

(2009) 05 DEL CK 0367
In the Delhi High Court
Case No : Criminal Rev. P. 407 of 2007

A.J.K. Fernandez

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 14-05-2009

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 190, 190(1), 190(1)
Delhi Police Special Establishment Act, 1946 — Section 5, 6
Evidence Act, 1872 — Section 40, 41, 42, 43
Penal Code, 1860 (IPC) — Section 109, 120B, 145, 145(1), 146

Citation : (2009) CriLJ 3379 : (2011) 7 RCR(Criminal) 1242

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : KTS Tulsi and Raj Kamal, for the Appellant; P.P. Malhotra, ASG and Chetan Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This order shall dispose of the aforesaid Revision Petition filed by the Petitioner under Sections 397/401 read with Section 482 of the Code of Criminal Procedure for setting aside the order directing framing of charges and the charges framed pursuant thereto, against the Petitioner on 17.05.2007 under Sections 465, 467, 468, 471 and 420 read with Sections 109 and 120B of Indian Penal Code by the Chief Metropolitan Magistrate, Delhi in case RC No. 6(E)/2003/CBI/SPE/EOU.VII, P.S. New Delhi dated 27.10.2003 registered by CBI on the complaint of Shri Anand Kumar, who claims to be the constituted attorney of his son Mukesh Kumar, a resident of Ireland.

2. The Charges were framed by the CMM after the charge sheet was filed by the prosecution u/s 173 of the Code of Criminal Procedure on 1.01.2004 after completing the investigation. In the charge sheet, besides the Petitioner, one K. Kadakasham, Deputy Manager of the State Bank of India, Nungambakkam Branch, Chennai, was also challanned as a co-conspirator. He also filed a

separate revision but on account of his death, the same stands abated.

3. Briefly stating, the allegations made by the Complainant in his complaint dated 17.05.2007 can be enumerated as under:

(i) Mukesh Kumar, a non-resident Indian, son of the Complainant after settling in Ireland took charge of the business of his grand father namely, Sh. Datt Sahai who was doing business in London since 1950 and was having bank accounts with large deposits. A decision was taken by the family to bring the deposits in the banks at London to India and to deposit the said amount in the form of Fixed Deposit Receipts in Indian Banks as the rate of interest was better in India. The complainant was appointed as power of attorney holder of Mukesh Kumar on 18.04.1992. He accordingly opened Bank account in Delhi with Federal Bank, New Delhi and funds were transferred.

(ii) In the year 2000, Complainant came into contact with one Arun Jain who was an agent of AJK Fernandez, who had offered the complainant a deal to the effect, that if the deposits are made in South Indian Banks as suggested by AJK Fernandez, the complainant in addition to the higher rate of interest as prevailing in South Indian Banks would also get an incentive of 3.75% while 0.25% would come to Arun Jain. Accordingly on transfer of two deposits from Federal Bank Ltd. at New Delhi to Federal Bank of Nagercoil as suggested by accused AJK Fernandez in the month of August, 2000 to the tune of US \$ 1729684.81 and US \$ 97,141.24 respectively, the complainant got incentive of about 5 lakhs in advance by way of DD in the name of Mukesh Kumar. On that basis the transactions continued even subsequently. Various deposits were similarly transferred to SBI Nungambakkam Branch of Chennai belonging to Mukesh Kumar. The details of the said deposits are as follows:

A. FDRs with Federal Bank, Nagercoil, Tamil Nadu:					
Date of	Amount in	FDR No.	Maturity	Maturity Date	Deposit US \$ Value US \$
21.08.00	17,29,684.81	37197/FCAB	43	2150995.50	21.08.2003
31.08.00	9,97,141.24	37197/FCAB	44	1234650.22	31.08.2003

B. FDRs with State Bank of India, Nungambakkam:

					S. No.
Date of	Amount in	FDR No.	Maturity	Maturity Date	Deposit US \$ Value US \$
11.12.00	2297415.79	962159	2832347.59	11.12.2003	1.
12.12.00	3,36,240	962158	4,14,530.34	12.12.2003	2.
26.12.00	2,00,142.88	508489	2,44,936.22	26.12.2003	3.

29.12.00	5,21,014.50	508497	628,294.25	29.12.2003
04.01.01	73,302.83	962156	88,396.29	04.01.2004.
19.01.01	8,81,840.79	962173	10,40,100.45	19.01.2004.
16.03.01	4,69,571.53	962217	5,53,927.66	16.03.2004.
19.03.01	28,24,927.11	962219	3332,410.87	19.03.2004.
21.03.01	35,231.32.	962221	4,560.45	21.03.2004.
10.04.01	3,85,047.72	962237	4,54,219.58	10.04.2004.
15.05.01	29,752.06	962264	34,579.94	15.05.2004
14.06.01	6,492.50	962442	7,490.16	14.06.2004
25.07.02	2,31,079.76	813200	2,53,769.50	25.07.2005.

Date	Amount	FDR No.	Maturity	Maturity Date	Deposit	GB \$	Value	GB \$
10.09.01	3,18,160	419872	3,72,543.31	10.09.2004				

Date	Amount	FDR No.	Maturity	Maturity Date	Deposit	Exchange	Rs.
02.07.02	2,28,92,679	845711	2,96,80,411	02.07.05.			
16.09.02	58,18,176	845742	72,71,070	16.09.05			

(iii) It was further alleged, that for all these deposits the accounts, as per the instructions of the complainant, were to be opened only in the single name of Mukesh Kumar and for that purpose account opening forms were sent to the petitioner duly signed by Mukesh Kumar alongwith his forwarding letters and in those forms the column where second applicant and third applicant had to sign were either scored off or "xxxx" marks were put before sending the forms. However, the accounts were in fact opened by AJK Fernandez in the joint name by putting his own signatures on the aforesaid forms and in the third column and by forging the signatures of Mukesh Kumar.

