

(2023) 01 CAL CK 0021
In the Calcutta High Court
Case No : Criminal Revision No. 298 Of 2019

Vivo Communication Device Pvt. Ltd. & Anr.	APPELLANT
Vs	
State Of West Bengal & Anr.	RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 120B, 378, 403, 405, 406, 415, 418, 420, 425
Code Of Criminal Procedure, 1973 — Section 173(2), 173(8), 190, 200, 202, 204,
209, 216, 217, 227, 228, 250, 482

Citation : (2023) 01 CAL CK 0021

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Mayukh Mukherjee

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

The revision has been preferred praying for quashing of the proceeding being Complaint Case No. C- 4119 of 2018, pending before the Learned Additional Chief Magistrate at Bidhannagar under Sections 405/406/420/425/34 of the Indian Penal Code, 1860.

The Complainant /Opposite Party No. 2 herein filed a complaint under Section 200 of the Code of Criminal Procedure stating there in that the opposite party no. 2 entered into agreement with the petitioner no.1 company, in order to promote the retail excellence in the name and style of VIVO and sell their products at shop No. CCSGA004, Ground Floor, City Centre Mall Matigara, District – Darjeeling since 2007. Subsequently dispute cropped up between them relating to rent, allegedly showing fabricated sale figure to convince the complainant to open the Brand Store, non refund of security deposit, shortage of staff, sudden charge of policy structure and target achievement plans, infiltration of stock, all leading to the business being stopped arbitrarily causing huge loss to the

complainant by having to forgo legitimate dues. The complainant alleged that the petitioner has committed the offence of cheating and criminal breach of trust.

Mr. Mayukh Mukherjee, Learned Counsel for the petitioner has submitted that the petitioners have diligently responded to the notice served upon them by the complainant, proving their clear and honest intention.

It is further stated that Criminal liability cannot arise from a commercial transaction or obligation when the sum was not promised to be paid. Mens rea which is a condition precedent for criminal liability to arise, is completely missing. A commercial transaction or obligation cannot be given a criminal colour to suit the needs of the opposite party. That no unfair or deceptive means or data are provided to any of their business partner. The instant dispute is civil in nature but it has been given criminal colors only to malign the petitioners brand reputation. There is nothing on record to show or even prima facie suggest that the petitioners have committed such offences.

The terms and condition in the agreement were very clear and the petitioners all along have performed their part of the contract diligently. That the ingredient required to constitute the offences alleged are totally absent there being no evidence to prima facie make out a case of cognizable offence against the petitioners and as such the cognizance taken by the Learned Magistrate is bad in law and the proceedings are thus liable to be quashed.

Inspite of intimation being served, there is no representation on the part of the opposite party no. 2.

On hearing the counsel for the petitioners and/having considered the materials on record including the documents relied upon by the petitioner, it appears that a written agreement (on 2 ½ pages) was entered into between the parties on 30.03.2017. The agreement did not contain any arbitration clause. The terms and condition were clearly mentioned therein. Vide an order dated 06.10.2018 the Learned Magistrate was pleased to issue summons upon the petitioner.

Hence the revision with a prayer for quashing of the said proceedings.

Considering the nature of dispute between the parties based on a distributor agreement, the following judgment of the Supreme Court is to be taken as a guidance and if applicable to the present case shall be applied to arrive at a just decision.

In M/s. Indian Oil Corporation vs. M/s Neps India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006, the court considered the following point among the two points decided.

8. The High Court by common judgment dated 23. 3.2001 allowed both the petitions and quashed the two complaints. It accepted the second ground urged by the Respondents herein, but rejected the first ground. The said order of the High Court is under challenge in these appeals. On the rival contentions urged,

the following points arise for consideration :

- (i) Whether existence or availment of civil remedy in respect of disputes arising from breach of contract, bars remedy under criminal law?
- (ii) Whether the allegations in the complaint, if accepted on face value, constitute any offence under sections 378, 403, 405, 415 or 425 IPC ?

Re : Point No. (i) :

9. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v. Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

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

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

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

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

necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

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

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

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

Now in the lines of the judgment under reference let us see if the allegations in the complaint in the present case, if accepted on face value, constitute any offence under Sections 406/418/420/120B IPC.

Section 405/406/420/425/34 of the Indian Penal Code.

