfully

For Viom Networks Limited

Col. Ananda Sen
(Authorized Signatory)

Richard Johnson *Pijush Kanti Mondal*
(Circle SOM Head) *(Circle O&M Head)"*

46. The aforesaid communication of termination of the aforesaid agreement conveyed the fault on the part of the opposite party in pursuing necessary measures to cure the failures/problems referred through e-mail 19.09.11 consequence to which the services of the service provider was terminated from 01st of October, 2011 on certain terms and conditions as enumerated therein. It was further concurred that the outstanding invoices along with proof of payments wherever applicable to be submitted by the opposite party prior to 30th of September, 2011 for ensuring full and final payment of the dues of the service provider.

47. The High Court, discharging its powers under Section 482 of the Code of Criminal Procedure, cannot act as a Trial Court forming opinion based on the documents annexed in the revisional application unless and until it is impeachable in nature. However, the aforesaid agreement and the letter of termination have been relied upon by the petitioner and the opposite party no. 2 and, therefore, the same can be taken into consideration by the High Court for a conclusive determination wherein the primary crux of the case appears to be a violation of contract which is civil in nature stipulating the clauses of termination of the contract as well as a forum of dispute resolution agreed upon by both the parties.

48. In the instant case, clause no. 16 stated the disputes and differences arising out of the agreement and in relation the interpretation or effect of any of the terms and conditions contained in the agreement or in relation to rights and obligations of the parties **shall be** referred to mutually appointed arbitrator and if still not able to settle then will go for arbitration in accordance with provisions of the Arbitration and Conciliation Act, 1996 or any statutory enactment thereof. The place of arbitration shall be New Delhi and the language of arbitration shall be English. In the communication of termination dated 01.07.2010, the authorized signatory of the petitioner company stated that the opposite party no. 2 was entitled to certain dues. However, without clarifying the dues and paying the dues of the opposite party filed the proceedings under Section 138 of the Negotiable Instruments Act with regard to 3 numbers of cheques amounting to a sum of Rs. 75 lakhs. The legal notice issued to the opposite party is stated as follows:-

"Sub: Legal notice as per the provision of Section 138 Negotiable Instrument Act, 1881

Dear Sir,

We VIOM Networks Limited, a Company incorporated and existing under the Companies Act, 1956 and having its Registered Office at D-2, 5th Floor, Southern Park, Saket Place, Saket, New Delhi – 110017 and Corporate Office at Plot NO. 14A, Sector – 18, Maruti Industrial Complex, Gurgaon – 122015, do hereby serve upon you the following notice:

1. *That you had approached us and represented that you have necessary infrastructure and expertise in providing operations & Maintenance at the Cell Sites and on your representation the O&M Service & Diesel Provider Agreement (Agreement) was entered into between us on 01.07.2010 and LOI dated 30.08.2011. Further, you Notice No. 2 and 3 represented yourself as partners and signatories of Notice No. 1.*

2. *That as per the Agreement, you were, inter alia, required to provide operations and Maintenance services including diesel filling services at out cell sites in West Bengal Circle by using the Petro Cards of IOCL, provided by us to you. As per Agreement, at the time of issuance of Petro Cards, you have issued three cheques bearing number 004356, 004355 and 004357 for Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) each dated 13.06.2012 drawn on Standard Chartered Bank, Mukherjee House, Hill Cart Road, Siliguri – 734001 in favour of VIOM.*
3. *That towards recovery of your dues and liabilities, we have presented the above said three cheques on 13.06.2012 with our banker HDFC Bank Ltd., 1st floor, Kailash Building, 26, K.G. Marg, New Delhi- 110001. However, to our utter distress all the three cheques have been returned unpaid with remark "Payment stopped by Drawer" in the respective Memos issued by our Banker on 15.06.2012.*
4. *That you, with mala-fide and fraudulent intention, issued the cheques, having no intentions to clear the same despite of the fact that you have dues and liabilities towards us. You have cheated us and have committed an offence which is punishable under Section 138 of the Negotiable Instrument Act, 1881.*
5. *Right from the entering into the Agreement and issuing said three cheques, you had the intention to cheat us as you have failed to pay and discharge your liabilities despite our repeated requests. Therefore you are also liable to be punished under Section 417 and 420 of the Indian Penal Code.*
6. *Through this notice, we hereby, call upon you, to pay us an amount of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) against the aforesaid dishonoured three cheques within 15 days of the receipt of this notice, failing which we will initiate appropriate legal/criminal proceedings including complaint under Section 138 of Negotiable Instrument Act, 1881 against you. Needless to mention that any proceeding which may by initiated shall be entirely at your risk as to cost and consequences.*