(iv) However, Shri AJK Fernandez, the petitioner, with the help of his co-accused K. Kadaksham, the then Deputy Manager of SBI Nungambakkam branch in pursuance of conspiracy also opened a joint NRE SB account No. 01192060511 based on forged letter dated 22.09.2000 purportedly to have been signed by Sh. Mukesh Kumar and by stating to the bank officials that Mukesh Kumar and AJK Fernandez are business partners and that Mukesh Kumar had authorized AJK Fernandez to make deposits/withdrawal in joint account got the earlier mentioned two FDRs Number 43, 44 prematurely closed, and the amount of deposits which were to the tune of US \$ 17,29,684 and 9,97,141 were transferred in the said bank to a joint NRE SB Account No. 009206055, Nungambakkam Branch with a view to misappropriate the aforesaid amount. It is thereafter amount totaling nearly Rs. 12.6 crores was fraudulently credited in the above mentioned joint account number i.e. 605011 on 10.10.2000. Almost the entire amount was siphoned off by AJK Fernandez on the very next day, i.e., on 11.10.2000 in the form of one STDR of Rs. 1 crore in his own name two FCNB deposits for a total of US \$ 4,05,000 in his own name, 19 DD totaling US \$ 13,00,00 (approximately about 67.5 crores) transfer of Rs. 80 lacs to another NRE SB account number 011920060536 for a closure of a loan of Rs. 22.5 lacs which was obtained on 23.08.2000.

(v) In view of the arrangement further 14 remittance in foreign currency (13 in US \$ and 1 Sterling) were sent from the account of Sh. Mukesh Kumar through wire transfer to the bank, but the same were also fraudulently got converted into STDRs in the joint name of Mukesh Kumar and AJK Fernandez on the basis of forged letter as aforesaid. Further those STDRs were also prematurely closed and proceeds were credited in another joint NRE account and money was siphoned off by AJK Fernandez and Mukesh Kumar subsequently. To keep the complainant misinformed the petitioner also supplied 18 fake STDRs to Sh. Anand Kumar showing deposits in the name of Mukesh Kumar but by keeping the original STDRs issued in the joint name with him, i.e, 16 original FDRs issued from SBI Nungambakkam Branch Chennai and two original FCNB FDRs issued from Federal Bank, Nagercoil. Out of these 18 fake STDRs, one STDR No. TA/1, 962273 was sent to SBI Nungambakkam Branch, Chennai by Anand Kumar for correction believing it to be genuine, when the said branch issued another genuine STDR number 962242 after correction in lieu of above mentioned forged STDR. The complainant then came to know about the aforesaid fraud vide letter dated 23.10.2002 received from SBI, Nungambakkam Branch at Chennai, who informed Mukesh Kumar, the details of 6 TDRs one in single name and 5 in joint names of Mukesh Kumar and accused AJK Fernandez (Petitioner) accused, though the instructions were for the single name of Mukesh Kumar. It also transpired that against one TDR even a loan of Rs. 1.50 crores had been obtained by AJK Fernandez. This information was shared by Mukesh Kumar with Anand Kumar, who in turn communicated with Nungambakkam Branch and sent photocopies of deposit application forms and 6 TDRs mentioned in the letter dated 23.10.2002, which were in the single name of Mukesh Kumar requesting

them to confirm the status/genuinity of the same. It is also submitted that the State Bank of India Nungambakkam Branch did not give any reply despite various reminders. However, vide letter dated 18.02.2003, the bank informed that loan amount had been cleared against the said TDR but the bank refrained from confirming the status/genuinity of these 6 TDRs despite many requests.

(vi) Thereafter the complainant contacted Mr. Muralidharan, the New Branch Manager of the SBI on 26.07.2003 on the basis of photocopies of the documents which were the basis of the frauds committed by the Petitioner, the Chief Manager got suspicious about the transaction and reported the matter to the higher authorities. As a result thereof vigilance inquiry was initiated by SBI. As soon as inquiry started accused AJK Fernandez sensed trouble and filed civil suits in Nagercoil Court praying for declaring the STDRs held by the complainant as null and void. This establishes his knowledge of STDRs in the possession of Anand Kumar which were supplied by him and were actually forged. This pressure tactics worked and the complainant was approached by AJK Fernandez who offered for out of Court settlement. As a result, on 01.09.2003 AJK Fernandez fraudulently induced the complainant into handing over the 18 STDRs held by him in lieu of fake Demand Draft of US \$ 19.72 million purportedly issued by the Canadian Imperial Bank of Commerce, Toronto and obtained two letters from Anand Kumar stating that his son would have no claim over the above mentioned 18 STDRs and that he would repay the excess amount of US \$ 5 million after the encashment of the said DD which was when presented by Mukesh in HSBC Bank, New Delhi on 22.09.2003 were found to be forged as informed by the bank authorities as the said DD was never issued by the Imperial Bank of Toronto. In order to further pressurize the complainant, AJK Fernandez filed two more civil suits against Anand Kumar and his son Mukesh Kumar along with Arun Jain. Hence, he cheated the complainant and his son and misappropriated a sum of totaling approximately Rs. 67.5 crores.

4. The allegations made in the complaint were verified by the prosecution after investigating the same and by taking into possession various records of the concerned banks, and by recording the statement of witnesses u/s 161 Cr.P.C. They also relied upon the report of FSL with respect to forging of documents on the basis of which joint accounts were opened by the Petitioner and thereafter funds belonging to Mukesh Kumar were siphoned off, which are to the tune of Rs. 67.5 crores approximately.

5. A perusal of the impugned order goes to show that the charges were framed by the CMM after being satisfied that prima facie a case was made out against the Petitioner. The relevant observations made in this regard are reproduced hereunder:

From the statement of the witnesses and the documentary evidence collected by the prosecution, accused Fernandez was responsible for certain 18 fake STDR, i.e., two of Federal Bank and 16 of SBI Nungambakam Branch, Chennai to be sent to the complainant and caused pre-mature closure of 10 STDR in the SBI

Nungambakam Branch and two STDRs of Federal Bank Nagarcovil by using forged signatures of Mukesh Kumar. Accused Fernandez also presented the authority letters purportedly signed by Mukesh Kumar dated 20.09.2000 for getting the NRE account open having full knowledge that the signature of Mukesh Kumar were forged one and also with the intention that the same would be used for the purpose of cheating. The GEQD result which was procured after the specimen signatures of Mukesh Kumar were compared with the signatures present on the said STDRs and the above mentioned letters was conclusive that the said STDRs and the letters did not bear the signatures of Mukesh Kumar and that the signatures were forged though, positive opinion about Fernandez forging the same was not given. At this juncture it would not be out of place to refer to Bank of India Vs. Yeturi Maredi Shanker Rao and Another, wherein the Hon"ble Supreme Court observed that where money was withdrawn by an accused from an account by using forged signatures of the Account holder, and pocketed the same, an inference could safely be drawn that it was the accused who had got the signatures forged and hence convicted the accused for the offence u/s 467 r/w 109 IPC. Placing reliance of the said pronouncement, I am of the opinion that prima facie case u/s 467/468 IPC read with Section 109 IPC and Section 465 IPC read with Section 109 IPC is also made out against accused Fernandez.

