Delhi High Court
Subhkaran Luharuka & Anr. vs State & Anr. on 9 July, 2010
Author: Mool Chand Garg

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.M.C. No.6122-23/2005

% Date of Reserve: 26.05.2010
Date of Decision: 09.07.2010

1. SHRI SUBHKARAN LUHARUKA
S/O LATE K.P. LUHARUKA
AVADH BUILDING, G.K.MARG,
MUMBAI - 400 018

2. M/S SHREE RAM MILLS LTD.
AVADH BUILDING, G.K.MARG,
MUMBAI - 400 018 .... PETITIONERS

Through Mr. Saurav Aggarwal, Mr. Gauri Subramanian, Mr. Mohit Mathur, Mr. Vedant Verma, Mr. Lalit Kataria, Mr. Anand Nandan, Mr. Raunak Dhillon, Advocates

VERSUS

1. STATE (GOVT. OF NCT OF DELHI)

2. UTILITY PREMISES PVT. LTD.
C-20/1, LGF GAUTAM NAGAR,
NEW DELHI - 110 016 ....RESPONDENTS

Through Mr. Vijay Aggarwal, Mr. Gurpreet Singh, Mr. Gaurav Kapoor, Advocates.
Mr. Pawan Behl, APP for the State

WITH

+ Crl.M.C. No.6133-34/2005

1. SHRI SUBHKARAN LUHARUKA
S/O LATE K.P. LUHARUKA
AVADH BUILDING, G.K.MARG,
MUMBAI - 400 018

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[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 1 of 69]
Through Mr. Vijay Aggarwal, Mr. Gurpreet Singh,
Mr. Gaurav Kapoor, Advocates.
Mr. Pawan Behl, APP for the State

Interveners/ Amicus Curiae
Mr. Akshay Chandra, Mr. Gaurav Agrawal,
Mr.HarshJaidka, Advocates

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J:

1. This common judgment shall dispose of the aforesaid two petitions, one filed under Section 397 of the Code of Criminal Procedure (hereinafter referred to as "Code") and the other filed under Section 482 of the Code by the same petitioners praying for quashing of the Criminal Complaint No. 1263/1/2005 and the order dated 01.07.2005 of the Metropolitan Magistrate, New Delhi directing registration of an FIR on the allegations contained in the aforesaid Complaint filed under Section 200 of the Code and to investigate the same in exercise of the provisions contained under Section 156(3) of the Code. Prayer has also been made to quash the FIR bearing No. 436/2005 dated 6.8.2005 registered under Sections 420/467/468/471/120-B/34 IPC at Police Station Defence Colony, New Delhi in compliance with the aforesaid order against the petitioners and others.

2. It is the case of the Petitioners that petitioner No.2 M/s Shri Ram Mills Ltd. (hereinafter referred to as the "Company") is owner of large chunk of the land ad-measuring about 67,785.50 sq. mtr. in Worli Mumbai. The first petitioner is its Director. This company became a sick company. For its revival a scheme was framed under the directions of the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as "the AAIFR") which permitted the company to dispose of 4848.1 sq. mtr. of land to meet its liability towards financial institutions. In that context the Company entered into a development agreement dated 27.04.1994 with the 2nd respondent/ complainant, M/s Utility Premises Ltd. (referred to as "UTILITY" hereinafter) whereby it was agreed that the said land measuring 4848.1 sq. mtr., would be developed by UTILITY and residential flats would be constructed to be thereafter. The sale proceeds of those flats were to be shared between them 50:50. No money was received by the Company from the Complainant in this

regard at that time. As per the agreement, the ownership and possession of the land was always to remain with the Company. The agreement also mentions

