

(2015) 10 CAL CK 0056

In the Calcutta High Court

Case No : CRR No. 2022 of 2015 and CRAN 2248, 2295 of 2015

Raj Shekhar Agrawal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 173, 195(1)(b)(ii), 196(1A)
Information Technology Act, 2000 — Section 2
Penal Code, 1860 (IPC) — Section 120A, 120B, 120-B, 153B, 323

Citation : (2015) 4 CALLT 615 : (2016) CriLJ 993

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Tirthankar Ghosh, S.K. Sewak, S. Prasad and Soumik Chakraborty, for the Appellant; Manjit Singh and Sabir Ahmed, for the Respondent

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—The petitioner has preferred the revision under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing the proceeding of G.R. No. 406 of 2015 arising out of Hare Street (DD) Police Station Case No. 109 dated February 19, 2015 under Sections 120B /420 /467 /468 /469 /471 /511 of the Indian Penal Code pending before the Court of Learned Chief Metropolitan Magistrate, Calcutta.

2. The backdrop of the present revisional application is as follows: The opposite party No. 2/complainant submitted written complaint before the Special Additional Commissioner & Joint Commissioner of Police (Crime), Kolkata on February 18, 2015 praying for registration of a criminal case against the petitioner under Sections 120B /420 /466 /467 /468 /511 of the Indian Penal Code. It appears from the said written complaint that the opposite party No. 2/complainant is the Promoter/Director of Pragati 47 Development Ltd., a company incorporated under the Companies Act, 1956 having its registered office in

Kolkata. Initially, the petitioner, his wife Vandana Agrawal and one R.K. Banerjee were Directors of Pragati 47 Development Ltd. (hereinafter referred to as "the Company"). In the year 2005 the Company formed a joint venture with Housing and Urban Development Corporation and the said joint entity is named as Pragati Social Infrastructure and Development Ltd. (hereinafter referred to as PSIDL). Subsequently, in the year 2007 the said Joint Venture Entity - PSIDL launched a project for Development of Aerotropolis i.e. the airport and adjoining airport city in Durgapur, West Bengal. For the said purpose, Bengal Aerotropolis Project Limited (hereinafter referred to as BAPL) was formed in the year 2008 with the company and other investors being the constituent members. The petitioner was a Director of BAPL and the Company, but he resigned from the Directorship of BAPL and the Company in January, 2010. It further appears from the said written complaint that the airport city is coming up fast in Andal in the vicinity of Durgapur in West Bengal for the strenuous effort of the opposite party No. 2/complainant. The opposite party No. 2/complainant is the Managing Director of BAPL and overlooking the entire development project, which will generate employment in the State of West Bengal. Having resigned from the post of Director of BAPL and the Company, the petitioner along with his wife Vandana Agrawal have unleashed a sustained campaign of not only defaming the opposite party No. 21 complainant, but also has put all possible impediments towards successful completion of the aerotropolis project.

3. The opposite party No. 2/complainant along with his wife started a proceeding before the Company Law Board, Kolkata Bench under Sections 397/398 of the Companies Act, and the said proceeding is registered as Company Petition No. 509 of 2010. The petitioner filed a supplementary affidavit in the said proceeding before the Company Law Board, Kolkata Bench by falsely claiming himself as Director of the Company. The petitioner annexed a fake Board Resolution of the Company to the supplementary affidavit, which purportedly reflected that he had been authorised to represent the Company. The said fake Board Resolution was also attested by the petitioner by putting a forged seal purportedly showing him as the Director of the Company. The petitioner in collusion with his wife, Vandana Agrawal and one Yudhistir Kumar Gauba have falsely claimed themselves to be the Directors of the Company before the print media and other public authorities and have filed false supplementary affidavit and forged Board Resolution of the Company before the Company Law Board. Even the registered office of the Company is shown to have been changed in the forged Board Resolution, which reflects the intention of the petitioner and his associates to commit fraud upon the opposite party No. 2/complainant and the said company.

4. The opposite party No. 2/complainant apprehends that the petitioner, his wife Vandana Agrawal and one Yudhistir Kumar Gauba have usurped, misappropriated and collected fund in the name of the Company and siphoned off the same by opening fake bank accounts. The petitioner and his associates have fabricated minutes of meeting of the Board of Directors of the Company in order to induce and cheat bona fide investors of the Company. The petitioner and his associates

have entered into a criminal conspiracy to cheat and defraud the Company by filing supplementary affidavit claiming themselves to be the Directors of the Company before the Company Law Board, Kolkata Bench. It is the reasonable belief of the opposite party No. 2/complainant that the petitioner and his associates have cheated the investors and thereby caused wrongful loss to the Company and consequent wrongful gain to themselves.