To conclude and for ready reference, it may be mentioned again that prima facie offences u/s 120B read with Section 465/467/468/471 IPC and 420 IPC read with Section 120B IPC and 471 IPC read with Section 120B are made out against both the accused Fernandez and K. Kadaksham. While offence under Sections 467/468 read with 109 IPC and 465 read with Section 109 IPC are made out against accused Fernandez alone. Both the accused persons are charged accordingly.

6. The CMM also took note of the preliminary submissions made on behalf of the Petitioner that CBI had no jurisdiction to register FIR and to investigate the matter and made the following observations:

4. To tackle first thing first, the issue of CBI not having jurisdiction to investigate the matter in Chennai needs to be dealt with at the outset. Section 5 of the Delhi Special Police Establishment Act, 1946 empowers the Central Government to pass any order extending the powers and jurisdiction of the members of Delhi Special Police Establishment for investigation of offences or class of offences specified by a notification and as submitted by PP for CBI vide notification dated 25/12/62/VD-II of Govt. of India dated 18.2.1963, such powers were extended for investigation in certain States including that of Madras, for certain offences including 420/465/467/468/471 IPC. No doubt, Section 5 of the Act is subject to Section 6 of the Act and consent of the said Government is to be taken by the members of the Delhi Special Police Establishment (which include CBI) for investigating the offence in the said State but if the said consent has not been taken the entire proceedings do not get vitiated so as to discharge the accused persons who have been arrayed as such, for the offence allegedly complained of.

More so, in the instant case, it is an admitted fact that the accused Fernandez had moved a petition before Hon''ble High Court for transferring the present matter from Delhi to Chennai which petition was dismissed and more recently it was Hon''ble Supreme Court's order that the matter be disposed of expeditiously by this Court. Therefore, on a procedural irregularity, discharging the accused persons, to my mind is a far fetched proposition which cannot be paid heed to.

7. The Petitioner has assailed the order framing the charge and the charges, by raising hypothetical submissions that such transaction could not have taken place looking to the averments made in the complaint that his son was a multi billionaire. It is also his case:

a) That a lot of amount had been paid by the Petitioner to Sh. Anand Kumar by preparing the Demand Drafts worth Rs. US\$133472.68 and US \$258009.96 in the name of Mukesh Kumar for the purpose of deposit in the India Millenium Deposit Scheme. He also claims to have further invested a sum of Rs. 13 crores and having also paid Rs. 26 crores to Mukesh Kumar, Anand Kumar and Arun Jain by way of drafts and cheques. Such payments have not been considered by CBI. (It may be mentioned here that no document to prove any deposits except the initial payments towards the incentive has been placed on record by the Petitioner.)

b) That all investments were made by Anand Kumar on the basis of Indian Passport of Mukesh Kumar which ceased to exist as he adopted an Irish Passport. It is also submitted that the draft which is sought to have been paid by the Petitioner to Sh. Anand Kumar was not sent by the Petitioner but was sent by his son Mukesh Kumar.

c) That CBI had no jurisdiction to investigate the matter and that nothing happened in Delhi which could confer jurisdiction to Delhi Courts.

d) It is also stated that no charge could have been framed against the Petitioner either u/s 420 or u/s 467 read with Section 109 IPC inasmuch as it is Arun Jain who met the complainant in Delhi and induced the Complainant to transfer funds from Delhi and therefore cheating if any has been done by Arun Jain and not by the Petitioner. It is also submitted that as per the FSL report the signature of Mukesh Kumar were forged, but there is no evidence that the forgery has been committed by the Petitioner.

8. The learned Senior Counsel appearing for the Petitioner, also made following additional submissions by way of the written submissions:

i. That the petitioner, Anand Kumar (Complainant) as well as his son Mukesh Kumar were friends since 1991 and have jointly carried on business in India, Ireland US & Canada in joint names. A formal agreement dated 16.08.2000 was entered into between them according to which joint account was opened between the Petitioner and Mukesh Kumar with the State Bank of India, Nungambakkam Branch, Madras and accordingly, was operated as per the

agreement. The deposits bearing No. TA/A/1-962159, TA/A/1-962158, TA/A/1-508489, TA/A/1-508497, TA/A/1-962156, TA/A/1-962173, TA/A/1-962217, TA/A/1-962219, TA/A/1-962237, TA/A/1-419872 were cancelled and credited into the joint account of the Petitioner and Mukesh Kumar as per their directions. Three other deposits bearing Nos. TA/A/1-845711, TA/A/1-813200 and TA/A/1-845742 were pledged for obtaining loan which was also credited to the said bank account. All the original deposit receipts except the two receipts bearing No. TA/A/1-962221 and TA/A/1-962264 were in custody of the bank. (However, no document to prove friendship or any formal agreement has been filed on record except the plaint of the suits though denied by the respondents).

ii. It is also alleged that on 11.11.2003, the investigating officer seized 7 documents from the Noida Branch of HSBC which contained a letter dated 14.09.2003, addressed by the Senior Vice President of the Advantage Technology to Mukesh Kumar forwarding a draft No. 7849416 dated 12.09.2003, for an amount of 19,720,000.00 US\$ in favor of the complainant towards advance consultation for promoting the Petro Chemical project. By a letter dated 30.09.2003, Mukesh Kumar was informed that the draft was not issued by the issuing bank. (As per the prosecution the letter dated 14.09.2003 is a forged document and in fact the draft handed over by the petitioner was also not genuine.)

iii. That the Petitioner filed original Suit Bearing No. 229/2003 on 18.08.2003 for declaration and possession of fake deposit receipt and the same was decreed on 29.12.2003. He also filed Original Suit bearing No. 238/2003 on 18.08.2003 for rendition of account and the same was also decreed on 25.03.2004. Another suit bearing No. 269/2003 was also filed on 29.09.2003 for restraining the complainant, his son Mukesh Kumar and others from misusing the demand draft in favour of Mukesh Kumar and the same was decreed on 29.04.2004. It is also alleged that upon learning from HSBC that the demand draft was a forged document, despite the fact that the demand draft had been supplied to the complainant by his son-Mukesh Kumar vide letter dated 14.09.2003 which was deposited in the bank by the complainant himself, the Petitioner has been made a scapegoat .(The third suit stands as withdrawn even after the same was decreed which, according to the Respondents, was based upon a compromise which the Petitioner wanted to enter into with the Complainant by making some payment by way of a Demand Draft, which itself was found to be in genuine.)

