

(2011) 05 BOM CK 0066

In the Bombay High Court

Case No : Criminal Revision Application No. 441 of 2008

Rajeev Sawhney

APPELLANT

Vs

State Bank of Mauritius Ltd. and Others

RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202, 202(1), 203, 483
Penal Code, 1860 (IPC) — Section 120B, 403, 420, 465, 467

Citation : (2011) 113 BOMLR 2036 : (2011) 6 MhLj 401

Hon'ble Judges : J.H. Bhatia, J

Bench : Single Bench

Advocate : Mahesh Jethmalani, instructed by Rahul Moghe, for the Appellant; Sanjog S. Parab, for Respondent Nos. 1 to 3, Ashok K. Wanwar, instructed by Rita S. Panjwani, for Respondent No. 3, K.G. Menon, instructed by J.L. Phoujdar, for Respondent Nos. 4, 5 and 6 and M.R. Tideke, APP, for the Respondent

Final Decision : Allowed

Judgement

J.H. Bhatia, J.—Rule. Rule made returnable forthwith. Heard the learned Counsel for the parties.

2. The Revision Application is filed by the original complainant challenging the order passed by the learned Additional Sessions Judge, Greater Bombay, on 13.8.2008 whereby he allowed the Revision Application Nos. 449 of 2007, 460 of 2007 and 853 of 2007 filed by the different accused persons/Respondents and whereby he set aside the order passed by the Additional Chief Metropolitan Magistrate 47th Court, Esplanade, Mumbai on 18.1.2007 of issuance of process against all the accused persons for the offences under Sections 420, 465, 467, 471, 403 read with Section 120B of IPC.

3. To appreciate the controversy, it will be useful to state the facts in brief. For the sake of convenience, the revision applicant may be called as complainant and the Respondents as the accused persons. Respondent Nos. 1 and 2 are original accused Nos. 1 and 3 respectively while accused Nos. 3 to 6 are original accused

Nos. 4 to 7 respectively. The complainant is a Chairman of Vmoksha Technologies Ltd., a company incorporated in Mauritius (hereinafter referred to as "the Company"). The Company had certain subsidiaries by name "Vmoksha Technologies Pvt. Ltd." registered at Bangalore, "Vmoksha Technologies Inc. USA" and "Vmoksha Technologies Pvt. Ltd.", Singapore. Accused No. 5 -Helios and Matheson Information Technology Ltd. is registered in India and has its head office at Chennai. Accused Nos. 6 and 7 are the Chairman and Managing Director respectively of the said accused 5 Company. The complainant had 50% shareholding in Vmoksha Technologies and the accused No. 4 Pawan Kumar and his family members had also 50% holding in the said Company. Accused No. 4 Pawan Kumar was also the Chief Executive Officer of the Company. On 28.1.2006, his 50% holdings were transferred to the complainant. Accused No. 1 is State Bank of Mauritius Ltd., while accused No. 2 was situated at Mumbai. Accused No. 3 was looking after the Chennai Branch of the accused No. 1 Bank. The shareholders of the Company decided to sell the Company's subsidiaries in India, USA and Singapore and the task of identifying a prospective buyer was entrusted to M/s. Price Waterhouse Coopers, a firm of Chartered Accountants. Said M/s. Price Waterhouse Coopers identified accused No. 5 as a potential buyer. After a series of negotiations, on 11.5.2005, a Share Purchase Agreement was executed between the Company and various other confirming parties on one hand and accused Nos. 6 and 7 in their respective capacity as Chairman and Managing Director of accused No. 5. As per the said agreement, accused No. 5 acquired Company's Indian, USA and Singapore subsidiaries for a consideration of US\$ 19 million including an earn out of US\$ 4 million to be paid to accused No. 4 Pawan Kumar, the then CEO and he was to continue to work as CEO for the Company's said subsidiaries even after sale. The balance amount of US\$ 15 million was to be paid to the shareholders of the Company as a consideration of the said transaction. Out of this consideration amount, some amount was to be paid to Tapan Garg and Madhuri Garg, son and wife of the accused No. 4 Pawan Kumar respectively for their holdings and the amount of US\$ 13,395,519.13 was to be paid to the complainant and other shareholders and as eventually the 50% share of accused No. 4 Pawan Kumar was also taken over by the complainant and his family, whole of that amount was to come to the complainant. As accused No. 5 was not in a position to make payment of the whole of the consideration amount in cash immediately, it had agreed to make payment after 18 months. However, it was also agreed that initially, accused No. 5 would make payment of US\$ 15 million to the sellers and the sellers would pay back the said amount to accused No. 5 by subscribing to redeemable preference shares for the equal amount and the said shares would be redeemed by accused No. 5 after 18 months by making payment. Thus, initially, only the redeemable preference shares of accused No. 5 Company were to be transferred to the sellers of the Company and on redeeming those shares after 18 months, the complainant and other sellers were to receive the consideration amount in cash. The sellers were to deposit all the original share certificates representing 100% equity capital of the Company in its USA, Singapore and India subsidiaries with Price Waterhouse