5. The written complaint filed by the opposite party No. 2/complainant on February 18, 2015 was forwarded to the Officer-in-charge, Anti-Fraud Section, Detective Department, Lal Bazar, Kolkata by the Special Additional Commissioner & Joint Commissioner of Police (Crime), Kolkata on February 19, 2015. Ultimately, Hare Street Police Station Case No. 109 dated February 19, 2015 under Sections 120B /420 /467 /468 /469 /471 /511 of the Indian Penal Code was registered on the basis of the said written complaint. The investigation of the criminal case is in progress.

6. Mr. Bikash Ranjan Bhattacharya, Learned Senior Counsel appearing on behalf of the petitioner contends that the contents of written complaint treated as FIR do not disclose any cognizable offence and as such the investigation of the criminal case is liable to be quashed. Mr. Bhattacharya submits that the opposite party No. 2/complainant, his wife Sumana Ghosh, the petitioner, his wife Vandana Agrawal were promoters of the Company. The Company defaulted in filing financial statements for the financial years 2010-2011, 2011-2012 and 2012-2013 and thereby the opposite party No. 2/complainant disqualified himself to act as the Director of the Company under Section 164(2)(a) of the Companies Act, 2013. He further submits that the opposite party No. 2/complainant and other Directors of the said company incurred disqualifications specified in Section 164(2)(a) of the Companies Act, 2013 resulting in vacation of office of all Directors of the Company under Section 167(1)(a) of the Companies Act, 2013. By referring to the provisions of Section 167(3) of the Companies Act, 2013, Mr. Bhattacharya argues that the promoter of the Company has the authority to appoint required number of Directors temporarily till the Directors are appointed by the Company in the general meeting, as all the directors of the Company are deemed to have vacated the office by incurring disqualifications specified in Section 167(1)(a) of the Companies Act, 2013. By referring to the definition of "promoter" in Section 2(69) of the Companies Act, 2013, Mr. Bhattacharya has explained that the petitioner and his wife, Vandana Agrawal being the promoters of the Company appointed three Directors including themselves under Section 167(3) of the Companies Act, 2013. On February 6, 2015 the newly appointed Directors of the said company held a Board Meeting and appointed new advocate-on-record to represent the Company before the Company Law Board, Kolkata Bench. The Company represented by the new Board of Directors including the petitioner filed Company Petition No. 684 of 2015 in connection with Company Petition No. 509 of 2010 filed by the opposite party No. 2/complainant before Company Law Board, Kolkata Bench praying for an injunction restraining appointment of new advocate-on-record on behalf of the respondent company

under authorisation of its erstwhile Directors who vacated the office in terms of Section 167(1)(a) of the Companies Act, 2013. The opposite party No. 2/complainant filed affidavit-in-reply wherein the opposite party No. 2/complainant admitted that there had been failure on the part of the Company to submit financial statements of the Company for the last three consecutive financial years being 2010-2011, 2011-2012 and 2012-2013.

7. Mr. Bhattacharya submits that Learned Civil Judge (Jr. Division), 2nd Court, Alipore passed an ad interim order of injunction in Title Suit No. 3469 of 2010 restraining the Company from holding any general meeting and the said order of ad interim injunction is still in force. He has urged this Court to consider the provision of Section 137(2) of the Companies Act, 2013, wherein it is specifically laid down that the financial statements along with the documents required to be attached under sub-Section (1) of Section 137 of the Companies Act, 2013 can be filed with the Registrar within 30 days of the last date before which the Annual General Meeting should have been held in case the Annual General Meeting of the company has not been held for any financial year. According to Mr. Bhattacharya, the opposite party No. 2/complainant could have filed the financial statement of the Company under Section 137(2) of the Companies Act, 2013 without holding any Annual General Meeting of the said company and as such the order of injunction passed by Learned Civil Judge (Jr. Division), 2nd Court, Alipore in Title Suit No. 3469 of 2010 does not stand on the way of submitting financial statements of the Company for three consecutive financial years of 2010-2011, 2011-2012 and 2012-2013.

8. Mr. Bhattacharya contends that the dispute between the opposite party No. 2/complainant and the petitioner over control and management of the Company is pending for adjudication before the Company Law Board, Kolkata Bench. He submits that the petitioner has acted as promoter for constitution of new Board of Directors of the Company and the resolution taken by the Board of Directors is signed by the petitioner and the seal of the Company is used in the said resolution in assertion of the right of the petitioner under the law and the validity and legality of the constitution of Board of Directors and the resolution obtained by the Board of Directors are pending for adjudication before the Company Law Board, Kolkata Bench. According to Mr. Bhattacharya, the persuasion of legal remedy for control and management of the company cannot amount to an offence by any stretch of imagination. The vague allegation made by the opposite party No. 2/complainant about collection of fund from the shareholders and misuse of the said fund is not substantiated by materials and as such the same cannot give rise for criminal action against the petitioner. The specific contention of Mr. Bhattacharya is that the sufficient facts are not disclosed by the opposite party No. 2/complainant in the written complaint treated as FIR for reasonable belief that there was wrongful loss of the Company or wrongful gain of the present petitioner and thereby criminal action is not justified under the law. According to Mr. Bhattacharya, the criminal action is initiated by the opposite party No. 2/complainant in a mala fide way only to harass the petitioner due to

business rivalry between the parties. He has placed his reliance on the following decisions of the Supreme Court in support of his above contention: (i) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (ii) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (iii) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (iv) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (v) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and (vi) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 .