that FSI (Floor Space Index) to be made available under the agreement would be between 86,000 and 1,20,000 sq. ft. but actually the FSI made available was only 86,725 sq. ft. FSI. The company also entered into a second agreement with UTILITY on 18.07.1994 to make available additional land of 2500 sq. mtr. However this could not be done as they could not agree to the price and therefore the said agreement was rescinded by mutual consent vide agreement dated 22.06.1996 as mentioned in clause 5 of the said Agreement. Vide this agreement the Complainant and M/s Bhupendera Capital also agreed to confine their rights of development only to the extent of FSI of 86,725 sq.ft. in the land in question. It may be mentioned there that the aforesaid agreements contained an Arbitration Clause for settling inter se disputes between the parties. There was also a prohibition clause restraining the Company from creating any third party interest in the Land to be developed. This agreement was also signed by M/s Bhupendra Capital and Finance Ltd., who came into the picture because of the agreement dated 09.11.1994 whereby the rights of the Company to receive 50% of the sale proceeds of the flats were transferred to them. Another agreement dated 28.06.96 also entered into between the parties, witnessed another important development when the complainant also transferred all its rights under the Agreement dated 27.4.1994 in favor of M/s Ansal Housing Pvt. Ltd. (hereinafter referred to as "Ansals") for consideration by accepting Rs.40 crores from them.

3. On 06.08.2004 a loan of Rs. 50 crores was taken by M/s Vijay Infrastructure from Infrastructure Leasing and Financial Services Trust Company Ltd. (hereinafter referred to as "IL&FS"). In that transaction the Company/petitioner No.2 gave its guarantee by creating a mortgage of its entire property measuring 67,785.50 sq. mtr., including 4848.1 sq. mtr. of land to be developed under Agreement dated 27.4.94. It is the case of the petitioners that neither the possession was transferred nor it was a sale but was a mere hypothecation and later on the said mortgage has also been re-conveyed on 18.03.2006.

4. It is submitted that Complainant issued a legal notice on 24.05.05 to the Company raising a dispute by invoking the Arbitration clause again to claim that they were entitled to 1,20,000 sq ft FSI and also alleging that the mortgage of the property was also a breach of agreement dated 27.04.1994 by the Company. The matter went up to the Apex Court by way of Civil Appeal No. 1523/2007 arising out of SLP (C) No. 15656/2006 seeking invocation of arbitration proceedings.

5. It may be noticed here that earlier also the complainant raised disputes with the Company alleging breach of the agreement dated 27.4.05 at many forums from 2001, but without success. Some relevant facts also noticed by the Honble Supreme Court in the aforesaid Civil Appeal for understanding the controversy between the parties are reproduced hereunder:

(i) As per the agreement dated 22.06.1996 it was

also agreed between the parties that UTILITY and the third party brought in i.e. M/s. Bhupendra Capital & Finance Ltd. would be left with no right or claim in respect of the property belonging to the company more particularly described in the First Schedule, save and except, the 86725 sq.ft. FSI. It is not in dispute that that much of land remained with UTILITY which was for development purpose which later on UTILITY assigned to M/s. Ansals Housing by means of an agreement dated 28.06.1996.

(ii) On 22.06.1996 the agreement dated 18.07.1994 was cancelled by mutual consent as the parties were unable to agree on the cost of shifting the reservation which was agreed to in the agreement dated 18.07.1994. It was, therefore, agreed vide clause 5 that the UTILITY and the third party brought in, i.e., Bhupenda Capital and Finance Ltd., would have no right or claim in respect of the said property belonging to the petitioner no.2 and more particularly described in the First Schedule, save and except, the 86725 sq.ft. FSI. There is no dispute that, that much of land remained with the UTILITY for development purposes.

(iii) On 28.06.1996 the UTILITY entered into an Assignment Agreement (a tripartite agreement) with Ansals to build flats on the area with FSI of 86,725 sq.ft. It is the contention of the petitioners that since then the complainant was left with no right whatsoever in the property as their own rights stood transferred to Ansals who thereafter even constructed the flats and have never raised any

dispute with the complainant.

(iv) Vide another agreement entered into between the parties, interest of the company to receive the sale proceeds in the flats to be developed was also transferred to M/s. Bhupendra Capital & Finance Ltd. on 09.11.1994. At that time sum of Rs. 21.60 crores which was to be paid to the company by the said party, was paid to UTILITY for repayment on a loan granted by UTILITY to the company earlier.