Coopers, who were appointed as Escrow Agent, till completion of the transaction. In terms of the Escrow Agreement, accused No. 5 was to deposit a sum of Rs. 1.2 crore with the Escrow Agent to be held by them. In terms of the said sale agreement, initially, the amount was to be paid by cheque which was to be replaced by Pay Order within 7 working days from the date of execution of the agreement. On conversion of the consideration into Indian Currency, excluding the share of Tapan Garg and Madhuri Garg, the sellers were to receive an amount of Rs. 58,3775 crore from accused No. 5 as consideration of the transfer of their shares in the said three subsidiary companies. In a Board Meeting of the Company held on 19.5.2005, it was resolved to authorize accused No. 4 to deposit share certificates of the subsidiaries of the Company with signed transfer deeds in favor of accused No. 5 with the escrow agent.

4. There is no dispute about the aforesaid facts. It is the contention of the complainant that accused No. 5 never deposited the original pay order of Rs. 1.2 crore with the escrow agent nor had delivered the redeemable preference shares of accused No. 5 in favor of the complainant.

5. It is the contention of the complainant that on 28.6.2005, the accused No. 4 sent an E-mail to Price Waterhouse Coopers i.e. Escrow Agent requesting them to make the complainant agree for securing some loan and opening an account with Respondent No. 1 Bank, Port Louis Branch at Mauritius. A copy of the resolution for the complainant's signature was annexed with the said E-mail. The proposed resolution contained an authority in favor of accused No. 4 to open the account with accused No. 1 and to apply for some loan. As the complainant suspected some foul play, he refused to give his consent. Therefore, Mr. Puneet Kinra of Price Waterhouse Coopers sent an E-mail dated 29.6.2005 to hold the process of completion of transaction with accused No. 1. Later on, the complainant came to know that the accused No. 5 was claiming that they had paid the entire consideration for purchase of the shares of all the three subsidiaries of the Company and was claiming ownership over the same. According to the complainant, the accused No. 5 had not made any payment nor had transferred the redeemable preference shares to the sellers as per the agreement. On further enquiry, it was revealed that on 28.6.2005 itself, accused No. 4 had submitted a proposal to accused No. 1 Bank for opening an account and for advancing of loan to the Company. The Bank approved the proposal and agreed to advance the loan subject to condition that the Board Resolution of the Company to that effect and the authority in favor of accused No. 4 be produced. As stated above, according to the complainant, he had not given his consent nor he had signed the above referred resolution sent by accused No. 4 for his signature through the Escrow Agent. Not only this, he had conveyed his disagreement by sending E-mail through the Escrow Agent to hold the proceedings of the transaction. In spite of this, on 28.6.2005 itself, the accused Nos. 2 and 3, the officers of the accused No. 1 Bank sanctioned the loan immediately on the same day and immediately the said amount was initially credited in the newly opened account of the Company with accused No. 1 Bank,