9. Mr. Manjit Singh, Learned Public Prosecutor for the opposite party State of West Bengal contends that the Company Law Board where the false supplementary affidavit is filed by the petitioner by annexing forged resolution of Board of Directors of the Company cannot decide on the issue of forgery as the document was forged before filing the same in the Company Law Board. The Company Law Board cannot conduct an inquiry under Section 340 of the Code of Criminal Procedure in connection with forgery which did not take place in course of the proceeding before the Company Law Board. According to Mr. Singh, the allegation of forgery against the petitioner is made out from the written complaint treated as FIR and as such the criminal case needs to be investigated and police report must be submitted in final form before the Court of Learned Magistrate on completion of investigation. Mr. Singh has relied on Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 in support of his contention that bar under Section 195(1)(b)(ii) of the Code of Criminal Procedure would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after its production before the judicial forum i.e. during the period when the document was in custodia legis.

10. By referring to the written complaint treated as FIR, Mr. Singh has tried to impress upon the Court that cognizable offence under Section 420 of the Indian Penal Code and offences under Sections 466 /467 /468 /120B of the Indian Penal Code have been made out against the petitioner. According to Mr. Singh, all the ingredients of the offences need not be disclosed in the written complaint for registration of the FIR, if the foundation for the offences can be inferred from the facts disclosed in the written complaint, the FIR should be registered and the investigation should be started. By referring to the document available in the website of Ministry of Corporate Affairs, Government of India, Mr. Singh argues that the present petitioner resigned from the post of Director of the Company on February 1, 2010, but the petitioner is claiming himself to be the Director of the company and trying to collect money from the shareholders by usurping control and management of the company in violation of the procedure of law. He submits that the Board of Directors of the Company could not submit the annual return/financial statement before the Registrar as the company was restrained from holding Annual General Meeting by an interim order of injunction passed by Learned Civil Judge (Jr. Division), 2nd Court, Alipore in Title Suit No. 3469 of

2010 and the said interim order is extended from time to time till October 1, 2015. In view of the said order of ad interim injunction, the Board of Directors of the Company could not submit the financial statements before the Registrar and as such the disqualifications enumerated in Section 164(2)(a) of the Companies Act, 2013 cannot be made applicable in case of Directors of the Company. The resultant effect is that the Board of Directors of the Company cannot be deemed to have vacated office by operation of law under Section 167(1)(a) of the Companies Act, 2013. The further contention of Mr. Singh is that the court must not interfere in the investigation while the facts are incomplete and hazy and the evidence is yet to be collected by the Investigating Agency. According to Mr. Singh, the contents of written complaint treated as FIR disclose cognizable offence and as such the investigation must proceed to its logical conclusion by submission of police report in final form under Section 173 of the Code of Criminal Procedure.

11. Mr. Debashis Roy, Learned Counsel appearing on behalf of the opposite party No. 2/complainant submits that the contents of written complaint treated as FIR disclose cognizable offence under Sections 420 /466 /467 /468 /120B of the Indian Penal Code and as such the court cannot interfere in the investigation which must be allowed to continue to its logical end by submission of police report in final form under Section 173 of the Code of Criminal Procedure. He further submits that the Company Law Board cannot adjudicate on the forgery and cheating committed by the petitioner before commencement of the proceeding in the Company Law Board. Mr. Roy has cited the following decisions in support of his contention that the court should not interfere in the investigation while the contents of written complaint treated as FIR disclose cognizable offence: (i) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (ii) "State of Orissa V. Saraj Kumar Sahoo" reported in (2006) 2 SCC (Cri) 272 (Paragraphs 11 and 14), (iii) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (iv) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (v) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (vi) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (vii) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (viii) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , (ix) "State of Orissa v. Ujjal Kumar Bardhan" reported in (2012) 4 SCC 574 (Paragraph 11) and (x) Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 .

12. I would like to consider the proposal of law laid down by the Supreme Court in various reports cited on behalf of the petitioner. It is also relevant to place reliance on the proposition of law laid down by the Supreme Court in Paragraph 102 of Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , which is as follows:

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. The criteria for invoking the provisions of Section 482 of the Code of Criminal Procedure for quashing the criminal proceedings are laid down by the Supreme Court in paragraphs 11 and 12 of *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 , which are as follows :

"11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 is attracted, which are as under: (SCC p. 523, para 15).

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegations disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

12. Yet again, in *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 this Court held: (SCC p. 92, para 12).

"12. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of this Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide."

