

(2006) 01 GUJ CK 0042
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 5389 of 2005

Dr. Anil K. Khandelwal and Others

APPELLANT

Vs

Shri Maksud Saiyed and Another

RESPONDENT

Date of Decision : 09-01-2006

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 3(2B)
Companies Act, 1956 — Section 5, 63, 68
Constitution of India, 1950 — Article 226, 227
Contract Act, 1872 — Section 17
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195, 197, 199, 340
Penal Code, 1860 (IPC) — Section 107, 120A, 120B, 175, 177
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4)

Citation : (2006) CriLJ 3180 : (2006) 3 GLR 2043

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : K.B. Anandjiwala, s 1-5, for the Appellant; M.M. Tirmizi, for Respondent 1 and Public Prosecutor for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—Criminal Misc. Application No. 5389 of 2005 is filed by Dr. Anil K. Khandelwal and 14 others u/s 482 of the Criminal Procedure Code, praying for quashing and setting aside the Criminal Complaint Inquiry No. 14 of 2005 lodged by the complainant, namely, Shri Maksud Saiyed, Director of Nagami Nicotine Pvt. Ltd., in the Court of Chief Judicial Magistrate, Vadodara, for the offences punishable under Sections 107, 120-B, 177, 181, 191, 192, 200, 209, 405, 409, 415, 420, 425, 463, 464, 468, 470, 471, 499 and 500 of the Indian Penal Code, and which has been registered as M Case No. 7/2005 at Sayajiganj Police Station pursuant to the order passed by the Chief Judicial Magistrate, Vadodara, dated 28.2.2005 forwarding the Criminal Complaint for investigation u/s 156(3) of the Criminal Procedure Code.

2. The case of the complainant / present respondent is that Dena Bank floated a public issue of 8 crores equity shares of Rs. 10/- each for cash at a premium of Rs. 17/- at a price of Rs. 27/- each aggregating to Rs. 216/- crores. The issue of equity share was being made pursuant to the sanction of Government of India and in consultation of the Reserve Bank of India (RBI) vide its letter F No. 001/26/2003-BOA dated October 19, 2004 u/s 3(2B)(c) of the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970, as amended and the resolution passed at the meeting of Board of Directors of the Bank on October 23, 2003 and the shareholders of the Bank at the EGM held on November 25, 2003. It is alleged by the complainant that in the prospectus published for the purpose of Public Issue, some false and misleading information were given with regard to sanctioned limits, the dues and Export Bills of the Company, namely, Nagami Nicotines Pvt. Ltd., of which the complainant is the Director, and thus the accused persons have committed offences. It is further alleged that the accused persons conspired with each other to commit the offences and, therefore, they have committed offence punishable u/s 120-B of the Indian Penal Code. It is also the case of the complainant that accused No. 1 has committed an offence punishable u/s 425 of the Indian Penal Code. It is also alleged that the accused persons furnished false information, statements and evidence and thereby they have committed the offence under Sections 191, 192, 177 and 181 of I.P.C. It is also alleged that by making such false statements in the prospectus as regards the complainant's company, its dues and the litigations pending, the complainant has been defamed and therefore, the accused persons have committed offence of defamation as defined u/s 499 of I.P.C., and punishable u/s 500 of I.P.C. It is also the case of the complainant that the Bank maliciously filed a claim before the Debt Recovery Tribunal, Ahmedabad, without any justifiable cause by fabricating false evidence. It is also the case of the complainant that he has filed a Civil Suit against the Bank in Baroda for recovery of Rs. 993.47 lacs towards damages for non submission of Export Bills and non releasing of the sanctioned limits. It is also the case of the complainant that in the prospectus false information has been furnished that the suit is pending before DRT, Ahmedabad whereas the suit has been filed in the Court of Civil Judge (S.D.) Vadodara. It is also the case of the complainant that the accused No. 12 had made certain false affirmation and verification and has also fabricated evidence for the same and in the same manner accused No. 14 has without any authority signed and affirmed some statements. The gravamen of the allegation of the complainant is that the Bank has filed a false claim against the company by virtue of which the business of the complainant got seriously affected and his reputation in the society has got tarnished and thereby he has been defamed by the Bank.

3. The learned Chief Judicial Magistrate vide order dated 28.1.2005 sent the complaint for investigation by police u/s 156(3) of the Criminal Procedure code and the same came to be registered as M Case No. 7 of 2005 at Sayajiganj Police Station, Vadodara. Since the present petitioners / original accused are of the

view that the complainant has failed to disclose commission of any offence and as the very act of the complainant in lodging such a false, frivolous and vexatious complaint is a gross abuse of process of law, the present petitioners / original accused persons have preferred this petition invoking the inherent powers of this Court u/s 482 of the Criminal Procedure Code for quashing and setting aside the complaint.