Post Louis Branch at Mauritius. n the same day i.e. 28.6.2005, an amount of US\$ 13,395,519.13 was transmitted from the said account of the Company to the account of accused No. 5 with State Bank of Mauritius, Chennai Branch. Then on the same day, the said amount was re-transferred from the account of accused No. 5 with the Chennai Branch of State Bank of Mauritius to the account of the Company with State Bank of Mauritius, Port Louis, Mauritius and on 30.6.2005 again whole of that amount was transferred to State Bank of Mauritius and thus the loan taken by opening the new account in the name of the Company on 28.6.2005 was shown to have been repaid. According to the complainant, the above transactions, beginning with opening of the account in the name of the Company with Bank of Mauritius at Port Louis till the said amount of the loan was repaid, were a part of great conspiracy hatched and executed by accused Nos. 1 to 7. This was to defraud the complainant and other shareholders of the said subsidiaries of the Company. It is contended that for this purpose, accused No. 4 Pawan Kumar had had entered into conspiracy with accused Nos. 1 to 3 and accused Nos. 5 to 7 and had created the forged and fabricated documents to show that he was authorized to open the account to obtain the loan and to 9 CRA-441-08.sxw transmit that amount to the account of accused No. 5 Company.

6. The learned Counsel for the complainant contended that even though as per the agreement, the accused No. 5 was to deliver the redeemable preference shares of the accused No. 5 Company to the sellers. Those shares were never delivered or transferred to the complainant and other owners of the said Company. The learned Counsel contended that there was no valid reason to obtain the loan from the accused No. 1 in the name of the said company nor there was any reason for the Company to transfer that amount to the account of accused No. 5 at Chennai because the complainant or its company was not to make any payment to the accused No. 5 in the said transaction. The complainant's Company was the seller and he had to receive consideration of the sale of the said subsidiaries from accused No. 5. As the accused No. 5 was not in a position to make payment in cash immediately, it was agreed that they would hand over the redeemable preference shares, which would be eventually redeemed after 18 months and thus the price would be paid to the complainant and other vendors of the Company in cash. The learned Counsel for the accused persons inspite of his best attempts could not give any convincing reply as to why and in what circumstances the complainant Company was required to obtain the loan to make payment to the accused No. 5 when in fact the payment was to be made by the accused No. 5 Company to the company of the complainant and not otherwise. The complainant and the Company had not purchased anything from the accused No. 5 and, therefore, they were not required to make any payment to the accused No. 5. One can understand if the accused No. 5 would have opened an account and had obtained certain loan in his own account and then that amount was transferred to the account of the Company of the complainant and then that amount was taken back against delivery of redeemable preference shares. However, in the present case, it appears that not

only the accused Nos. 5 to 7 secured original shares of the three subsidiaries of Vmoksha Technologies it secured loan from accused No. 1 Bank in the name of the seller company and then got transferred that money in the account of accused No. 5 and the same was therefore rechanneled to the account of Vmoksha Technologies and back to the Bank immediately. By this, an attempt was made to show that accused No. 5 had made payment of the consideration amount by transferring that amount from its account at Chennai Branch of Bank of Mauritius to the account of Vmoksha Technologies opened with Bank of Mauritius, Port Louis while in fact not even a rupee was actually paid by accused No. 5 to Vmoksha. This, prima facie, shows a fraudulent transaction.

7. Whole of this fraudulent transaction was completed within a short span of two days. The proposal was moved on 28.6.2005. On the same day, the proposal was accepted by the Company with certain conditions of producing the resolution of the Company. On that day itself accused No. 4 sent the copy of the resolution by E-mail to the Escrow Agents i.e. Price Waterhouse Coopers with a request to obtain signature of the complainant. Record reveals that the complainant did not sign it and through Escrow Agents asked the bank to hold the process of loan transaction. In spite of the fact that the resolution duly signed by the shareholders, and particularly the complainant, was not submitted to the Bank, the loan was sanctioned and on the same day, amount of US\$ 13.5 million was credited in the newly opened account of Vmoksha Technologies. The shocking fact is that not only the loan was sanctioned and the amount was credited to the newly opened account in the name of Vmoksha Technologie on 28.6.2005, on the same day, the amount of US \$ 13,395,519.13 was first transferred to the account of accused No. 5 with Chennai Branch and then that amount was shown to have been transferred from the account of accused No. 5 from Chennai Branch to the newly opened account of Vmoksha Technologies and within two days after that the amount was paid back to the Bank of Mauritius. From these facts, prima facie conclusion can be drawn that whole of this transaction was the result of a great conspiracy and fraud in which accused Nos. 4, 5, 6 and 7 had actually participated.