14. The criteria for quashing the criminal investigation where the accusations have been levelled without disclosing supporting materials are laid down in paragraph 16 of *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 , which are as follows:

"16. From the course of our narration of the factual position as it traversed before different levels of investigation and judicial scrutiny, it emerges that the appellant Sarabjit Singh has not been able to produce any material, on the basis of which he can establish his claim..... It is a case where accusations have been levelled without supporting material. Despite a clear indication in the order passed by the High Court, such supporting material has still not been made available for perusal of this Court. Therefore, in the facts and circumstances of this case, we are satisfied, that in the absence of any material whatsoever to support the charges levelled by the appellant Sarabjit Singh in the first information report dated 10-1-1998, the High Court was justified in quashing the said first information report by invoking its jurisdiction under Section 482 of the Code of Criminal Procedure...."

15. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court has relied on *Bhajan Lal* (supra) and laid down in paragraph 19 the criteria for quashing criminal proceedings where the proceeding is manifestly attended with mala fide. I would like to quote relevant portion of paragraph 19 of the said report, which is as follows:

"19. The institution of a criminal case must be held to be an act of mala fide on the part of the respondents in the aforementioned backdrop of events which stand admitted. This case, therefore, satisfies some of the parameters laid down in several sub-paras of para 102 of *Bhajan Lal* (supra) which read as under: (SCC pp. 378-79)...

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

(3) Where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court quashed the criminal proceeding under Sections 420 /423 /469 /504 /120B of the Indian Penal Code by making the following observations in paragraphs 15 and 16 of the report, which are quoted below:

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

16. Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference in as much as the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 has not been made out..... Therefore the core postulate of dishonest intention in order to deceive the complainant-Respondent 2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of the process of the court."

17. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court quashed the criminal proceeding under Sections 420 /120B of the Indian Penal Code when the petition of complaint did not disclose any offence. It is relevant to quote paragraph 7 of the report, which is as follows:

"7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Cr.P.C. which it has erroneously refused."

18. The criteria for quashing the criminal proceedings when the criminal proceeding is initiated with mala fide intention or with ulterior motive for wreaking vengeance on the other side are laid down by the Supreme Court in Paragraph 22 of Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 . The relevant portion of paragraph 22 of the report is as follows:

"22. ...the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case."

19. What emerges from the above decisions of the Apex Court is that the High Court can quash the criminal proceeding by exercise of inherent power under Section 482 of the Code of Criminal Procedure under the following circumstances:

- (i) Where the allegations contained in the written complaint treated as FIR even if given face value and taken to be correct in their entirety, do not disclose any cognizable offence;
- (ii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge;
- (iii) Where the allegations in the FIR are so absurd or inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (iv) Where the allegation of cheating is made in the FIR, but there was no fraudulent or dishonest intention of the accused to deceive from the inception of

the transaction when the promise was made.

By applying the above test in the facts of the present case, I would like to decide in the appropriate place of the judgment whether continuation of the investigation by the police will be an abuse of the process of law.

20. Now, I would like to consider the decisions cited by Mr. Roy to put forward the argument that in the facts situation of the present case the High Court cannot interfere in the investigation by invoking inherent power under Section 482 of the Code of Criminal Procedure. It is held by the Supreme Court in *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 which is as follows:

"15. ...This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in cognizable offence."

In this report the High Court quashed the criminal proceeding under Section 153B of the Indian Penal Code on the ground that the Investigating Agency had not obtained previous sanction of the Central Government or the State Government or the District Magistrate as required under Section 196(1A) of the Code of Criminal Procedure. Since the question of sanction is required to be decided by the Court before taking cognizance and since the stage of taking a cognizance did not arise during investigation of the criminal case, the Supreme Court had set aside the order of quashing the criminal proceeding passed by the High Court. So, this report is not relevant for deciding the issues involved in the present case.

21. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court has observed in paragraph 11 as follows:

"11. ...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 materials.

In the above report the High Court quashed the criminal proceeding initiated against the accused person on the allegation that he had acquired assets disproportionate to his known source of income. The Supreme Court had set aside the order of the High Court as Learned Single Judge of the High Court arrived at the conclusion on the basis of the surmise and conjecture without any material to support them. The facts of the present case are clearly distinguishable from the facts of "*State of Orissa V. Saroj Kumar Sahoo*" (supra) and as such the said proposition of law is not relevant in the present case.

22. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336

and in *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court has reiterated that the High Court 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.