4. The Court has issued notice on 12.5.2005 and granted ad interim relief, staying the operation and execution of the impugned order dated 28.2.2005 with respect to M Case No. 7 of 2005 in terms of Para-6(B). The petition was admitted and rule was granted and the ad interim relief granted earlier was continued as interim relief.

5. The respondent / original complainant have filed Criminal Misc. Application No. 9521 of 2005, praying for vacating the interim relief granted in Misc. Criminal Application No. 5389 of 2005 or in the alternative, it was prayed for the expeditious hearing of Misc. Criminal Application No. 5389 of 2005 in the interest of justice. The hearing of this application is also kept with the hearing of Misc. Criminal Application No. 5389 of 2005.

6. Mr. K.B. Anandjiwala, learned advocate appearing for the petitioners has submitted that the petitioner No. 1 is the former Chairman and Managing Director of Dena Bank, whereas the petitioner No. 2 is the whole time Executive Director of the said Bank. So far as petitioner Nos. 3 to 10 are concerned, they are the Directors on the Board of the Bank representing various authorities, namely, Government of India, Reserve Bank of India etc., and are not at all concerned with the day today management and conduct of business of the Bank. The petitioner Nos. 11 to 14 are employees of the Bank posted at various Branch offices of the Bank and petitioner No. 15 was also an employee of the Bank who has now retired. He has further submitted that all these persons have been arraigned as accused in the complaint with the sole object and oblique motive of harassing the accused persons and the learned Chief Judicial Magistrate, Vadodara, without any application of mind and even without considering the nature of allegations and the tenor of the complaint, has blindly directed the police to investigate into the same under the provisions of Section 156(3) of the Criminal Procedure Code.

7. So far as alleged offence u/s 177 of I.P.C., is concerned, Mr. Anandjiwala submitted that offence Section 177 of I.P.C., is an offence relating to furnishing false information. Whoever, being legally bound to furnish information on any subject to any public servant, as such furnishes, as true, the information on the subject which he knows or has reason to believe to be false or, if the information which he is legally bound to give respects the commission of an offence is said to have committed offence u/s 177 of I.P.C. Mr. Anandjiwala has submitted that this section contains two branches. The first branch, whoever being legally bound... or with both- deals with simple case of person who being legally bound to furnish true information to the public servant furnishes false information to him. So far

as this case is concerned the accused are only concerned with the first branch. Now, if it is a case of the complainant that the offence u/s 177 has been committed, then, who can file a complaint for the same. It is mandatory in view of the provision of Section 195 of the Criminal Procedure Code that a complaint for the offence u/s 177 of I.P.C., has to be a complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate. How can the police u/s 156(3) of Criminal Procedure Code, investigate into the allegations of offence u/s 177 of I.P.C., when there is no complaint regarding the same by the public servant concerned or of some other public servant.

8. So far as alleged offence under Sections 499 and 500 of I.P.C., is concerned, Mr. Anandjiwala has submitted that it is the case of the complainant that the accused persons by making false declaration in the prospectus of the public issue which was floated and by filing proceedings of recovery of dues before the DRT has tarnished the image of the complainant's company and the complainant himself as the Director of the company and thereby the accused persons have committed the offence of defamation. He has submitted that the important question is whether the police has got powers to investigate into the allegations which may constitute an offence of defamation as defined under Sections 499 and punishable u/s 500 of I.P.C. He has further submitted that no Court shall take cognizance of the offence of defamation except upon a complaint made by the person aggrieved. There is no dispute as regards this proposition of law. The important question is, can a private complaint for defamation punishable u/s 500 of I.P.C., be ordered to be investigated by the police u/s 156(3) of Criminal Procedure Code. He has further submitted that Section 199 of the Criminal Procedure Code makes it very clear that no Court shall take cognizance of an offence punishable under Chapter-XXI of the I.P.C., except upon a complaint made by some person aggrieved by the offence. He has, therefore, submitted that the question would be whether the Court can take cognizance of the offence of defamation on the charge sheet which the police may file at the end of investigation. He has submitted that the answer is obviously No. Therefore, even on this count the investigation is absolutely bad in law and not maintainable.

9. So far as alleged offence under Sections 463, 464, 468, 470 and 471 of I.P.C., are concerned, Mr. Anandjiwala has submitted that it is the case of the complainant that the Bank by furnishing false information in the prospectus has committed offences of forgery punishable under Sections 463, 464, 468, 470 and 471 of I.P.C. He has further submitted that misconception on the part of the complainant is that if any statement in a particular document is found to be false or incorrect then the same would render the document as a false document and it would constitute an offence of forgery. The elements of forgery by making a false documents are :-

(i) That a person dishonestly or fraudulently makes, signs, seals, or executes the document or part of a document, or make any mark denoting the execution of a document; and

(ii) Does as above with the intention of causing it to be believed that such document or part of the document was made, signed, sealed or executed;

(a) by or by the authority of a person by whom or by whose authority it was not so made, signed, sealed or executed, or

(b) at a time at which he knows that it was not made, signed, sealed or executed.