9. It was also submitted that once the civil court decreed the suit of the Petitioner as aforesaid, the findings returned in those suits became binding even on the criminal court. CBI was aware of the filing of these suits before the registration of the FIR and, as such, it had no jurisdiction to register the FIR and even if it was registered in ignorance of the filing of the civil suits, after the suits were decreed, the FIR was liable to be quashed being inconsistent with the findings rendered in three decrees by the civil court. It is also submitted that the CBI has not at all cared to either examine the contents of the plaint or the

decree despite having come to know about it during the course of Investigation. They have conveniently adopted the specious plea of the complainant that the suits have been filed only for pressurizing the complainant not to report the matter to the police. Neither the factual matrix of the suit nor the findings of the Civil Court have even remotely been referred to in the entire chargesheet. The Petitioner has also relied upon the following judgments:

- a) Sardool Singh v. Nasib Kaur
- b) Tukaram Annaba Chavan and Another Vs. Machindra Yeshwant Patil and Another,
- c) Savita Vs. State of Rajasthan and Others,
- d) Shanti Kumar Panda v. Shakuntala Devi (2004) 1 SCC 488, Para 15
- e) P.S. Rajya Vs. State of Bihar,
- f) V.M. Shah Vs. State of Maharashtra and another,
- g) Sunil Gulati v. R.K. Vohra (2007) 1 JCC 220, Para 25
- h) D.K. Rastogi Vs. Union of India (UOI),
- i) G.L. Didwania v. IT Officer 1955 (2) Supp. SCC 724
- j) Indian Oil Corporation Vs. NEPC India Ltd. and Others,

10. The learned ASG who appeared for the Respondents submitted that no interference is called for in the order directing framing of charges and the charges framed accordingly against the Petitioner because at the stage of framing of the charges, the court has not to weigh the evidence and the stage of appreciating the evidence for the purpose of arriving at a conclusion whether the prosecution was able to bring home the charge against the Petitioner would arise only after the evidence is concluded. He also denied that in the facts of this case the filing of civil suit or the ex-parte judgments given in favor of the petitioner are binding in these proceedings. It is submitted that the Court at the stage of framing of charge exercises a limited jurisdiction and is only required to see that a prima facie case is made out or not. Reliance in this regard has been placed on:

- (i) Hem Chand Vs. State of Jharkhand, .
- (ii) Union of India (UOI) Vs. Prafulla Kumar Samal and Another, .

11. On the question of binding nature of the civil court's decision, the respondents have submitted that mere pendency of a suit cannot be a ground for quashing the criminal proceedings which was instituted by an unscrupulous litigants apprehending criminal action against them, interference in such cases encourages in frustrating the course of justice and law, by filing suit with respect to the documents intended to be used against them after initiation of criminal proceedings or in anticipation of such proceedings. Civil Proceedings as

distinguished from criminal action have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt in a criminal case is not applicable in the civil proceedings which can be decided merely on the basis of probabilities with respect to the acts complained of while in criminal cases we have to proceed in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.

12. Respondents also relied upon the following judgments:

- i) M.S. Sheriff Vs. The State of Madras and Others,
- ii) Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, .
- iii) Syed Askari Hadi Ali Augustine Imam and Another Vs. State (Delhi Admn.) and Another, .
- iv) K.G. Premshanker Vs. Inspector of Police and Another,
- v) Kamaladevi Agarwal Vs. State of West Bengal and Others,

13. I have given my thoughtful consideration to the rival contentions and have also gone through the records. The questions which arise for consideration in the present petition are as follows:

A. Whether in the facts and circumstances of this case, the civil proceedings taken out by the Petitioner which resulted in passing of the ex-parte decree after registration of FIR, has any bearing on the facts of this case and if so, whether the charges framed against the Petitioner based upon the investigation carried out by the CBI are liable to be set aside.

B. Whether the findings returned by the civil court which are ex-parte, are binding on the criminal courts so as to take away the jurisdiction of the criminal courts to deal with the allegations which have been levelled against the Petitioner on the basis of the investigation carried out by CBI.

C. Whether it is a fit case where interference should be caused in exercise of the powers of this Court under Sections 397/401 read with Section 482 of the Cr.P.C. to quash the orders framing the charges dated 17.05.2007 also taking into consideration that not only the charge sheet has been filed on 1.01.2004 but ten witnesses have also been examined by the prosecution after that stage.

14. At the outset, I would like to discuss the scope of revision u/s 397 read with Section 401 of the Code of Criminal Procedure. In this regard, I may observe that the revisional power of the High Court u/s 397 Cr.P.C. does not create any right in the litigant, but only confers the power in this Court to see that justice is done in accordance with the recognized rules of criminal jurisdiction and that subordinate courts do not exceed their jurisdiction or abuse their power vested in them by the code in hearing and determining cases. u/s 401 Cr.P.C., this Court

discharges its supervising duties for administration of justice on the Criminal Side and a general superintendence over the action of the courts subordinate to it. On its administrative side this power is known as power of superintendence while on its judicial side it is known as revision. It is also the Salutory Duty of this Court to prevent the abuse of the process or miscarriage of justice or to correct the irregularities/incorrectness committed by the inferior courts in its judicial orders. However, the Petitioner has been unable to point out any such ground for interference by this Court. A perusal of the order passed by the learned CMM while framing the charge do reveal that the learned CMM has applied his judicial mind to the material placed before him and thereafter on being satisfied that a prima facie case has been made out has framed the charges.