8. The learned Counsel for the accused Nos. 1 and 2 vehemently contended that accused Nos. 2 and 3 were stationed in India during the relevant period. The account of Vmoksha Technologies was opened, loan was sanctioned and credited to that account at Port Louis Branch of State Bank of Mauritius. The transaction had taken place at Mauritius and, therefore, the accused Nos. 2 and 3 had no role and they cannot be held responsible. However, the learned Senior Counsel for the complainant pointed out that the letter dated 28.6.2005 from State Bank of Mauritius addressed to the Director of Vmoksha Technologies Ltd. was signed by the accused Nos. 2 and 3. By that letter, they had accepted the proposal for opening of the account and advancing of the loan subject to the condition that Vmoksha was to indicate acceptance of the conditions and returned the said agreement with copy of the shareholders' resolution confirming the terms and conditions. As noted above, neither such a resolution was passed by the

shareholders of the Company nor any such resolution was submitted to the Bank. What was submitted was a draft resolution prepared by accused No. 4 and sent by him alone. He had sent that resolution by E-mail to the complainant who had refused to sign. Thus, accused Nos. 1 to 3 did not get the said resolution and any document about the acceptance of the terms and conditions of the loan. According to the complainant, the loan agreement was signed by accused Nos. 2 and 3 on behalf of the Bank and by accused No. 4. It indicated the participation of accused Nos. 2 and 3 in the whole fraudulent transaction. I hasten to add that at the time of trial, the accused Nos. 2 and 3 will have an opportunity to show that they were not parties to the loan agreement and actual transfer of the amount from the account of Vmoksha Technologies and back. The case is a warrant trial case and therefore the complainant will be required to lead evidence before framing of charge. At that time, the accused persons will have right to cross-examine the witnesses and will get an opportunity to point out that the evidence does not make out a case for framing of charge against them. At that stage, accused persons and particularly accused Nos. 2 and 3 may press for discharge, but at this stage, prima facie case is made out against them also.

9. Taking into consideration the facts and circumstances noted above, it must be held that prima facie case was made out to issue process against accused persons, which the trial Court did. The order of the trial Court was set aside by the learned Addl. Sessions Judge by the impugned order mainly on three grounds. Firstly, there was suppression of fact that the complainant had earlier filed a complaint on the basis of same facts before the Magistrate at Bangalore. Secondly, the mandatory provision of inquiry u/s 202 of Code of Criminal Procedure was not complied with as some of the accused persons were not residing within the territorial jurisdiction of the learned Metropolitan Magistrate and thirdly, the alleged act of 28.6.2005 was ratified by the complainant in the meeting held on 19.7.2005.

10. It is an admitted fact that before complaint was filed by the complainant against the accused Nos. 1 to 7 in the Court of Chief Metropolitan Magistrate, 47th Court, Mumbai, the complaint was also filed before the Magistrate at Bangalore against accused Nos. 4 to 7. When the Metropolitan Magistrate, Mumbai issued the process, the complaint was pending before the Magistrate at Bangalore. It is also an admitted fact that the learned Magistrate at Bangalore had directed the investigation u/s 156(3) of Code of Criminal Procedure That order was challenged by the accused persons before the Karnataka High Court and before the Karnataka High Court also the accused persons had contended that on the same facts and circumstances, the complainant had filed complaint in Mumbai and when that complaint was pending, the complaint before the Magistrate at Bangalore was liable to be quashed. The Karnataka High Court accepted that argument and quashed the said complaint mainly on the ground that a comprehensive complaint against seven accused persons, including accused Nos. 1 to 3 and 4 to 7 was already filed and was pending before the Magistrate at Mumbai. The Karnataka High Court passed the order dated