10. He has, therefore, submitted that the assertion of a false claim in a document does not constitute the document a false one, when it is executed by the party who purports to execute it and there is no intention of causing a belief that it was executed by some other person, real or fictitious. He has submitted that assuming for the moment without admitting that some information in the prospectus or some details which have been incorporated in the prospectus were not correct, the same would not constitute forgery on the wrong assumption that the contents are false and, therefore, the document is false. He has, therefore, submitted that the other offences which have been alleged are all relating to Chapter-XI of I.P.C., which deals with false evidence and offences against public justice. He has submitted that the Bank floated a public issue and it is absolutely false on the part of the complainant to say that the Bank made false, misleading statement in the prospectus. It is also not correct to say that the Bank concealed the true facts. There may be some mistakes in the prospectus but they can never be termed as malafide or deliberate and most of the bonafide mistakes had nothing to do with the complainant. These mistakes were rectified at the earliest. The concerned authorities like Securities & Exchange Board of India (SEBI), through Lead Manager to the issue, were informed in time and only after clearance from SEBI the Public Issue was concluded as per prescribed time schedule. He has further submitted that all statements and averments made in the claim petition before DRT, are true. There are no false statements made deliberately in the Claim Petition. If the complainant feels that the statements and averments made in the Claim Petition before the DRT are false then the remedy for him is to ask the DRT to take appropriate action under the provisions of Section 340 read with Section 195 of the Criminal Procedure Code as the proceedings before the DRT can be termed to be Court proceedings and the offence, if any, as alleged by the complainant is committed by the accused persons then it can be said to have been committed in or in relation to the proceedings in the Court.

11. Mr. Anandjiwala, further submitted that the Bank through its Fatehganj Branch, Vadodara had advanced some financial facilities to the complainant. Subsequently for administrative and monitoring purposes the loan accounts of the complainant and other borrowers against whom Claims were filed in DRT, Ahmedabad, were transferred to Asset Recovery Branch (ARB), Ahmedabad, as per the policy of the Bank. Since the loan account of the complainant was transferred to ARB, Ahmedabad, outstanding balances in the loan accounts of the complainant at Fatehganj Branch of the Bank were shown as NIL. Hence, the liability of the complainant to the Bank remained the same due to transfer of

their loan account from Fatehganj Branch, Vadodara to ARB, Ahmedabad. This does not mean that nothing was due by the complainant to the Bank.

12. Mr. Anandjiwala further submitted that the documents listed in Para-3A are all genuine documents executed by the concerned parties including the complainant during the course of the process of advancing financial facility to the complainant's company. They are duly signed and executed by the concerned parties. It is not correct to say that the documents are false and forged. They were executed by the concerned parties after properly understanding the contents and implications thereof. They were executed during period of 1998-2000. For all these years, no objection was raised by the complainant about the genuineness or legality of the documents. He has further submitted that the complainant has filed his reply to the claim of the Bank in the DRT Ahmedabad. In the said reply no dispute as to the genuineness or legality of the said documents has been raised or challenged. Mr. Anandjiwala further submitted that so far as petitioner Nos. 12 and 14 are concerned, they have not made any false statement, affirmation or declaration. So far as the petitioner Nos. 11 and 13 are concerned, they were not even posted in Gujarat when the alleged transactions were entered into by the Bank with the complainant.

13. Mr. Anandjiwala further submitted that Bank has not made any false statement in respect of Uniform Customs and Practice for Documentary Credit Rules (UCPDC). The statements made in this behalf were on account of inadvertence and they were not intentional. Even SEBI has accepted this fact and permitted the Bank to complete the Public Issue smoothly. He has submitted that the complainant failed to pay up the dues of the Bank for a very very long time inspite of demands by the Bank. The failure of the complainant to pay the dues of the Bank for such a long time clearly showed its intention of not fulfilling its promise. The allegations of the complainant that the Bank had credited illegal demand loan credit facility bearing A/c No. BL-36183 is absolutely false and baseless. He has submitted that it was at the instance of the complainant who had operated the accounts at Fatehganj Branch. The complainant was responsible for the Export Bills under Letter of Credit which was returned unpaid and the said amount of Export Bills under letter of credit remained due and payable by the complainant to the Bank as per demand loan account.