23. In "*Minu Kumari V. State of Bihar*" (Supra) Learned Chief Judicial Magistrate issued summons against three accused persons under Sections 341 /323 /435 /34 of the Indian Penal Code, though the charge-sheet submitted by the police did not disclose the names of those accused persons. The recalling of the said order by Learned Chief Judicial Magistrate was set aside by the Court of Sessions and the High Court refused to invoke the power under Section 482 of the Code of Criminal Procedure for quashing the order of Learned Sessions Judge. The Supreme Court was of the view that the High Court should have interfered under Section 482 of the Code of Criminal Procedure for quashing the order of issuing summons to the three accused persons by Learned Chief Judicial Magistrate. So the ratio of this report will not be made applicable in the facts of the present case. Similarly, in "*State of A.P. v. Golconda Linga Swamy*" (supra) the High Court quashed FIR under various provisions of the Andhra Pradesh Excise Act, 1968, even when the allegation was made that the accused persons were transporting or storing black jaggery/molasses for manufacturing illicit distilled liquor. So the ratio of the said report also can not be made applicable in the facts of the present case.

24. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court has laid down the criteria when the investigation of cheating cannot be quashed. The relevant portion of paragraph 9 and 11 of the said report is placed below:

"9. ...Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence...."

"11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not

clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities."

The above report will be considered with reference to the facts of this case in the latter portion of the judgment.

25. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court has observed in paragraph 18 as follows:

"18. While entertaining a petition under Section 482 Cr.P.C. the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is a well-settled position of law that when there are prima facie materials available a petition for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases."

By accepting the above proposition of law, I would like to consider whether pre-emption of investigation would be justified in the facts of the present case at the subsequent stage of the judgment.

26. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the first respondent executed one sale deed in favour of his own daughter on the basis of revoked general power of attorney without having any right over the property and with an intention to cause loss to the de facto complainant and to cheat him. The Supreme Court found that there are ingredients of the offences complained of in the FIR and as such set aside the order of quashing of the FIR passed by Learned Single Judge of the High Court. So, this report has no relevance in the facts of the present case where the petitioner has acted on the assertion of his right under the law.

27. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court has pointed out various principles and circumstances under which the High Court can exercise inherent jurisdiction under Section 482 of the Code of Criminal Procedure. It is relevant to quote some portion of paragraphs 31 and 32 of the report which are as follows:

"31. ...When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge....

32. It would not be proper for the High Court to analyse the case of the complainant in the light of all the probabilities in order to determine whether conviction would be sustainable and on such premise arriving at a conclusion that the proceedings are to be quashed. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case

in which the complaint does not disclose any offence or is frivolous, vexatious or oppressive...."

I would like to keep in mind the above proposition of law at the time of deciding whether the written complaint of the opposite party No. 2/complainant disclose cognizable offence for carrying out the investigation by the police.

28. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Superintendent of Police, Vigilance Cell, had merely approved the opening of an inquiry and FIR was yet to be lodged. However, the High Court stayed the preliminary inquiry by an interim order in the writ petition and then quashed the same. The Supreme Court observed in paragraph 11 of the report that any kind of hindrance or obstruction of the process of law from taking its normal course, without any supervening circumstances, in a casual manner, merely on the whims and fancy of the court tantamounts to miscarriage of justice, which seems to be the case here. The law laid down by the Supreme Court in this report is not at all relevant in the present case.

29. In *Uma Shankar Gopalika vs. State of Bihar and Another*(2005) 10 SCC 336 the Supreme Court dealt with the facts relating to execution of several vexatious sale deeds with the intention to make unlawful gain. The concerned Registrar permitted the registration of the sale deeds without verification of photo identification proof and as such the Supreme Court was of the opinion that the High Court was not justified in quashing the first information reports and the charge-sheets in exercise of its power under Section 482 of the Code of Criminal Procedure. So, the ratio of this report has no relevance in the facts of the present case.

30. Now, I would like to consider whether the contents of the written complaint treated as FIR of Hare Street Police Station Case No. 109 dated February 19, 2015 disclose commission of offences under Sections 120B /420 /467 /468 /469 /471 /511 of the Indian Penal Code. The background of filing the written complaint by the opposite party No. 2/complainant before the Special Additional Commissioner & Joint Commissioner of Police (Crime), Kolkata must be taken into consideration to decide whether the opposite party No. 2/complainant has taken recourse to criminal law with an ulterior motive for wreaking vengeance on the petitioner and the criminal proceeding is initiated in a mala fide way as alleged on behalf of the petitioner. Admittedly, the petitioner, his wife Vandana Agrawal and one R.K. Banerjee were the directors of Pragati 47 Development Ltd. The further admitted position is that in the year 2005 the Company formed a joint venture with the Housing & Urban Development Corporation and the said joint venture entity is named as Pragati Social Infrastructure & Development Ltd. It is not disputed that in the year 2007 the said joint venture entity - PSIDL launched a project for Development of Aerotropolis and for the same Bengal Aerotropolis Project Ltd. came into existence in the year 2008. It is also not disputed by Learned Counsel representing both parties that the petitioner resigned from the post of Director of