15. In this regard, reference can be made to the judgment delivered in the case of Hem Chand v. State of Jharkhand (supra) in particular to paragraphs 13 and 14, which reads as under:

13. The learned Counsel for the CBI is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related the documents filed by the appellant alongwith his application for discharge. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

14. In State of Madhya Pradesh Vs. Mohanlal Soni, , this Court has held;

7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

It was furthermore observed;

As is evident from the paragraph extracted above if the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed. We agree with the said view. See also State of Orissa v. Debendra Nath Padhi AIR 2000 SC 359. We may, however, add that in this case, this Court is not concerned with other legal principles, which would be applied in determining the issues at that stage.

16. Reference can also be made to the judgment delivered by the Apex Court in

Union of India v. Prafful Kumar (supra) where the scope of Section 227 of the Criminal Procedure Code on the question of charge has been considered. It was held:

8. The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar Vs. Ramesh Singh, where Untwalia, J., speaking for the Court observed as follows:

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial." this Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.

9. In the case of K.P. Raghavan and Another Vs. M.H. Abbas and Another, this Court observed as follows:

No doubt a Magistrate enquiring into a case u/s 209 CrPC is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session.

To the same effect is the later decision of this Court in the case of Almohan Das and Others Vs. State of West Bengal, where Shah, J., speaking for the Court observed as follows:

A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no *prima facie* evidence or the evidence is totally unworthy of credit, it is his duty to discharge the accused: if there is some evidence on which a conviction may reasonably be based, he must commit the case.

In the aforesaid case this Court was considering the scope and ambit of Section 209 of the Code of 1898.

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

17. The issue of jurisdiction of Delhi Courts has also been discussed by the trial Court in detail and need not be gone into by this Court once again. Regarding jurisdiction of CBI to investigate the matter, it is clear from notification dated 18.02.1963 that powers of CBI were extended for investigation in some States including that of Madras now known as Chennai. No doubt, subject to consent, but if the said consent has not been taken this irregularity does not vitiate the entire proceedings as cognizance of the offence has been taken by the competent court after the submission of charge sheet, the bar of prior consent goes off because the trial court is empowered u/s 190(1)(c) of the Cr.P.C. to take the cognizance of the offence even suo moto. It is quite clear from the facts that links of the offence stretched to Nagarcoil and Chennai started from Delhi and finally culminated in Delhi.

18. In so far as the issue of jurisdiction of the CBI in having taken up the investigation of this case is concerned, on which the Petitioner submits that CBI had no jurisdiction to register a case, the CMM has already taken note of the preliminary submissions in his order as referred to in para 6 of the judgment

which may also be supplemented by another judgment delivered by this Court in the case of Vinod Kumar Garg Vs. State, , where the question of irregularity of investigation was considered by this Court in the light of the judgment of the Apex Court and it was observed;

14. It may be noticed at this stage that a three-Judge Bench of this Court in H.N. Rishbud and Inder Singh Vs. The State of Delhi, had held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. Referring to the provisions of Sections 190, 193, 195 to 199 and 537 of the Code of Criminal Procedure (1898) in the context of an offence under the Prevention of Corruption Act, 1947. It was held:

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation as provided in Section 190, Cr.P.C is the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, Cr.P.C is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1) (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial....

19. In view of the aforesaid, even if there was some lacuna in the jurisdiction of CBI to investigate the present matter, once the investigation has been completed, challan has been filed, and cognizance was taken by a CMM, the issue of irregularity cannot vitiate the framing of charge. It is a matter of record that original suit bearing No. 229/2003 has been admittedly withdrawn by the Petitioner after he tried to enter into a compromise and gave a draft as stated above which has been found to be forged.

20. About filing of civil suit and binding nature of their decisions, the respondents have submitted that mere pendency of a suit cannot be a ground for quashing the criminal proceedings which was instituted by an unscrupulous litigants apprehending criminal action against them, interference in such cases encourages in frustrating the course of justice and law, by filing suit with respect to the documents intended to be used against them after initiation of criminal proceedings or in anticipation of such proceedings. Civil Proceedings as distinguished from criminal action have to be adjudicated and concluded by

adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt in a criminal case is not applicable in the civil proceedings which can be decided merely on the basis of probabilities with respect to the acts complained of while in criminal cases we have to proceed in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.

21. It may however be seen that in the present case the judgments relied upon by the petitioner are ex parte given after the registration of FIR and even otherwise does not deal with the forgery alleged to have been committed by the Petitioner by forging the signatures of Mukesh Kumar on a letter alleging to be the authority and thereafter preclosing the various deposits and siphoning away of the money in his own account.

22. Much emphasis has been laid by the Petitioner on the judgment delivered in the case of Sardool Singh (Supra), wherein it has been held:

2. A civil suit between the parties is pending wherein the contention of the respondent is that no will was executed whereas the contention of the appellants is that a will has been executed by the testator. A case for grant of probate is also pending in the court of learned District Judge, Rampur. The civil court is therefore seized of the question as regards the validity of the will. The matter is sub judice in the aforesaid two cases in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the will is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the will is being tested before a civil court. We, therefore, allow the appeal, set aside the order of the High Court, and quash the criminal proceedings pending in the Court of the Judicial Magistrate, First Class, Chandigarh in the case entitled Smt Nasib Kaur v. Sardool Singh. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the will is a forged one. We of course refrain from expressing any opinion as regards genuineness or otherwise of the Will in question as there is no occasion to do so and the question is wide open before the lower courts.

23. In case of Shanti Kumar Panda (supra) also relied upon by the Petitioner, it has been held: 15. It is well settled that a decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. (See Sarkar on Evidence, 15th Edn., p. 845.) A decision given u/s 145 of the Code has relevance and is admissible in evidence to show: (i) that there was a dispute relating to a particular property; (ii) that the dispute was between the particular parties; (iii) that such dispute led to the passing of a preliminary order u/s 145(1) or an attachment u/s 146(1), on the given date; and (iv) that the Magistrate found one of the parties to be in possession or fictional possession of

the disputed property on the date of the preliminary order. The reasoning recorded by the Magistrate or other findings arrived at by him have no relevance and are not admissible in evidence before the competent court and the competent court is not bound by the findings arrived at by the Magistrate even on the question of possession though, as between the parties, the order of the Magistrate would be evidence of possession. The finding recorded by the Magistrate does not bind the court. The competent court has jurisdiction and would be justified in arriving at a finding inconsistent with the one arrived at by the Executive Magistrate even on the question of possession. Sections 145 and 146 only provide for the order of the Executive Magistrate made under any of the two provisions being superseded by and giving way to the order or decree of a competent court. The effect of the Magistrate's order is that burden is thrown on the unsuccessful party to prove its possession or entitlement to possession before the competent court.