14. Mr. Anandjiwala further submitted that the complainant is defaulter and therefore, appropriate actions under the provisions of Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 have been taken against the complainant. The Bank was forced to do so as huge amounts are due and recoverable from the complainant. It is further submitted that it is the public money which is involved so far as the Bank is concerned. It is not correct to say that there was any oblique motive or any other intention on the part of the accused to cause any undue harassment to the complainant. The actions which have been taken by the Bank against the complainant are bonafide and within the parameters of law. He has, therefore, submitted that the

declarations made in the prospectus were bonafide and substantially true. In fact, the declarations were put on website of the Bank. Necessary corrections were also declared through Press and Electronic media. The Bank never intended either to mislead the public at large or even to cause any harm to any customers including the complainant.

15. Mr. Anandjiwala has further submitted that civil litigations between the Bank and the complainant are already pending before the different forums and only with a view to create some pressure on the Bank by the complainant, as a measure of last resort has now tried to harass the accused persons by filing such a false criminal complaint which is being investigated by the police u/s 156(3) of Criminal Procedure Code. He has further submitted that if the police is permitted to continue with the investigation then the same would be nothing but travesty of justice and the accused persons who are all high ranking officers of the Bank and who are public servants will be unnecessarily harassed. He has further submitted that even sanction is necessary u/s 197 of the Criminal Procedure Code before prosecuting the accused persons who are public servants.

16. Mr. Anandjiwala has further submitted that the complainant through his advocate got issued a notice to the Bank dated 25.1.2005 asking the Bank to take immediate and urgent action in the interest of the Bank for successful implementation of the public issue as well as in the interest of the public. In the said notice it has been stated that at page No. 87 of the prospectus at Sr.No.4 in Table for outstanding litigation where claims amount exceeds Rs. 1 crore and above, according to the complainant the same is false. In the notice it is also stated that the litigation which is being shown in the prospectus before the DRT is not correct but the complainant has filed Special Civil Suit No. 178 of 2003 on 28.3.2003 and the same is pending for adjudication in the Civil Court, Vadodara before the Civil Judge (S.D.) Vadodara. The Bank immediately gave reply dated 5.2.2005 through its advocate to the said notice of complainant dated 25.1.2005 clarifying and explaining the entire position. The Bank has also addressed a detailed letter dated 8.2.2005 to M/s. SBI Capital Markets Ltd., informing that the Bank has not concealed or suppressed any material fact against the interest of the public at large and investors in particular. It was clarified that the bonafide mis-description of mentioning the DRT, Ahmedabad instead of City Civil, Vadodara and the mis-description in setting out the nature of claim was unintentional. As other material particulars like the amount of claim, date of filing and name of the company were correctly mentioned, the mis-description did not materially influence or affect the decision of the investors public. He has, therefore, submitted that this Court may exercise its inherent powers u/s 482 of the Criminal Procedure Code and quash the entire complaint which is nothing but gross abuse of process of law.

17. Mr. M.M. Tirmizi, learned advocate is appearing on behalf of the respondent ?" original complainant. An affidavit in reply is filed by respondent No. 2. Written arguments under affidavit were filed by the respondent No. 2 and

the same are taken on record. At the out set, Mr. Tirmizi has submitted that the petitioners have intentionally omitted to produce documents annexed as Annexure 3 to 11 with the original complaint, third page of notice dated 25.1.2005 annexed as Annexure-B to the petition and second page of reply of the Bank dated 5.2.2005 to the notice of the complainant annexed as Annexure ?" C to the petition to mislead and misguide this Court by misrepresentation and to suppress their prima facie criminal offences for obtaining stay of operation and execution of the impugned order dated 28.2.2005 of the learned Chief Judicial Magistrate, Vadodara and committed offence u/s 175 of the I.P.C. He has further submitted that Bank dishonestly misused false, fabricated and fraudulent documents as submitted in para-3A of the original complaint to file so called original application before the DRT, Ahmedabad on 1.5.2001 under the bogus pretext of the recovery of its so called dues with malicious ulterior motive to cover up its criminal offences, to stall the complaint and claim of the Company before various forums and authorities and to avoid its responsibility and liability as a holder for a value for the amount of illegally withheld export bills to the Company being conspiracy u/s 120A of the I.P.C. Mr. Tirmizi has further submitted that the modus operandi of the Bank to misuse the power by giving so called demand notice of one day to the Company being so called borrower is to abuse the RDB Act, 1993 for filing the said so called original application in violation of the natural justice for making false claim u/s 209 by giving false and fabricated statements, information and evidences under Sections 177, 181, 191, 192, 196, 199, 200, 470 and 471 of I.P.C., and the said so called original application is pending for the adjudication for its dismissal as the jurisdiction of the DRT, Ahmedabad is debarred in absence of debt and cause of action and also the so called original application being illegal, mala fide and fraudulent.