BAPL and the Company on January 22, 2010. It is also on record that the petitioner filed writ application before Delhi High Court praying for direction upon the Registrar of Companies for uploading of the digital signatures of the directors of the newly constituted Board of the Company and the said writ application was dismissed by Delhi High Court on September 14, 2015. The opposite party No. 2/complainant and his wife filed Company Petition No. 509 of 2010 under Sections 397/398 of the Companies Act before the Company Law Board, Kolkata, Bench. The opposite party No. 2/complainant has made representation before the Registrar of Companies on April 7, 2015 (Annexure B to the application for vacating the interim order being CRAN 2295 of 2015) disclosing the fact how the family of the petitioner and another Ghosh family have instituted various proceedings against the Company in order to take over management and control of the Company. It appears from Annexure A to the revisional application that the petitioner and his wife Vandana Agrawal have filed Company Application No. 684 of 2015 in connection with Company Petition No. 509 of 2010 before the Company Law Board, Kolkata Bench praying for an order of injunction restraining the appointment of new advocate-on-record on behalf of the Company under the authorisation of its erstwhile Directors who have vacated their offices in terms of Section 167(1) of the Companies Act, 2013. It also appears from the documents annexed to the revisional application that the opposite party No. 2/complainant has submitted one affidavit-in-reply denying the claim of the petitioner and his wife to engage M/s. Sandip Agrawal & Company as Advocate-on-record to represent the Company before the Company Law Board, Kolkata Bench. It appears from the said affidavit submitted by the opposite party No. 2/complainant before the Company Law Board that the petitioner and his wife are trying to take over management and control of the Company. The opposite party No. 2/complainant has also disclosed in the said affidavit before the Company Law Board, Kolkata Bench that the opposite party No. 2/complainant could not submit the financial statement/annual return of the Company before the Registrar of Companies for the Financial years 2010-2011, 2011-2012 and 2012-2013, because the Annual General Meeting of the Company could not be held due to the order of injunction granted by the Civil Court.

31. It appears from order dated December 15, 2010 passed by Learned Civil Judge (Junior Division), Alipore in Title Suit No. 3469 of 2010 that the Company was restrained by an order of ad interim injunction from holding any general meeting of the Company and the said order of ad interim injunction was extended from time to time and is in force till October 1, 2015. The argument advanced on behalf of both the opposite parties that the financial statements of the Company could not be submitted before the Registrar of Companies as the Company was restrained from holding general meeting for approval of the financial statements for three consecutive financial years is not justified under the law. In this regard, I would like to quote provisions of Section 137(2) of the Companies Act, 2013, which is as follows:

"S. 137(2). Where the annual general meeting of a company for any year has not

been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed within the time specified, under Section 403."

In view of the above provision of law, the financial statements of the Company could have been filed before the Registrar of Companies even when Annual General Meeting of the Company was not held for any financial year.

32. The resultant effect of not filing financial statement/annual return of the Company for three consecutive financial years is laid down in Section 164(2)(a) of the Companies Act, 2013, which is as follows:

"164(2). No person who is or has been a Director of a Company which-

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so."

In view of the above provision of law, the Director of the Company including the opposite party No. 2/complainant shall not be eligible to be re-appointed as a Director of the said Company for a period of five years from the date on which the Company fails to submit the financial statements.

33. Section 167(1)(a) of the Companies Act, 2013 lays down that the office of a Director of the Company shall become vacant in case the Director incurs any of the disqualifications specified in Section 164. Since the opposite party No. 2/complainant has incurred disqualification as the Director under Section 164 of the Companies Act, 2013 for not submitting financial statements of the Company for three consecutive years, the office of the Director of the Company shall become vacant by operation of law. It is relevant to place the provision of Section 167(3) of the Companies Act, 2013, which is as follows:

"167(3). Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting."

It is the claim of the petitioner that the petitioner as "promoter" of the Company has appointed three directors including the petitioner and his wife Vanadana

Agrawal for management of the Company under Section 167(3) of the Companies Act, 2013 in the meeting held on February 6, 2015. I have already pointed out that the Company represented by the new directors including the petitioner filed an application being Company Application No. 684 of 2015 in connection with Company Petition No. 509 of 2010 filed by the opposite party No. 2/complainant before the Company Law Board, Kolkata Bench praying for an injunction restraining appointment of Advocate-on-record authorised by the erstwhile Directors of the Company, who vacated the office in terms of Section 167(1)(a) of the Companies Act, 2013. The filing of the said application before the Company Law Board by the petitioner was communicated to the opposite party No. 2/complainant and his wife Sumana Ghosh by M/s. Sandip Agrawal & Company on February 7, 2015 by Speed Post with acknowledgement due. The opposite party No. 2/complainant has filed the written complaint against the petitioner, his wife Vandana Agrawal and one Yudhistir Kumar Gauba before the Special Additional Commissioner & Joint Commissioner of Police (Crime), Kolkata on February 18, 2015 i.e. after receiving the copy of the application filed by the petitioner before the Company Law Board, Kolkata Bench. I would like to make it clear that I am not deciding the legality and validity of not submitting the financial statement of the Company for three consecutive financial years and the resultant claim of the petitioner and his wife to take control and management of the Company by constitution of new Board of Directors on February 6, 2015. Nor will it be prudent on my part to decide whether the petitioner can act as the "promoter" of the Company within the meaning of Section 2(69) of the Companies Act, 2013 for reconstitution of new Board of Directors of the Company for taking control and management of the Company. I would only like to consider whether under the above factual matrix any cognizable offence is disclosed against the petitioner and his associates from the written complaint treated as FIR.