24. However, perusal of the facts of this case goes to show that the same has no application to the controversy involved in the present case.

25. Petitioner also relied upon judgment delivered in the case of Sunil Gulati and D.K. Rastogi (*supra*) in which case this Court observed:

11. This Court in the judgment reported as *Sunil Gulati v. R.K. Vohra* 2007 (1) JCC 220 which was relied upon by the learned Counsel for the petitioner during the hearing, elaborately considered the various nuances of identical problems, where adjudication proceedings culminated in orders favoring the accused/assessed and where in exercise of independent powers prosecution or complaints were launched. The Court after noticing various judgments including Supreme Court rulings and the judgment in *Standard Chartered Bank's* case (*supra*) was of the opinion that though seemingly there was a facial conflict in the different strands of reasoning, yet on a deeper analyses, it was apparent that it was one thing to say that two proceedings could be maintained as a matter of law, but entirely another to say that after suffering an adjudication order on the same facts, the department or the prosecuting agency ought not to be allowed to prosecute the assessee having failed to establish the basic and necessary facts. The issue is not, Therefore, as much as existence of power to prosecute an offender, as the finding by a competent Court or Tribunal about foundational facts which would justify prosecution.

26. This judgment was delivered in a case where the appellant was exonerated by the Department in departmental proceedings and, therefore, the criminal proceedings against him were quashed, which again is not the case in hand.

27. The petitioner also relied upon the judgment delivered in the case of *Iqbal Singh Marwah v. Meenakshi Marwah* (*supra*), wherein it has been observed:

32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings is entirely different. Civil

cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint u/s 476 of the old Code, the following observations made by a Constitution Bench in *M.S. Sheriff Vs. The State of Madras and Others*, give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered u/s 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.

28. I am unable to understand how this judgment helps the case of the Petitioner. As far as the judgments given in the case of *G.L. Didwania and Indian Oil Corp.* (supra) are concerned, it may simply be observed that a perusal of facts of those cases show that the judgments were delivered taking into consideration the squaring of liability of the Complainant with the accused which is not the case in hand. The case in hand is one where the deposits of the son of the complainant had simply been appropriated by the petitioner to his own use only by forging documents. Even the pleadings of the suits filed by the petitioner goes to show that the petitioner was very much aware of the fabrication of the documents and creation of the false STDRs of which he wanted to take possession and wanted an injunction against the complainant for not taking any

proceedings against him which at least the Civil Court was not even competent to grant.

29. At this stage, it may also be observed that the latest view of the Apex Court is that in case of forgery or fabrication of documents despite a compromise the proceedings cannot be quashed. Reference can also be made to the judgment delivered by the Apex Court in the case of Smt. Rumi Dhar Vs. State of West Bengal and Another, .

21. The learned Special Judge in his order dated 16.12.2006 rejected the contention raised on behalf of the appellant herein, stating:

I have gone through the record citation and considered the circumstances. It is true that the accd. has put a good gesture by paying of the dues of the bank but I am at one with the Ld. PP that this payment cannot exonerate the accd. from a prima facie charge. If I allow this, then I may have to swallow in a case of bribery that the accd. has paid back the amount to the sufferer the amount received as bribe. It is a question of trial whether there was any criminal intention on the part of this Lady accd. in this crime. The criminal intention is to be inferred from the evidence to be adduced by the prosecution. Simply because the money has been returned, I cannot shut the mouth of the prosecution from adducing evidence against this accd. Thus, I do not like to pass any order in favour of the accd. The prayer for discharge of accd. No. 7, Rumi Dhar stands rejected. Let the case proceed. Fix 7.2.07 for consideration of charge. The sureties must produce all the accd. persons on that date.

22. It has not been argued before us that the learned Judge, in arriving at the said opinion, committed any error of law or the same otherwise suffers from any illegality so as to enable the High Court to interfere with the same matter. A prima facie case has been found out against the appellant. There is no error apparent on the face of the record warranting interference therewith.

Strong reliance has been placed by Mr. Rai on a decision of this Court in Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta, wherein this Court held:

26. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. In recent decisions of this Court, in the case of Bhajan Lal (supra), P.P. Sharma (supra) and Janta Dal (supra), since relied on by Mr. Tulsi, the guiding principles in quashing

a criminal case have been indicated. It was furthermore observed:

27. In the instant case, a serious dispute has been raised by the learned Counsel appearing for the respective party as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 I.P.C. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression "entrusted appearing in Section 405 I.P.C. is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence 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. The expression "trust" in Section 405 I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed. In the facts and circumstances of the case, it, however, appears to us that the Respondents moved the High Court only in 1991 although the first FIR was filed in 1987 and the second was filed in 1989. The CBI, therefore, got sufficient time to complete the investigation for the purpose of framing the charge. This is also not a case where unlike Duncans Agro Industries, no case of criminal breach of trust had been made out.

Our attention has also been drawn to a recent decision of this Court in Nikhil Merchant Vs. Central Bureau of Investigation and Another, wherein this Court refused to refer the matter to a larger Bench, stating:

30. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain

criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised.

31. On an overall view of the facts as indicated hereinabove and keeping in mind the decision of this Court in B.S. Joshi's case (supra) and the compromise arrived at between the Company and the Bank as also Clause 11 of the consent terms filed in the suit filed by the Bank, we are satisfied that this is a fit case where technicality should not be allowed to stand in the way in the quashing of the criminal proceedings, since, in our view, the continuance of the same after the compromise arrived at between the parties would be a futile exercise.

23. The jurisdiction of the Court under Article 142 of the Constitution of India is not in dispute. Exercise of such power would, however, depend on the facts and circumstance of each case. The High Court, in exercise of its jurisdiction u/s 482 of the Code of Criminal procedure, and this Court, in terms of Article 142 of the Constitution of India, would not direct quashing of a case involving crime against the society particularly when both the learned Special Judge as also the High Court have found that a prima facie case has been made out against the appellant herein for framing charge.

24. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly.