   A copy of this notice has been retained in our office for record and reference in future.

For VIOM Networks Limited."

49. The petitioner did not mention the dues to be reimbursed to the opposite party in the said legal notice and claimed the amount of Rs.75 lakhs while instituting the proceedings under Section 138 of the Negotiable Instruments Act. The petitioner company in compliance with the agreement dated 01.07.2010 should have referred the dispute to a sole arbitrator appointed with the concurrence of the opposite party for resolving the issue. The legal notice dated 20th June 2012 as well as reply by an Advocate's letter dated 14.07.2012 which is denoted as follows:-

"To

VIOM NETWORKS LTD.

Regional Office – Asyat Park,
4thFloo, Block – GN 37/1,
Sector – V,
Saltlake,
Sector – 5
Kolkata – 700009

Registered Office – D2,
5th Floor, Southern Park,
Saket Place, Saket,
New Delhi – 110017.

Ref : Your Notice dated 20.06.2012 issued U/S 138 of N.I. Act 1881.

My Client – M/s M.S. & Co.,
a firm registered under the Indian Partnership Act.

Dear Sir,

Your above referred notice duly received by my client and have gone thorough the contents of the said notice and I have been instructed by my client to repay as follows:

1. *That my client became surprised on receipt of the said notice as the said notice is unwanted, uncalled for bad in law and there was no reason to issue such notice.*
2. *That my client denies and disputes all the allegations made by you in the said notice against my client which is contradictory to the record and not admitted by my client.*
3. *That in respect of the statements made in Para 1 of the notice, it is stated that my client is a partnership firm registered under the partnership Act, having its office at 43 G. M. Road, PO & Ps. Siliguri, Dist. Darjeeling and carries on business of construction and also provides services to various private telecom industries and other Govt. Departments such as C.P.W.D, S.J.D.A., M.ES., B.S.N.L., etc. and my client has been carrying on the said business since long with good reputation and due to sincerity, integrity and honesty my client earned good reputation in various private sectors and Govt. sectors On 1 day of July, 2010, Wireless-TT Info Services Ltd. entered into an agreement with my client at Calcutta for operation and maintenance and also to supply/ provide Diesel to the respective Diesel Generator sets on their respective sites of their infrastructure for the area of six districts of North Bengal, namely Malda, North Dinajpur, South Dinajpur, Darjeeling, Jalpaiguri and Cooch bihar and also the State of Sikkim for a period of 12 months with effect from date of execution i.e. on and from 10th day of July 2010 and Quippo Telecom Infrastructure Ltd. on 1/7/2010 also entered into an agreement with my clients at Calcutta for operation and maintenance and also to supply/ provide Diesel to the respective Diesel Generator sets on their respective sites of their infrastructure for the area of six districts of North Bengal namely Malda, Uttar DinajpurDakshinDinajpur, Darjeeling, Jalpaiguri and Cooch Behar and also the State of Sikkim for a period of 12 months with effect from date of execution ie. on and from 10th day of July 2010. My client as per the agreement made with Quippo Telecom Infrastructure Ltd. & Wireless-TT Services Ltd. took charge of the sites of both the companies throughout North Bengal and Sikkim and also started providing operation and maintenance service including supplying / providing Diesel to the all Diesel Generator (DG) based sites. Thereafter, the*

said two companies amalgamated with each other and the new company VIOM Networks was formed.