Section 406 IPC lays down:

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

Ingredients of offence.— The essential ingredients of the offence under Sec. 406 are as follows:-

- (1) There must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract.
- (2) The accused was entrusted with the property or domain over it.
- (3) He dishonestly misappropriated or converted to his own use such property;
- (4) He dishonestly used or disposed of that property or willfully suffered any other person to do so in failure of-
 - (a) Any direction of law prescribing the mode in which such trust is to be discharged, or
 - (b) Any legal contract made touching upon the discharge of such trust."
 - (c)

Section 405 Indian Penal Code defines :-

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

In *M/s. Indian Oil Corporation vs. M/s Npec India Ltd. & Ors.* (supra) the Supreme Court also held:-

18. In *Chelloor Mankkal Narayan Ittiravi Nambudiri v. State of Travancore, Cochin* [AIR 1953 SC 478], this Court held :

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

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

[Emphasis supplied] In *Jaswantrao Manilal Akhaney v. State of Bombay* [AIR 1956 SC 575], this Court reiterated that the first ingredient to be proved in respect of a criminal breach of trust is 'entrustment'. It, however, clarified :

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

19. The question is whether there is 'entrustment' in an hypothecation? Hypothecation is a mode of creating a security without delivery of title or possession. Both ownership of the movable property and possession thereof, remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note : we are not expressing any opinion on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). The following definitions of the term 'hypothecation' in P. Ramanatha Aiyar's *Advanced Law Lexicon* (Third (2005) Edition, Vol.2, Pages 2179 and 2180) are relevant :

"Hypothecation : It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrower enters into an agreement with the lender to hand over the possession of the hypothecated asset whenever called upon to do so. The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledgee."

'Hypothecation' means a charge in or upon any movable property, existing in future, created by a borrower in favour of a secured creditor, without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallization of such charge into fixed charge on movable property. (Borrowed from section 2(n) of *Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002*)"

But there is no 'entrustment of the property' or 'entrustment of dominion over the property' by the hypothecatee (creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously there cannot be any entrustment by the creditor.

20. The question directly arose for consideration in *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, Calcutta [1996 (5) SCC 591]. It related to a complaint against the accused for offences of criminal breach of trust. It was alleged that a floating charge was created by the accused debtor on the goods by way of security under a deed of hypothecation, in favour of a bank to cover credit facility and that the said goods were disposed of by the debtor. It was contended that the disposal of the goods amounted to criminal breach of trust. Negating the said contention, this Court after stating the principle as to when a complaint can be quashed at the threshold, held thus :

"a serious dispute has been raised by the learned counsel as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression 'entrusted with property' or 'with any dominion over property' has been used in a wide sense in Section 405, I.P.C. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405, I.P.C. is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405, I.P.C. is a comprehensive expression and has been used to denote various kinds of relationship like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee....."

In the present case, the petitioners are admittedly the owners of the products and as such there was no "entrustment" in favour the petitioners.

As such the offence of criminal breach of trust by the petitioners has not been committed and the cognizance taken by the Magistrate is bad in law.

Section 420 IPC lays down:-

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

Ingredients of offence.— The essential ingredients of the offence under Sec. 420 are as follows:-

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(a) the person so induced to do anything which he would not do or omit if he were not so deceived, and

(b) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are –

(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and

(B) Inducing the person deceived to part with property.”

In the present case there is no case against the petitioners that they dishonestly induced the complainant to deliver any property.

There was neither any inducement nor any delivery of property as required. As such an essential ingredient required to constitute an offence under Section 420 IPC being prima facie not present, the offence alleged cannot be held to be proved against the petitioners/accused.

Section 425 IPC lays down:-

“425. Mischief.—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Mischief.— The elements necessary for constituting an offence under this section are as follows:-

(a) The accused must have caused the destruction of some property or some change in it or its situation;

(b) Such change must have destroyed or diminished the value or utility of the property or affected it injuriously.

(c) Destruction or change in the property or situation thereof must have been done with the intention of causing or with the knowledge that it is likely to cause wrongful loss or damage to the public or to any person.”

No such ingredients is present to prima facie show that mischief was caused by the petitioners.

Admittedly there is a business relationship between the parties.

It was for the benefit of both the parties that the agreement had been executed. Cheating with knowledge to cause loss to the complainant herein will also cause

loss to the petitioners who for extension of their business entered into the said agreement. From the petition of complaint, no such materials has been produced to prima facie show that the petitioners intentionally with knowledge cheated the complainant.

The Supreme Court in M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021, citing several precedents held :-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

In Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, the Supreme Court held :-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”

In Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra) the Supreme Court also held :-

"20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial.

(Vide *Pepsi Foods Ltd. v. Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , *Ashok Chaturvedi v. Shitul H. Chanchani* [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and *Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy* [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

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

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

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

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

30.4. Step four : Whether proceeding with the trial would result in an abuse of

process of the court, and would not serve the ends of justice?"