23.7.2007 and as a result of that order, the complaint filed before the Magistrate at Bangalore was quashed and it was no more in existence. The impugned order was passed by the Additional Sessions Judge on 13.8.2008. On that day, no complaint was pending before the Magistrate at Bangalore. Therefore, one of the ground given by the learned Addl. Sessions Judge for allowing the revision application that a similar complaint was filed before and was pending before the Magistrate at Bangalore and this fact was suppressed was in fact not available. It is a fact that initially when this complaint was filed before the Addl. C.M.M. Mumbai, the complaint was pending before the Magistrate at Bangalore, but the learned Addl. Sessions Judge, Mumbai, could not ignore the fact that said complaint before the Magistrate at Bangalore was already quashed and was no more in existence. On 13.8.2008 when the learned Addl. Sessions Judge passed the order, there was no complaint except the one filed before the Addl. C.M.M. Mumbai. The learned Senior Counsel for the accused persons contended that when certain facts are suppressed for getting some relief, on that ground itself the relief can be refused. Mr. Menon, the learned Senior Counsel for accused Nos. 5, 6 and 7, placed reliance upon Welcom Hotel and Others Vs. State of Andhra Pradesh and Others, , S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , Motorola Incorporated Vs. Union of India (UOI), State of Maharashtra and Iridium India Telecom Ltd., and Bomanji Kavasji Boman Behram and Ors. v. Mehernosh Minochar Mehta and Ors. 1980 Bom. C.R. 503. In all these matters, the Supreme Court and the Bombay High Court had taken a view that if a party has suppressed material facts while obtaining or attempting to obtain some relief's from the Court, the Court would be justified in refusing that relief on the ground that there was suppression of material facts. There can be no dispute about this legal proposition. However, the facts of the present case, as noted above, make it clear that when the learned Addl. Sessions Judge passed the order, there was no second criminal complaint pending before the Magistrate at Bangalore.

11. It was also contended by the learned Counsel for the accused persons that when one complaint has been dismissed, the complainant cannot be allowed to prosecute the accused persons on the basis of same facts and circumstances by filing second complaint and in support of this reliance was placed upon Poonam Chand Jain and Another Vs. Fazru, . In fact, in that case, first complaint was dismissed on merits and the question was before the Supreme Court whether second complaint on identical facts would be maintainable, particularly when the first complaint was dismissed on merits and that dismissal had attained finality. The Supreme court observed thus in paras 15, 16 and 20:

15. Almost similar questions came up for consideration before this Court in Pramatha Nath Talukdar v. Saroj Ranjan Sarkar. The majority judgment in Pramatha Nath was delivered by Kapur, J. His Lordship held that an order of dismissal u/s 203 of the Code of Criminal Procedure (for short "the Code") is, however, no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances. This Court explained

the exceptional circumstances as:

- (a) where the previous order was passed on incomplete record, or
- (b) on a misunderstanding of the nature of the complaint, or
- (c) the order which was passed was manifestly absurd, unjust or foolish, or
- (d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings

16. This Court in *Pramatha Nath* made it very clear that interest of justice cannot permit that after a decision has been given on a complaint upon full consideration of the case, the complainant should be given another opportunity to have the complaint enquired into again. In para 50 of the judgment the majority judgment of this Court opined that fresh evidence or fresh facts must be such which could not with reasonable diligence have been brought on record. This Court very clearly held that it cannot be settled law which permits the complainant to place some evidence before the Magistrate which are in his possession and then if the complaint is dismissed adduce some more evidence. According to this Court, such a course is not permitted on a correct view of the law. (para 50, p.899).

20. Following the aforesaid principles which are more or less settled and are holding the field since 1962 and have been repeatedly followed by this Court, we are of the view that the second complaint in this case was on almost identical facts which was raised in the first complaint and which was dismissed on merits. So the second complaint is not maintainable. This Court finds that the core of both the complaints is the same. Nothing has been disclosed in the second complaint which is substantially new and not disclosed in first complaint. No case is made out that even after the exercise of due diligence the facts alleged in the second complaint were not within the knowledge of the first complainant. In fact, such a case could not be made out since the facts in both the complaints are almost identical. Therefore, the second complaint is not covered within exceptional circumstances explained in *Pramatha Nath*. In that view of the matter the second complainant in the facts of this case, cannot be entertained.