4. *That in respect of statements made in Para 2 of your notice it is stated that it is true that as per agreement my client were inter-alia required to provide operation and maintenance services including diesel filling services at your B.T.S. Sites in rest of West Bengal (ROWB) namely North Bengal and Sikkim by issuing the Petro cards of IOCL provided by you to my client. It is also stated that at the time of entering into the agreement with the Wireless TT Info Services Ltd. there was no terms to issue any B.G. (Bank Guarantee) by my client in favour of either of the company. But on 6/7/2010 requested over phone to give B/G and 3 undated cheques of Rs.25 Lac each which later on intimated through email send by Mr. Soumen Sinha of Wireless TT Info Services Ltd. with copy to others. And although there is no terms in the agreements to provide with any security/ B.G or issuing undated cheques but my client having full confidence to provide service strictly as per agreement agreed to issue without hesitation and only agreed to issue 3 undated cheques and issued 3 undated cheques of Rs.25 Lakhs each of standard Chartered Bank, Siliguriinfavour of Wireless TT Info Services Ltd. as guarantee towards fleet card.*
5. *That in respect of statements made in para 3 of the notice it is stated that initially my clients was provided with the work with two companies for a period of 12 months and subsequently being satisfied with the performance of the works of my client strictly as per terms of agreement, the period of service were extended for a further period of 3 months under the same terms and conditions and the 3 cheques were issued as guarantee/ security for the performance of the work was kept by you asguarantee/ security of the performance of the works/ service. After completion of the entire period of 15 months with full satisfaction of you, my client submitted bills which was due amounting to more or less Rs.45 Lac and you VIOM Networks also made some counter claims and considering the claim and counter-claim between my client and you disputes and differences started between you and my client and you demanded a sum of Rs.1,48,372/ and subsequently reissued it to Rs.2,97,642/ without siding any justification of*

the earlier claim and revised claim. So even if your claim of Rs.2,97,642/ is assumed to be correct, then also you cannot present cheques of Rs.75 Lac.

It is also stated that you sent a letter on 22/4/2012 stated that as per your Auditors report a sum of Rs. 8000676/ is payable to my client as on 31/3/2012 and requested my client to confirm the said amount.

It is also stated that you wrongly and illegally presented the above 3 cheques on 13/6/2012 with your banker. It is stated that after the performance of the work you are to return the aforesaid 3 undated cheques which was kept by you as security/ guarantee of the performance of the work. It is also denied and disputed that there is any dues and liabilities to you by my client. It is unfortunate that you without returning those 3 cheques given by my client as security/guarantee of the performance of the work and supposed to return those cheques to my client, you have committed breach of trust and cheating and converted those cheques as valuable security for your illegal gain and presented the above said 3 cheques fraudulently to your banker inserting dates of your choice and therefore manipulating those cheques. It is also stated that after completion of the work to the satisfaction of you my client requested you to return those cheques and your client was taking time on the plea of this/ that and my client getting the scent of the ill motive of your client which is now proved to be true, had given instruction of the banker of my client for stop payment. My client being induced by you that those undated cheques will be kept for guarantee / security of the performance of work issued those cheques which you supposed return after performance of the work. My client would not issue such un-dated Cheques. If my client would present those undated cheques for encashment by making manipulations of these cheques by inserting dates without knowledge and consent of my client for your illegal gain.

6. *That the statements made in para 4 of the notice is absolutely false incorrect and tissues of lies. It is false that my client with malafide and fraudulent intention issued the cheques having no intention to clear the same. As stated above a sum of rupees More or less 45 Lac is due and*

payable to my client and your client also made some false counter claims and disputes and differences started between you and my client.

7. *That it is also to be stated that as per Agreement there is Arbitration Clause. It is very specifically mentioned that in the event of any disputes, difference or claims between you and my client during and/or after termination of the work in any manner whatsoever etc. etc. shall be referred and resolved through Arbitration in accordance with the provisions of the Arbitration and conciliation Act 1996. So in the circumstances you cannot present the said cheques of Rs.75. Lac which is not due from my client and there is disputes and difference between youand my client in respect of claim and counter claim and the said disputes of claim and counter claim can be solved by Arbitration only*

You are requested to return those 3 cheques immediately which were given to you as security/ guarantee failing which my client will be compelled to take appropriate legal action against you and your staff which please note.