18. Mr. Tirmizi has further submitted that the Bank has illegally withheld the export bills of the company. Non-submission or non-return of the export bills is a criminal breach of trust of the Bank. Over and above this non releasing of the sanctioned limits under the bogus pretext of negotiated export bills said to be remaining unpaid and not liquidated by the Company is a mischief and cheating of the Bank and the accused persons, it also amounts to fraud of the Bank u/s 17 of the Indian Contract Act, 1872. He has, therefore, submitted that the criminal complaint has been lodged by the complainant and the investigation is necessitated in the interest of the justice. Mr. Tirmizi has further submitted that the complainant and his company have never denied to clear dues / overdues legally recoverable, if any, to the Bank. The Bank has maliciously, illegally and fraudulently taken shelter of the proceedings before the DRT, Ahmedabad without cause of action in the absence of debt. He has further submitted that the Bank had agreed to withdraw the suit filed against the Company on receipt of undertaking. The Bank fraudulently misused the powers and cheated the Complainant and his Company by tampering the documents forcibly taken under the pretext to forward the Company's application for the permission of Barter

Trade from the RBI, Ahmedabad. He has further submitted that non release of the export bills as per procedure of UCPDC rules is a mischief, cheating and criminal breach of trust by the Bank. Mr. Tirmizi has further submitted that as a counter blast and enraged by the proceedings instituted by the Company against the Bank for the recovery of Rs. 9.49 crores, the Bank has issued so called notices dated 21.8.2003 u/s 13(2) of the Securitisation Act, 2002 to the Complainant and his Company and also issued so called letter dated 24.10.2003 to take so called appropriate action u/s 13(4) of the Securitisation Act, 2002 for enforcement of securities to recover its so called dues.

19. Mr. Tirmizi has further submitted that the Managing Director, the Directors, the Managers, the Secretaries, etc., shall be liable to any punishment or penalty for the default as per Section 5 of the Companies Act, 1956. He has further submitted that the Directors are trustees for the government and their position as agents of the corporation is the same as in a limited Company. He has further submitted that the accused No. 11 is the General Manager of the Bank and the General Manager being an Officer of a Bank is liable in the same way as its directors under the Companies Act, 1956. A Bank could seldom be held liable for larcenous acts of its employees but it might be held liable for fraudulent conversion. Mr. Tirmizi has further submitted that the petitioner Nos. 1 to 10 have deliberately, purposefully and intentionally published mis-statements in the prospectus as filing of the prospectus with the SEBI does not, however, absolve the Bank from any liabilities u/s 63 or 68 of the Companies Act, 1956. He has further submitted that surprisingly SBI Capital Markets Limited, the lead manager and M/s. Wadia Ghandy & Co., the advocates and solicitors, aided and abetted the said irregularities and lapses in the prospectus by misrepresentation.

20. Mr. Tirmizi has further submitted that it is false to state that the other offences which have been alleged are relating to Chapter-XI of I.P.C., which deals with false evidence and offences against the public justice. He has further submitted that the accused persons have again deliberately played this malicious and purposeful gimmick to misguide and mislead this Court by misrepresentation, because offences under Sections 107, 181, 405, 409, 415, 420 and 425 submitted in the original complaint are related to Chapter-V, X and XVII deals with abetment, contempt of the lawful authority of public servants and offences against property. He has further submitted that the Company has also lodged its complaint to SEBI with regard to the prospectus, but so far as no reply has been received from the SEBI. He has further submitted that the jurisdiction of the DRT, Ahmedabad is debarred in the absence of debt and cause of action and also for the so called original application being illegal, malafide and fraudulent. He has, therefore, submitted that it is not desirable to advise the complainant to ask the DRT, Ahmedabad to take appropriate action under the provisions of Section 340 read with Section 195 of the Criminal Procedure Code. He has further submitted that the criminal offences such as export bills illegally withheld by the Bank being criminal breach of trust, cheating with regard to Barter Trade permission, abuse of the Securitisation Act, 2002 under pretext of

CC Hypo limit of Rs. 75 lacs which was sanctioned in July, 2000 by the Bank, but it was not released and non existing so called demand loan limit of Rs. 46.29 lacs being willful mischief of the Bank comprise of cheating and criminal breach of trust etc., are not at all subject matter of the DRT, Ahmedabad. He has further submitted that with regard to these issues, provisions of Section 340 read with Section 195 of the Criminal Procedure Code are not at all applicable. He has, therefore, submitted that the investigation is necessitated in the interest of the justice.

21. Mr. Tirmizi has lastly submitted that the original complaint discloses a commission of a cognizable offence against the petitioner with documentary evidences of the Bank itself and investigation to reveal and to find out the real facts cannot be considered as the abuse of the process of the Court. He has, therefore, submitted that the offences are made out from bare perusal of the original complaint and therefore as per well settled legal position the petition is required to be dismissed in limine.