In the present case, first complaint was not dismissed on merits. The first complaint was quashed by the Karnataka High Court on the ground that complainant had filed another complaint on identical facts at Mumbai against 7 accused persons. The complaint filed before the Magistrate at Bangalore was not decided on merits nor the Court had dismissed the same on merits. Therefore, this authority is not attracted to the facts and circumstances of the case and on this ground the complaint filed before the Addl. C.M.M. Mumbai could not be dismissed. Even though complainant had filed two complaints, one of them was already quashed by the Karnatak High Court at Bangalore, the second complaint pending before the Addl. C.M.M. Mumbai could not have been dismissed on the same ground. If it would also be quashed, it would amount to denial of justice to

the complainant and providing protection and immunity to the accused persons who had committed serious offences of fraud, cheating, forgery, conspiracy, etc.

12. The second contention is about non-following the mandatory provisions of Section 202(1) of Code of Criminal Procedure. Out of seven accused persons, accused Nos. 1 and 2 were situated at Mumbai, accused No. 3 was at Chennai, accused No. 4 was at Bangalore and accused Nos. 5, 6 and 7 were also at Chennai. Therefore, it is clear that accused Nos. 3 to 7 were not residing or situated within the territorial jurisdiction of the Addl. C.M.M. Mumbai. After the amendment, with effect from 23.6.2006, in Section 202(1) of Code of Criminal Procedure it has been made mandatory that any Magistrate, on receipt of a complaint of an offence against an accused residing at a place beyond the area in which he exercises his jurisdiction, he shall postpone the issue of process against the accused and shall either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he deems fit, before issuing the process. There is no dispute that in Criminal Application No. 2640 of 2009 (Capt. S.C. Mathur and Anr. v. Elektronik Lab and Ors.) and companion matters, one of which was between the parties before this Court, a learned Single Judge of this Court was required to consider whether the above provision of Section 202 is mandatory or not and after hearing the parties, the learned Judge held that the amendment made in Section 202(1) of Code of Criminal Procedure insofar as postponement of issuance of process against the accused, who are not residing in the area in which the concerned Magistrate exercises his jurisdiction, is mandatory. This proposition of law is not in dispute in the present case.

13. The learned Counsel for the accused persons contended that this mandatory provision was not followed as no such enquiry was made by the learned Addl. C.M.M. before issuing process. On the other hand, the learned Senior Counsel for the complainant pointed out from the proceedings of the trial Court that the said provision was in fact followed. The record reveals that the complaint was filed on 22.11.2006 and on that day, the matter was adjourned to 11.12.2006 for hearing on the point of taking cognizance. On 11.12.2006, the matter was adjourned to 19.12.2006. On 19.12.2006 after hearing, the learned Addl. C.M.M. came to conclusion that offence was made out and therefore he took cognizance and posted it to 5.1.2007 for recording verification statement of the complainant. On 5.1.2007, verification statement was recorded. Thereafter, the matter was adjourned to 11.1.2007 and then to 18.1.2007 and finally on 18.1.2007, the learned Addl. C.M.M. passed the order to issue process. In that order, he gave detailed reasons which show that he had not only gone through the complaint, verification statement, but also other documents on which the complainant was relying. From this, it is clear that after taking cognizance of the complaint on 19.12.2006, the learned Addl. C.M.M. had adjourned the matter and for recording evidence after verification statement again, he had adjourned for hearing as to whether process should or should not be issued. It means, he had in fact postponed issuance of process after taking cognizance of the matter. What