Thanking you, *Yours faithfully*

Abhijit Sarkar
Advocate, Siliguri"

50. The aforesaid reply of the Advocate's letter, related an issue regarding submission of bills for completion of the work within a period of 15 months which was to be estimated. There were certain issues of counter claim and further demand. The claim of the opposite party no. 2 in the said reply to the aforesaid Advocate's letter dated 14.07.2012 revealed that the opposite party no. 2 might have a corresponding claim/demand to be fulfilled by the petitioner company. The entire process of transaction had been continuous with the involvement and the knowledge of both the parties and should have been sorted out taking recourse to the dispute resolution clause mandatorily

agreed upon by both the parties instead of instituting criminal cases against each other, since the dispute between the parties is primarily civil in nature. The legal notice dated 20th June, 2012 and the Advocate's letter dated 14.07.2012 in reply to such notice are a part of Court records before the Trial Court which can be taken into consideration at this stage to prevent multiplicity of proceedings and unnecessary harassment of either of the parties in the cases instituted by each one of them against each other for extortionate, extraction of money as well as resorting to counter blast harassive and pressurizing tactics.

51. The opposite party through the Advocate's letter dated 14.07.2012 had mentioned in Paragraph No. 7 of the same that *"As per the Agreement there is Arbitration Clause. It is very specifically mentioned that in the event of any disputes, difference or claims between you and my client during and/or after termination of the work in any manner whatsoever etc. etc. shall be referred and resolved through Arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996."* Further claiming that *"So in the circumstances you cannot present the said cheques of Rs.75 Lac which is not due from my client and there is disputes and difference between you and my client in respect of claim and counter claim and the said disputes of claim and counter claim can be solved by Arbitration only."*

52. Therefore the present complaint instituted by the opposite party being aware that the dispute between the both the parties could have been resolved invoking arbitration clause as aforesaid should not have filed the present complaint against the petitioner under the offences punishable under the Indian Penal Code as aforesaid. Similarly, the present petitioner disregarding

the claim of the opposite party yet to be reimbursed with regard to certain dues admitted by the petitioner through the letter of termination instituted the proceedings under Section 138 of the Negotiable Instruments Act with regard to the entire amount of Rs.75 lakhs concerning the three cheques. The blank cheques though filed by the opposite party was presented by the petitioner for encashment under the Clause 5 of the aforesaid agreement did not attract any offence under Section 467 and 468 of the Indian Penal Code nor did the petitioner have any intention to deceive the opposite party from the inception for wrongful gain and causing wrongful loss to the opposite party. Though the issue of the cheques in question are already the subject matter of a proceeding under the Negotiable Instruments Act, the legally enforceable liability of the opposite party therein should be determined by the concerned Court in its exactitude. However, in the present complaint instituted by the opposite p0arty against the petitioners do not constitute the offences to be criminally indicted in the opinion of this Court the issue between the parties are exclusively civil in nature bound of an Arbitration Clause to aid in its resolution and the instant complaint case should not be allowed to continue to disguise a civil dispute through a criminal case to the prejudice to parties concerned and burdening the case dockets of the Trial Courts.

53. In view of the above discussions, the proceeding in C.R. Case No. 169 of 2014 under Sections 406/420/467/468/120B of the Indian Penal Code pending before the Learned Additional Chief Judicial Magistrate, Siliguri, Darjeeling and all orders passed therein including the order dated 06th March, 2014 is quashed.

54. The instant criminal revisional application being no. CRR 2561 of 2014 is allowed.

55. Accordingly, CRR 2561 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of,

56. There is no order as to costs.

57. Copy of this judgment be sent down at once to the Learned Trial Court and concerned police station for necessary action.

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

(Ananya Bandyopadhyay, J.)