30. As regards the judgment of Sardool Singh and V.M. Shaha (Supra) relied upon by the Petitioner, the same has been discussed in Syed Askari Hadi Ali Augustine Imam's case (Supra) relied upon by the respondents. Relevant observations made are as follows:

10. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them.

In M.S. Sheriff Vs. The State of Madras and Others, , a Constitution Bench of this Court was seized of a question as to whether a civil suit or a criminal case should be stayed in the event both are pending; it was opined that the criminal matter should be given precedence.

In regard to the possibility of conflict in decisions, it was held that the law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other or even relevant, except for certain limited purposes, such as sentence or damages. It was held that the only relevant consideration was the likelihood of embarrassment.

If primacy is to be given to a criminal proceeding, indisputably, the civil suit must be determined on its own merit, keeping in view the evidences brought before it

and not in terms of the evidence brought in the criminal proceeding.

The question also came up for consideration in *K.G. Premshanker Vs. Inspector of Police and Another*, wherein this Court *inter alia* held:

30. What emerges from the aforesaid discussion is -- (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of *res judicata* may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is -- whether judgment, order or decree is relevant, if relevant -- its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

It is, however, significant to notice that the decision of this Court in *Karam Chand Ganga Prasad and Another Vs. Union of India (UOI) and Others*, wherein it was categorically held that the decisions of the civil courts will be binding on the criminal courts but the converse is not true, was overruled, stating:

33. Hence, the observation made by this Court in *V.M. Shah* case that the finding recorded by the criminal court stands superseded by the finding recorded by the civil court is not correct enunciation of law. Further, the general observations made in *Karam Chand* case are in context of the facts of the case stated above. The Court was not required to consider the earlier decision of the Constitution Bench in *M.S. Sheriff* case as well as Sections 40 to 43 of the Evidence Act.

11. Axiomatically, if judgment of a civil court is not binding on a criminal court, a judgment of a criminal court will certainly not be binding on a civil court. We have noticed hereinbefore that Section 43 of the Evidence Act categorically states that judgments, orders or decrees, other than those mentioned in

Sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of the Act. No other provision of the Evidence Act or for that matter any other statute has been brought to our notice. Another Constitution Bench of this Court had the occasion to consider a similar question in *Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another*, wherein it was held:

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time-consuming. It is also to be noticed that there is no provision of appeal against an order passed u/s 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon Clause (b)(ii).

Relying inter alia on *M.S. Sheriff (supra)*, it was furthermore held:

32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.

The question yet again came up for consideration in *P. Swaroopa Rani Vs. M. Hari Narayana @ Hari Babu*, wherein it was categorically held:

13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each

case.

12. Mr. Dwivedi, however, would urge that in a case of this nature Section 41 of the Indian Evidence Act, 1872 would be applicable. Mr. Dwivedi would in support of his aforementioned contention place strong reliance on *Tulsipur Sugar Co. Ltd. Vs. Secretary to the Government of U.P. and Others*, ; *Commissioner of Income Tax, Mumbai Vs. Bhupen Champak Lal Dalal and Another etc.*, and *Surinder Kumar and Others Vs. Gian Chand and Others*, . Section 41 of the Indian Evidence Act reads as under:

41 - Relevancy of certain judgments in probate, etc., jurisdiction. -- A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Such judgment, order or decree is conclusive proof:

that any legal character, to which it declares any such person to be entitled, accrued, to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

It speaks about a judgment. Section 41 of the Evidence Act would become applicable only when a final judgment is rendered. Rendition of a final judgment which would be binding on the whole world being conclusive in nature shall take a long time. As and when a judgment is rendered in one proceeding subject to the admissibility thereof keeping in view Section 43 of the Evidence Act may be produced in another proceeding. It is, however, beyond any cavil that a judgment rendered by a probate court is a judgment in rem. It is binding on all courts and authorities. Being a judgment in rem it will have effect over other judgments. A judgment in rem indisputably is conclusive in a criminal as well as in a civil proceeding.

We may, however, notice that whether a judgment in rem is conclusive in a criminal proceeding or not, is a matter of some doubt under the English law.

Johnson and Bridgman, *Taylor of Evidence*, Vol. 2, in Section 1680 notes that 'whether a judgment in rem is conclusive in a criminal proceeding is a question which admits of some doubt'. It is, however, concluded that it is said that nothing can be more inconvenient or dangerous than a conflict of decisions

between different courts, and that, if judgments in rem are not regarded as binding upon all courts alike, the most startling anomalies may occur.

A three judge Bench of this Court had the occasion to consider the legal effect of a judgment vis-à-vis Section 41 of the Evidence Act in *Surinder Kumar and Ors. v. Gian Chand and Ors.* (Supra). Kapur, J. speaking for the Bench, opined:

It is clear that the probate was applied for and obtained after the judgment of the High Court and therefore could not have been produced in that Court. The judgment of the Probate Court must be presumed to have been obtained in accordance with the procedure prescribed by law and it is a judgment in rem. The objection that the respondents were not parties to it is thus unsustainable because of the nature of the judgment itself.

The question came up for consideration again before this Court in *Sardool Singh and Anr. v. Smt. Nasib Kaur* (Supra), wherein it was opined:

A civil suit between the parties is pending wherein the contention of the respondent is that no Will was executed whereas the contention of the appellants is that a Will has been executed by the testator. A case for grant of probate is also pending in the court of learned District Judge, Rampur. The civil court is therefore seized of the question as regards the validity of the Will. The matter is sub judice in the aforesaid two cases in civil courts. At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the Will is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the Will is being tested before a civil court. We, therefore, allow the appeal, set aside the order of the High Court, and quash the criminal proceedings pending in the Court of the Judicial Magistrate, First Class, Chandigarh in the case entitled *Smt. Nasib Kaur v. Sardool Singh*. This will not come in the way of instituting appropriate proceedings in future in case the civil court comes to the conclusion that the Will is a forged one.

No ratio, however, can be culled out therefrom. Why such a direction was issued or such observations were made do not appear from the said decision.

31. It will also be appropriate to take note of the judgment delivered in *Kamla Devi Aggarwal's* case (supra), the relevant portion reads as under:

9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending. After referring to judgments in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and *Rajesh Bajaj Vs. State NCT of Delhi and Others*, this Court in *Trisuns Chemical Industry Vs. Rajesh Agarwal and others*, held:

7. Time and again this Court has been pointing out that quashing of FIR or a complaint in exercise of the inherent powers of the High Court should be limited

to very extreme exceptions (vide *State of Haryana v. Bhajan Lal* (supra) and *Rajesh Bajaj v. State NCT of Delhi*(supra)).