22. In support of his submission Mr. Tirmizi has relied on the decision of the Hon''ble Supreme Court in the case of Lalmuni Devi v. State Bank of Bihar and Ors. reported in AIR 2001 SCW 2504 , wherein the Court held that in exercise of inherent jurisdiction u/s 482 Cr.P.C., if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable, it does not mean that the criminal complaint cannot be maintained. The Court further held that it cannot be stated, at the prima facie stage, that it is a frivolous complaint. If that be so, then merely on the ground that it was a civil wrong, the criminal prosecution could not have been quashed.

23. Mr. Tirmizi has further relied on the decision of Hon''ble Supreme Court in the case of Mushtaq Ahmad Vs. Mohd. Habibur Rehman Faizi and others, , wherein after quoting a passage from the decision in State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Court held that inspite of the fact that the complaint and the documents annexed thereto clearly made out a prima facie case for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed u/s 482 Cr.P.C., vis-a-vis that of the appellant and entered into the debatable area of deciding which of the version was true, a course wholly impermissible in view of the above quoted observations in Bhajan Lal's case.

24. Mr. Tirmizi has further relied on the decision of the Hon''ble Supreme Court in the case of State of U.P. Vs. O.P. Sharma, wherein after discussing the entire case law on the subject the Hon''ble Supreme Court has held that the High Court has committed grave error of law in quashing the FIR. The High Court should be loathe to interfere at the threshold to thwart the prosecution exercising its inherent power u/s 482, Cr.P.C. Or under Articles 226 and 227 of the Constitution, as the case may be, and allow the law to take its own course.

25. After hearing heard the learned advocates Mr. K.B. Anandjiwala and Mr. M.M. Tirmizi, appearing for their respective parties and after having gone through the complaint, memo of the application as well as the documents produced before the Court and after having considered carefully the relevant statutory provisions and the authorities cited before the Court, the Court is of the view that the immediate cause of filing the criminal complaint against the petitioners was the disclosure made by the Bank on page No. 87 of the prospectus dated 10.1.2005 issued for its Public Issue of 8 crores equity shares opened on 21.1.2005 and closed on 29.1.2005. It was the case of the complainant, as per the notice issued by the complainant's advocate on 25.1.2005 that the Bank has made absolutely false and misleading statement in Part-XVI, dealing with outstanding litigation, defaulters and material developments at page No. 87 of the prospectus, at Sr.No.4 in Table for outstanding litigation where claims amount exceed Rs. 1 crore and above. The litigation mentioned by the Bank did not exist at DRT, Ahmedabad. On the contrary the complainant has filed Special Civil Suit No. 178 of 2003 on 28.3.2003 and the same is pending for adjudication in the Civil Court, Vadodara before the learned Civil Judge (S.D.) Vadodara. It was further stated that the complainant did not know ARB, Ahmedabad, and also was not aware of its place of existence and its whereabouts in Ahmedabad, and as per the complainant ARB has nothing to do with this suit. It was further pointed out in the said legal notice that the complainant has not filed the suit for non-submission of export bills and non releasing of the sanctioned limits. It has been filed for the recovery of Rs. 993.74 lacs being the damages / losses caused due to negligence and deliberately not returning the export bills. The only intention of not disclosing these facts in the prospectus was to deceive general public at large and to defame the complainant. The Bank has immediately given the reply to the said notice on 5.2.2005. It was stated therein that the Bank has correctly mentioned the name of the complainant and the amount claimed by the complainant. As regard the Branch, the complainant was aware about the fact that the complainant's account has been transferred to ARB, Ahmedabad and it was only for this reason the Branch was shown as Asset Recovery Branch, Ahmedabad in the prospectus. The complainant was also aware that they have filed a Special Civil Suit No. 178/2003 in the Court of Civil Judge (S.D.) at Vadodara, for recovery of Rs. 993.75 lacs from the Bank. The fact of the said suit was mentioned in the prospectus, but on account of bonafide mistake / error, it was mentioned as DRT instead of Civil Court, Vadodara. It was clarified in the said reply that the account was pertaining to Fatehganj Branch, Vadodara, and for the administrative purpose and monitoring the affairs of the said account, the said account was transferred to Asset Recovery Branch, Ahmedabad, of which the complainant was aware. With regard to export bills it was stated that the export bills amount was not released as it is the accounting procedure that whenever the export bills are submitted by the complainant to the Bank for negotiation, the Bank sends the said export bills to the concerned foreign Bank for realisation of the dues under export. The complainant has submitted export bills to the Bank for negotiation. The Bank has sent the export bills to the Bank