22. In *State of Bihar v. P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)

"68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to 'killing a stillborn child'. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report."

(emphasis supplied)

23. The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)

"16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

24. In *Parkash Singh Badal v. State of Punjab* [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)

"74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained."

25. In *State of A.P. v. Golconda Linga Swamy* [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

"8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

(See also *K. Karunakaran v. State of Kerala* [(2007) 1 SCC 59 : (2007) 1 SCC

(Cri) 251] .)

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

27. The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court."

In the instant case, cognizance has been taken and process has been issued (including attachment and warrant of arrest) by the Magistrate concerned.

The Supreme Court in *State of Maharashtra vs. Salman Salim Khan* (2004) 1 SCC-525, also held:-

"12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial....."

This Court relies upon the judgment of the Supreme Court in *Birla Corporation Ltd. vs. Adventz Investments and holdings*, Criminal Appeal no. 877 of 2019, wherein the court held:-

"86. In *Indian Oil Corpn. v. NEPC India Ltd. and Others* (2006) 6 SCC 736, the Supreme Court after observing that there is a growing tendency in business circles to convert powerful civil disputes in criminal cases held as under:-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are

unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

(Medmeme LLC & Ors. vs. M/s. Ihorse BPO Solutions Pvt. Ltd. (2018)13 SCC 374).

The judgment in Birla Corporation Ltd. vs Adventz Investments and holdings (supra) has already been discussed earlier.

In the said judgment the Supreme Court also observed:-

"82. Exercise of power under Section 482 Cr.P.C. envisages three circumstances in which the inherent jurisdiction may be exercised namely:- (i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Inherent jurisdiction under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution.

83. It is well settled that the inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:-

"5. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused; (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

84. In *State of Haryana and Others v. Bhajan Lal and Others* 1992 Supp (1) SCC 335, the Supreme Court considered the scope of inherent powers of the Court and after referring to earlier decisions, the Supreme Court enumerated categories of cases by way of illustration where the extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised by the High Court to prevent abuse of process of Court or otherwise to secure ends of justice. It was held that "where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

87. In *Madhavrao Jiwajirao Scindia and Others v. Sambhajirao Chandojirao Angre and Others* (1988) 1 SCC 692, it was held that "when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima-facie establish the offence." It was further held that "while considering the matter, the court is to take into consideration any special feature which appear in a particular case showing whether or not it is expedient in the interest of justice to permit a prosecution to continue."

88. The FIR or the criminal proceedings can be quashed if the allegations do not make out a prima-facie case or allegations are so improbable that no prudent person would ever reach a just conclusion that there are sufficient grounds for proceeding against the accused....."

The Supreme Court in *M/s Neeharika Infrastructure Vs. The State of Maharashtra* (on 13 April, 2021), in Criminal Appeal No. 330 of 2021, citing several precedents held :-

" * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not

overlapping;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

In Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, the Supreme Court held :-

"39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence."

In Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra) the Supreme Court also held :-

"20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of

the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial.

(Vide Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In Rajiv Thapar v. Madan Lal Kapoor [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

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

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

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

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

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

22. In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)

"68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to 'killing a stillborn child'. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition

should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report."

(emphasis supplied)

23. The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)

"16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

24. In *Parkash Singh Badal v. State of Punjab* [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)

"74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained."

25. In *State of A.P. v. Golconda Linga Swamy* [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

"8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

(See also *K. Karunakaran v. State of Kerala* [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251] .)

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

27. The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and

filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court."

In the instant case, charge-sheet has been filed and cognizance has been taken by the Magistrate concerned.

The Supreme Court in *State of Maharashtra vs. Salman Salim Khan* (2004) 1 SCC-525, also held:-

"12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial....."

The dispute herein between the parties is clearly a civil dispute relating to the non-compliance of terms and conditions in the agreement executed between the parties. The materials on record does not show any evidence to support the ingredients required to constitute the offences as alleged. In a case of such nature the parties should approach the Civil Courts and not come before the Criminal Courts making false accusations against each other. The parties are aware that the dispute between them is civil in nature and necessary relief has to be prayed for before the Civil Court.

The materials on record clearly show that there is absolutely no evidence to show that a prima facie case for the offences as alleged has been made out against the petitioners.

Accordingly, the criminal revisional application being CRR 298 of 2019 stands allowed.

The proceedings being in complaint Case No. C-4119 of 2018, pending before the learned Additional Chief Judicial Magistrate at Bidhannagar under Section 405/406/420/425/34 of the Indian Penal Code, 1860 is hereby quashed.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.