34. The specific contention of the opposite parties is that the petitioner falsely claimed himself as the Director of the Company by filing supplementary affidavit before the Company Law Board, Kolkata Bench and the petitioner also annexed a forged Board Resolution of the Company to the said supplementary affidavit and the said Board Resolution was not only attested by the petitioner, but also forged seal of the Company was affixed on the said resolution. I have already pointed out that the petitioner has tried to take control and management of the Company by taking advantage of the lapses on the part of the opposite party No. 2/complainant and other Directors of the Company by not submitting the financial statements/annual return of the Company before the Registrar of Companies for three consecutive financial years and the validity of the claim of the petitioner is pending for adjudication before the Company Law Board, Kolkata Bench. The question which calls for determination of the court is whether the petitioner has committed forgery by claiming himself as the Director of the Company and by producing resolution of Board of Directors of the Company dated February 6, 2015 and by attesting the said resolution with his signature and with the seal of

the Company.

35. "Forgery" is defined in Section 463 of the Indian Penal Code, as follows:

"S. 463 . Forgery: Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

36. Section 464 of the Indian Penal Code lays down the criteria for making a false document, which is as follows:

"S. 464 . A person is said to make a false document or false electronic record-

First.- Who dishonestly or fraudulently-

- (a) makes, signs, seals or executes a document or part of a document;
- (b) makes or transmits any electronic record or part of any electronic record;
- (c) affixes any electronic signature on any electronic record;
- (d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other persons, whether such person be living or dead at the time of such alteration; or

Thirdly - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know that contents of the document or electronic record or the nature of the alteration.

Explanation 1. A man's signature of his own name may amount to forgery.

Explanation 2. The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3. For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in Clause (d) of sub-section (1) of Section 2 of the Information Technology Act, 2000.

37. On perusal of the provisions of Section 463 and Section 464 of the Indian Penal Code it appears to me that false document is said to have been made when a person dishonestly or fraudulently makes a document with the intention of causing it to be believed that such document was made by some other person. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else, nor is he claiming that he is authorised by someone else. Therefore, execution of such document is not execution of a false document as defined under Section 464 of the Indian Penal Code. In the instant case, the petitioner has claimed himself as a "promoter" within the meaning of Section 2(69) of the Companies Act, 2013 and reconstituted the Board of Directors of the Company which passed the resolution on February 6, 2015 under the bona fide belief that the petitioner has the legal right to do so. The validity of the claim of the petitioner to reconstitute the Board of Directors of the Company by exercise of his legal right is pending for adjudication before the Company Law Board, Kolkata Bench and as such the resolution of Board of Directors of the Company passed on February 6, 2015 cannot be termed as false document within the meaning of Section 464 of the Indian Penal Code. Nor can the said resolution of Board of Directors of the Company be termed as forged for using of seal of the Company or for attesting the said resolution by the petitioner by putting his signature on the said resolution.

38. The argument advanced on behalf of the opposite party/State that the petitioner committed forgery with regard to the resolution of Board of Directors of the Company before submitting the said resolution in the Company Law Board and as such the Company Law Board cannot look into the allegation of forgery by conducting an inquiry under Section 340 of the Code of Criminal Procedure needs to be considered on the basis of the law laid down by the Apex Court. The proposition of law laid down by the Supreme Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 is that the bar contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure is not applicable in a case where forgery of a document was committed before the said document was produced in court. While I fully agree with the above proposition of law laid down by the Apex Court, I am constrained to hold that the resolution of Board of Directors of the Company dated February 6, 2015 and attestation of the same by the petitioner by putting his signature and seal of the Company under the bona fide belief that the petitioner has the legal right to do so cannot amount to forgery when the claim of the petitioner is contested by the opposite party No. 2/ complainant before the Company Law Board, Kolkata Bench. Thus, I am of the view that the contents of the written complaint of the opposite party No. 2/ complainant treated as FIR do not disclose offences under Sections

466 /467 /468 and 511 of the Indian Penal Code.