for realisation of the dues under export. The complainant has issued foreign bills to the Bank of Fujirah and the same were returned unpaid. The said documents were again sent to HSBC Bank, on collection basis, at the specific request of complainant vide their letter dated 28.3.2000. The documents were however again return unpaid. As per the banking system, the Bank has given credit at the time when the foreign bills were negotiated by the Bank and when the same were not honoured / realized, the Bank has to square up the outstanding liability by raising the demand loan in the name of the complainant. This would clear the transaction between complainant and the Bank and the said amount is already included in the DRT Case No. 210 of 2001. It was, therefore, stated that there was no suppression or concealment of any facts and it did not amount to criminal breach of trust and cheating on the part of the Bank as alleged by the complainant. The said export bills under L/C were negotiated by the Bank under the provisions of UCPDC 500 1995 Revision. The Bank has also informed vide its letter dated 8.2.2005 to M/s. SBI Capital Markets Ltd. It was stated therein that the Bank has not concealed or suppressed any material fact against the interest of the public at large and investors in particular. The bonafide mis-description in setting out the nature of claim was unintentional. It was further stated that the material particulars like the amount of claim, date of filing and name of the company was correctly mentioned. The mis-description did not materially influence / affect the decision of the investors / public. The Bank has also obtained legal opinion of their legal adviser, namely, M/s. Wadia Gandhi & Company dated 10.2.2005. It is stated therein that the important material aspects i.e., the amount, the name of the party and the date of filing have been correctly disclosed and the same have not been disputed by the complainant. Mere mis-description in the name of the court, the branch and nature of claim in their opinion were not of such material / significant nature as would affect the decision of the investors. The said mis-descriptions made in the prospectus were inadvertent and not with an intention to mislead the public at large or the investors in particular. It appears to the Court from these documents and pleadings that there was neither any concealment nor any suppression. There was no slightest intention on the part of the Bank to disrepute the complainant. A genuine and bonafide mistake / error was committed in mentioning the name of the branch and also in mentioning the nature of claim. This would not lead to the conclusion that the complainant's reputation has been affected or the complainant was defamed. No prudent person would ever come to this conclusion.

26. So far as other allegations or the offences alleged to have been committed by the petitioner are concerned, the Court is of the view that the same are pertaining to the proceedings pending before the DRT, Ahmedabad, and Civil Judge (S.D.) Vadodara. The Bank through its Fatehganj Branch has filed Original Application No. 210/2001 and the same is still pending for adjudication. The matter is, therefore subjudiced. Similarly, the complainant has filed Special Civil Suit No. 178/2003 for damages etc., in the Court of Civil Judge (S.D.), Vadodara

and the same is also pending for adjudication and it is, therefore, subjudiced. The competent Courts have yet to take decision on the issues pending before them. Unless and until the competent courts take the decision in those pending matters it is difficult to arrive at the conclusion that the petitioners have committed the offences alleged. It is settled position in law that if the Civil Court comes to the conclusion that absolutely false proceedings are filed, heavy compensatory costs may be awarded to the parties against whom such proceedings are filed. In that case, it is open for such parties to file criminal proceedings for malicious abuse of legal process. This stage has still not come and yet all these allegations are made against the present petitioners. Even otherwise, these proceedings were pending before the respective courts from 2001 and 2003. The complainant has not thought it fit to approach the Criminal Court for redressing his grievance. It is only when the prospectus was published and some mis-description was found in the said prospectus, a complaint was filed incorporating all these charges against the petitioners. The Court is, therefore, of the view that there does not appear to be any bonafide intention to file the criminal complaint against the petitioners.

27. It appears to the Court that the learned Chief Judicial Magistrate has not applied his mind while passing the order u/s 156(3) of the Criminal Procedure Code directing the police to investigate in the matter. The impugned order, on the face of it, reveals that he has not gone through the complaint. He has stated in the order that the accused Nos. 1 to 10 are Manager and Branch Manager of Dena Bank. As a matter of fact, the accused No. 1 was the Ex-Chairman and Managing Director of Dena Bank, and the accused No. 2 was the Executive Director. The accused Nos. 3 to 10 are Directors of Dena Bank. None of these persons are Managers or Branch Manager. Despite this, the learned Chief Judicial Magistrate has mentioned in his order that they are Managers or Branch Manager. With regard to the prospectus he has simply stated that the Bank has issued prospectus for its public issue and at page No. 87 false informations were given so as to cause damage to the Company and to jeopardize the reputation of the Company. Despite the fact that the litigations are pending before the Civil Court he has mentioned about non-returning of export bills etc. On these facts he has passed order u/s 156(3) of the Criminal Procedure Code, directing the PSI, Sayajiganj Police Station to make inquiry in the matter.

28. It is now well settled position in law in view of the decision of the Hon'ble Supreme Court in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, that summoning of accused in a criminal case is a serious matter. The Criminal Law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the Criminal Law set into motion. The Court has further observed that the Magistrate has to examine the nature of the allegations made in the complaint and the evidence, both oral and documentary, in support thereof and would that be sufficient for the complainant in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at

the time of recording the preliminary evidence before summoning the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. These observations are made by the Hon''ble Supreme Court in respect of the summoning of accused in the criminal case, meaning thereby issuance of order u/s 156(3) is even more serious than summoning the accused.