has been held in Capt. S.C. Mathur (supra) is that postponement of issuance of process is mandatory when the accused is not residing within the territorial jurisdiction of the Magistrate taking cognizance of the matter, till some enquiry is held either by the Magistrate himself or through police or some other person, Section 202 does not prescribe what enquiry should be held by the Magistrate after having taken cognizance. If the Magistrate hears the Counsel for the parties and peruses the relevant documents is satisfied that prima facie case is made out for issuance of process, it amounts to making necessary enquiry u/s 202 before issuance of process. In my opinion, taking into consideration the facts and circumstances, it must be held that the learned Addl. C.M.M. had in fact complied with the mandatory provision of Section 202 and had postponed the issuance of process till he made appropriate enquiry in the given circumstances and then he came to conclusion that the issuance of process was necessary, for which he passed a reasoned order. The learned Addl. Sessions Judge committed a serious error in holding that the learned Magistrate had not complied with the mandatory provisions of Section 202.

14. The third ground on which the learned Addl. Sessions Judge had allowed the revision of the accused persons and quashed the process was that the acts in dispute were ratified in the meeting dated 19.7.2001. It appears that during the arguments before the Addl. Sessions Judge, a photocopy of a document purporting to be minutes of the meeting of the advisers of the complainant and accused No. 4 Pawan Kumar held on 19.7.2005 was produced to show that the parties had approved the act of opening the account in the name of the Company and securing the loan on 28.6.2005. Firstly, this document was produced for the first time before the Addl. Sessions Judge in the revision application. This document could be treated as a defence of the accused persons. That document was not available before the Addl. C.M.M. when he passed the order. Secondly, this document being the defence could not be taken into consideration for the purpose of deciding whether prima facie case is made out for issuing process. The learned Addl. Sessions Judge observed that signature on the document was not disputed. In fact, the stage of proving that document or admitting signature on that document had never arisen. The original document was not before the Court and only a photocopy of the document purporting to be minutes of the meeting was filed and on the basis of such photocopy produced during the revision application by the accused persons, the learned Addl. Sessions Judge jumped to the conclusion that such a resolution was passed and the acts of 28.6.2005 were ratified. In my opinion, it will not be appropriate for the Addl. Sessions Judge.

15. In *Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd. and Others*, , the Supreme Court observed thus in para 22:

22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of

fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable.

In the present case, it cannot be said that the photocopy of the document purporting to be minutes of the meeting dated 19.7.2005 was a document of unimpeachable character. It is material to note that title of the document shows that it was the minutes of the meeting of the advisers of the complainant Rajeev Sawhney and accused No. 4 Pawan Kumar. If it was so the document would have been signed by such advisers, but according to the accused persons, the said document was in fact signed by the complainant himself. If it is so this fact may be proved by the accused as and when the parties are put to trial. Thus, the defence of the accused is based on that document. Therefore, it could not have been taken into consideration while quashing the order about issuance of process.

16. In view of the facts and circumstances noted above, all the three reasons given by the Additional Sessions Judge to quash the order passed by the Addl. C.M.M. had no basis. It is interesting to note that after having stated the facts of the case, in para 31 of the impugned order, the learned Addl. sessions Judge himself had observed "if this incident averred in the complaint is taken as it is without any more facts then certainly leads a prima facie case of playing fraud." It shows that the Addl. Sessions Judge, on the basis of the facts disclosed in the complaint, had also come to conclusion that prima facie case was made out. Having come to such a conclusion, the Addl. Sessions Judge embarked upon consideration of other grounds and quashed the order, which was well-reasoned and based on the facts disclosed in the complaint. Therefore, in my opinion, it is a fit case where this Court should, under its inherent power u/s 482, interfere and quash the order passed by the Addl. sessions Judge.

17. For the aforesaid reasons, the Revision Application is allowed. The impugned order passed by the learned Addl. Sessions Judge, Greater Bombay, is hereby set aside and the order passed by the Addl. C.M.M. 47th Court, Mumbai, issuing process against the accused persons is hereby restored.

18. Parties shall appear before the Addl. C.M.M. Mumbai, on 4.7.2011. It is made clear that the Court below while deciding the matter at the stage of framing charge or at the time of final judgment after trial, shall not be influenced by any observations made in this order as those observations are prima facie and are

made for deciding this Revision Application only.