39. Now, I would like to consider whether the contents of the written complaint treated as FIR disclose any offence of cheating and criminal conspiracy. Section 415 of the Indian Penal Code defines cheating, which is as follows:

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

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

40. On perusal of above definition of cheating, it appears that there must be some inducement on the part of the accused person and the said inducement is made fraudulently or dishonestly with a view to deceive the complainant. It is therefore, necessary to show by the complainant that due to deception practised by the accused, the person so deceived has delivered the property to the accused person or has given consent that the accused person shall retain the property. In the present case, the opposite party No. 2/complainant has not disclosed in the written complaint who has delivered the property or money to the petitioner. The mere disclosure on the part of the opposite party No. 2/complainant that the petitioner and his associates might have usurped/misappropriated/collected funds in the name of the company and siphoned off the same by opening fake bank accounts cannot amount to an offence of cheating under the Indian Penal Code. The written complaint is totally silent with regard to the particulars of collection of funds, if any or misappropriation of fund, if any on the part of the petitioner and his associates. The opposite party No. 2/complainant has stated in the written complaint that it is his reasonable belief that by utilising the false status as Director of the Company the petitioner and his associates have cheated other persons including the investors and thereby they have caused loss to the Company and consequent wrongful gain to themselves. Not a single name of the shareholder of the Company or the name of any other person is disclosed in the written complaint who is induced by the petitioner and his associates for parting with the property and thereby wrongful loss is caused to any individual and wrongful gain is made to the petitioner. Without disclosing materials and facts in the written complaint only the bald statement of the opposite party No. 2/complainant that it is his reasonable belief that the petitioner and his associates have cheated the investors of the Company cannot be a ground for registration of the criminal case against the petitioner and his associates under Section 420 of the Indian Penal Code. Thus, the opposite party No. 2/complainant has levelled accusations against the petitioner and his associates without supporting materials. The ratio of Uma Shankar Gopalika vs.

State of Bihar and Another(2005) 10 SCC 336 squarely applies to the facts of the present case and as such the criminal proceeding is liable to be quashed. Even by judging on the touchstone of the principles laid down in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , the basic facts necessary for the offence of cheating are absent from the written complaint treated as FIR.

41. The offence of criminal conspiracy is defined in Section 120A of the Indian Penal Code, which is as follows:

"S. 120A . Definition of Criminal Conspiracy: When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

42. On perusal of the above definition of criminal conspiracy, it appears that the essential ingredients of criminal conspiracy are (i) that there must be an agreement between two or more persons and (ii) that the agreement must relate to doing or causing to be done either an illegal act or an act which is not illegal in itself, but is done by illegal means. In the instant case, I have already pointed out that the petitioner has done everything under the bona fide belief that he has a legal right to do so and the claim of the petitioner is pending for adjudication before the Company Law Board, Kolkata Bench. Thus, the act of the petitioner cannot be construed either as an illegal act or as an act which is done by illegal means. So the registration of the criminal case under Section 120B of the Indian Penal Code is not justified under the law.

43. By applying the test laid down by the Supreme Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 it appears to me that the dishonest intention on the part of the petitioner and his associates in order to deceive the opposite party No. 2/complainant or any shareholder of the Company is not made out even by accepting all the averments in the written complainant on their face value and in their entirety and as such the continuation of the criminal proceeding against the petitioner and his associates is an abuse of the process of the court. Since the written complaint does not disclose any cognizable offence, the FIR in question is also liable to be quashed as per the proposition of law laid down by the Supreme Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and Uma Shankar Gopalika vs.

State of Bihar and Another(2005) 10 SCC 336 . Pre-emption of the investigation would be justified in the facts of the present case.

44. Having considered the written complaint treated as FIR in the background of dispute between the parties and by taking the allegations made in the said written complaint at their face value and as correct in their entirety, I am unable to persuade myself to hold that the contents of the said written complaint treated as FIR disclose any cognizable offence, particularly when sufficient materials are not disclosed by the opposite party No. 2/complainant with regard to forgery, cheating and criminal conspiracy. The irresistible inference of my entire above observation is that the contents of the written complaint treated as FIR do not disclose cognizable offence and as such the continuation of the investigation of the criminal case against the petitioner and his associates is an abuse of the process of the court. Judged by the touchstone of the principles enunciated by the Supreme Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 , I am constrained to hold that this is a fit case where the FIR should be quashed by invoking inherent power under Section 482 of the Code of Criminal Procedure.

45. On consideration of the written complaint treated as Hare Street Police Station Case No. 109 dated February 19, 2015 in the background of dispute between the petitioner and his associates on the one hand and the opposite party No. 2/complainant and his associates on the other hand over control and management of the Company, I am of the view that the opposite party No. 2/complainant has started the criminal proceeding in a mala fide way with an ulterior motive for wreaking vengeance on the petitioner and his associates and with a view to spite him due to private and personal grudge. So, this is a fit case where FIR is liable to be quashed as per proposition of law laid down by the Supreme Court in Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 and Uma Shankar Gopalika vs. State of Bihar and Another(2005) 10 SCC 336 .

46. As a result, the FIR of Hare Street Police Station Case No. 109 dated February 19, 2015 under Sections 120B /420 /467 /468 /469 /511 of the Indian Penal Code is quashed. Criminal revision and CRAN 2248 of 2015 and CRAN 2295 of 2015 are, thus, disposed of. The urgent photostat certified copy of the judgment and order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.