29. The practice of issuance of direction u/s 156(3) to the police authority is time and again deprecated by this Court as well as by the Hon''ble Supreme Court. In the case of *Arvindbhai Ravjibhai Patel v. Dhirubhai Sambhubhai*, reported in 1997 38 GLR 1972, this Court has directed all the Magistrates of the State to be henceforth quite discreet enough in not mechanically directing the police to investigate the case u/s 156(3) of the Code. When the allegations in the complaint are simple enough and further when the Court undoubtedly can straightway proceed to conduct the trial, in such cases the Court before which the complaint is filed, shall never mechanically abandon its sacrosanct duty of recording the evidence and doing justice, passing a buck to the police for doing the needful. This is clear abdication and dereliction of duty.

30. This Court has also considered this issue in the case of *Suresh Kumar Gupta Vs. State of Gujarat*, wherein it is observed that it is not the job of the Postman that the Magistrate has to do on receipt of a complaint that without application of mind straightaway to order investigation u/s 156(3), unless there is a clear case which needs investigation to assist the learned Magistrate to do justice. Before he orders or directs investigation u/s 156(3), he has to notionally decide that investigation through Police agency is needed in this case and the enquiry by himself may not be sufficient.

31. The Court is of the view that without undergoing this process in the present case the learned Chief Judicial Magistrate has straightaway issued the direction u/s 156(3) of the Code to investigate in the matter which is not just and proper looking to the facts of the present case.

32. It is true that powers u/s 482 of the Criminal Procedure Code are to be sparingly exercised by the Court and the Court has to look at the complaint only and the defence of the accused cannot be considered at the stage of considering the quashing petition. These principles are very succinctly laid down by the Hon''ble Supreme Court in the recent decision of *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, wherein the Hon''ble Supreme Court has held that 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. The 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 High Court of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrived 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 a 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 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 that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. If the Court looks at the present complaint in light of the above observations of the Hon'ble Supreme Court, it becomes clear that apparently the complaint was filed because of certain mis-descriptions made in the prospectus. Necessary explanations were tendered and genuine and bonafide mistake was admitted by the Bank. Despite this fact, by clubbing other issues which are pending before the Civil Court and which are of more than three years old the complaint was filed alleging the offences under different sections of I.P.C, against the petitioners. The application filed by the Bank is pending before the DRT and the claim of more than Rs. 1 crore is made by the Bank which will be decided on its own merits. However, simply on that basis the Court cannot proceed that the Bank has filed a false claim or suppressed materials or has concealed particulars or has forged the documents. All these issues can be agitated before the DRT and ultimately if the DRT comes to the conclusion that something wrong has happened or that the documents were forged, necessary orders will be passed. However, merely in anticipation of such orders or merely on assumption, invocation of jurisdiction of Criminal Court is not just and proper. It leads to the Court to believe that the complaint is false, frivolous and vexatious and it is filed with malafide intention or with some ulterior motive.

33. While arriving at this conclusion, the Court derives support from the decision of the Hon'ble Supreme Court in the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, , wherein the Hon'ble

Supreme Court has held that the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where, in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage. Here in the present case the Court found special features and hence thought it just and proper not to permit the prosecution to continue. The Court is also of the view that the forum of Criminal Court is utilised by the complainant for an oblique purpose and to pressurise the Bank for withdrawal of its recovery proceedings pending before the DRT. The other purpose may also be that the Bank may surrender to the demand of the complainant which is raised in the Civil Suit filed before the Court of learned Civil Judge (S.D.), Vadodara. Be that as it may, circumstances do not warrant to prosecute the highest dignitaries of the Bank especially when they have not played any active role in the alleged commission of offences.

34. The Court is also weighed with the submission made on behalf of the petitioners that the complainant can as well approach to the DRT if any offence is committed by the petitioners, by invoking the provisions contained in Section 340 read with Section 195 of the Criminal Procedure Code. The reason for not approaching the DRT as given by the complainant does not appear to be sound nor convincing. It is not open for the complainant to proceed with the complaint on assumption that the application filed by the Bank before the DRT for recovery of its dues is liable to be rejected.

35. Taking overall view of the matter, considering the entire facts and circumstances of the case and while objectively appreciating the submissions raised by the parties, the Court is of the view that this is the fit case where the Court has to exercise its inherent jurisdiction u/s 482 of the Criminal Procedure Code and quash the complaint. Accordingly the complaint is hereby quashed and set aside. The application is allowed. Rule is made absolute without any order as to costs.

36. In view of the order passed in Criminal Misc. Application No. 5389 of 2005, the Criminal Misc. Application No. 9521 of 2005 does not survive and it is accordingly disposed off.