8. In the last referred case this Court also pointed out that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. We quote the following observations:

10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

32. In view of the aforesaid, the position in law is that in the event of their being two proceedings, i.e, one Civil and one Criminal, the basic issue would be as to what are the facts and what is the purpose of initiating civil proceedings. In the present case, it is apparent that the complaint was made and registered on 27.10.2003 and after completing the investigation charge sheet has been filed on 01.01.2004. The prosecution has also examined more than 10 witnesses. All the allegations made by the Petitioner are disputed questions of fact and merely because an averment has been made in the suit does not ipso facto prove that the averments were correct. More so what the Petitioner is trying to achieve through the two civil suits is that 18 STDRs of which he wanted possession were fake STDRs. Even if it is taken that 18 STDRs of which the Petitioner wanted possession, it would not take away the allegations of the complainant that these STDRs were in fact forged by the Petitioner himself and therefore the question as to whether any forgery was committed or not would be a question which will have to be tried only by way of criminal proceedings. As far as the rendition of account is concerned, it cannot have any bearing in the criminal proceedings. In fact the conduct of the petitioner goes to show that attempt on the part of the Petitioner is to delay the proceedings inasmuch as he filed the present petition after 10 witnesses were already recorded. His attempt to thwart the proceedings by approaching the Supreme Court and seeking a review of the earlier directions to expedite the proceedings could not succeed.

33. As discussed above, mere pendency of a suit which though initiated before the lodging of the FIR cannot be a ground for quashing the criminal proceedings. It is quite possible for any unscrupulous litigant who apprehends criminal action to file Civil Suits with a view to frustrate the course of justice. Civil Proceedings are distinguished from criminal action inasmuch as the onus of proving the allegations beyond reasonable doubt is not applicable to civil proceedings. Admittedly the suits have been decreed ex parte though the same have been filed prior to the registration of the FIR but the same have certainly been filed after vigilance inquiry was initiated against the Petitioner because the fraud played by the petitioner was effected on 1.2.2002 itself. After a letter was received by the complainant from the SBI, Nungambakkam Branch of Chennai and had sent a letter dated 21.2.2002 to them and it is thereafter, it transpired

that the petitioner had defrauded the complainant and forged the signatures of his son, Mukesh Kumar. Even if it is presumed for the sake of reference that civil suits might have some bearing on some of the factual controversy the question of forgery is an issue which could not be decided without taking appropriate evidence which has been collected by the CBI. Reliance has been placed by the CBI even on the report of vigilance inquiry conducted by Branch Manager of Nungambakkam Branch, Sh. Muralidharan.

34. I have also discussed the law about the scope of interference while exercising powers vested in this Court as provided for u/s 397 read with Section 401 Cr.P.C. in paragraphs 14 and 15 of the judgment. In the light of those principles and taking into consideration the observations made by the trial Judge who has discussed the facts which have come on record in the form of the report filed by the prosecution u/s 173 Cr.P.C. after investigating the complaint which is the basis of the FIR, I do not find any reason to interfere with the impugned order.

35. In so far as the exercise of power u/s 482 at the stage of framing of charge is concerned, I may observe that at the time of framing of charge what is required is that trial court on a careful consideration of the allegations contained in the complaint should be satisfied that prima facie ingredients of the offence alleged in the complaint are made out. It is only when High Court notices that there has been a failure of justice and misuse of judicial mechanism or procedure or if sentence, order is not correct, interferes with the proceedings going on which is not the case in hand when such a great loss has been allegedly caused to the complainant in this case. This matter needs trial. It may also be observed that the complainant who was ex-parte has also taken proceedings for setting aside of the decrees of the Civil Court but it may take its own time. However in view of the controversy raised there would be no harm if both the proceedings are allowed to go on in the peculiar facts and circumstances of this case.

36. It would also be appropriate to take note of the recent judgments of Supreme Court regarding this issue in *The State of Andhra Pradesh v. Aravapally Venkanna and Anr.* in Criminal Appeal No. 1190 of 2003 and also in *The State of Andhra Pradesh v. Vangaveeti Nagaiah*; Criminal Appeal No. 732 of 2009 both decided on 15.04.2009 wherein it is held:

8. As noted above, the powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of

quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. 9. Keeping in view the principles of law as enunciated above, the action of the High Court in quashing the FIR cannot be maintained so far as Criminal Appeal arising out of SLP(Crl.) No. 677 OF 2004 is concerned.

10. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in R.P. Kapoor's case (supra).

11. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

37. In view of the aforesaid even if there was some lacuna in the jurisdiction of CBI to investigate the present matter, once the investigation has been

completed, challan has been filed, and cognizance was taken by a CMM, the issue of irregularity cannot vitiate the framing of charge. It is a matter of record that original suit bearing No. 229/2003 has been admittedly withdrawn by the Petitioner after he tried to enter into a compromise and gave a draft as stated above which has been found to be forged.

38. Applying the aforesaid parameters to the controversy involved in the present case which includes forging of documents, cheating the Complainant and misappropriation of the amount by opening a joint account by the Petitioner without any instruction of Mukesh Kumar and by forging his signatures are the matters where the judgment of the civil court given in this case, that also ex-parte, becomes relevant. Relevancy of aforesaid provisions of the Evidence Act has already been discussed in the judgment of Syed Askari (Supra). It may be observed here that in the present case, the Complainant has made applications for setting aside the ex-parte orders, but records are not traceable. In that view of the matter also, no interference is called for.

39. For the abovesaid reasons, I answer all the three questions framed in para 24 of the Judgment against the petitioner as for the reasons stated above there is no valid reason to interfere in the lower court proceeding so that they reach to the logical conclusion. Without expressing any opinion on the factual matrix lest it may prejudice the case of the Petitioner or prosecution, I do not find any merit in the instant criminal revision petition and the same is dismissed. The trial court record along with a copy of this judgment be sent back immediately. Parties to appear before the trial court on 25.5.2009, who would proceed with the case expeditiously. Interim order, if any, stands vacated.