(v) On 04.5.2001 UTILITY filed a petition under Section 9 of the Arbitration Act seeking injunction and appointment of Receiver in respect of 2500 sq.mt. of land. However, that was dismissed by the High Court on the ground that the area was covered under the agreement dated 18.07.1994 and it was cancelled by an agreement dated 22.06.1996 and, therefore, the application was not maintainable. The appeal against the order also failed vide order dated 03.06.2002.

(vi) On 12.09.2001 UTILITY and one Santosh Singh Bagla who was the Promoter of the UTILITY company, filed application before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) contending therein that the promoters of the petitioner company were guilty of misfeasance and hence those acts were liable to be inquired into. It was secondly prayed that the Board of Directors of the petitioner no.2 company should be superseded. It was thirdly prayed that the injunction be issued restraining the petitioner no.2 from selling or transferring the lands. This application was dismissed by AAIFR leaving the parties to get the disputes adjudicated before an appropriate forum. It is to be noted here that a specific statement was made before the AAIFR by UTILITY herein that the sale of 1.20 lakh sq.ft. was not the subject matter of the application as the separate proceedings were being contemplated before the appropriate forum.

(vii) On 11.06.2002 UTILITY served a notice invoking the arbitration clause under agreements dated 27.04.1994 and 18.07.1994 on the ground that the petitioner had denied its liability to transfer the FSI beyond 86725 sq.ft. though it was bound to make available FSI of 1.20 sq.ft. to the UTILITY.

(viii) UTILITY and Shri Santosh Singh Bagla filed a writ petition in the Delhi High Court on 26.07.2004 whereby they challenged the order passed by the AAIFR dated 12.09.2001. Though UTILITYs had, in their appeal before AAIFR, claimed that the sale of 1.20 lakh sq.ft. of FSI was not the subject matter of that application, it was all the same prayed before the High Court in the writ petition that the petitioner no.2 should be restrained from transferring the additional FSI left with them. Thereupon an undertaking was given by the counsel for the petitioner no.2 that the petitioner no.2 would not sell the property which was covered in the agreement dated 27.04.1994.

(ix) On 06.08.2004 the petitioner no.2 agreed to mortgage the property covered by the agreement dated 27.04.1994 in favour of IL&FS for Rs. 50 crores.

(x) On 15.10.2004 the petitioner no.2 company was released from SICA as it became viable.

(xi) On 19.01.2005 a Memorandum of Understanding (MOU) was signed between the parties to settle all disputes between them which naturally included the issue regarding the transfer of 1.20 lakh sq.ft. of FSI. UTILITY under the same

agreed to accept 1.20 crores out of which a payment of Rs. 10 lakhs was already made by the petitioner no.2 to the UTILITY. The petitioner no.2 also agreed to execute the necessary conveyance deed as per agreement dated 27.04.1994 and 22.06.1996 thereby seeking to confine the claim of the UTILITY to 86725 sq.ft. of FSI.

(xii) This MOU was cancelled by the UTILITY on

08.03.2005 and the UTILITY returned the amount of Rs. 10 lakhs.

6. During the pendency of the aforesaid Civil Appeal before the Apex Court as referred to abvove and without waiting for its decision UTILITY also initiated criminal proceedings against the petitioners in Delhi on 25.5.20055 itself soon after issuing the 2nd notice invoking Arbitration Clause as stated above. It is for that purpose they claims to have filed a complaint before Police Station Defence Colony, New Delhi on 25.05.2005 for registration of an FIR against the petitioners and others primarily on the following allegations:-

i) the complainant was induced to enter into the original agreement (which is dated 27.04.1994 though the date has not been given in the complaint) for a total consideration of Rs. 21.60 crores but were made to pay Rs. 25.60 crores inasmuch as the dues of the bank turned out to be Rs. 23.68 crores and another sum of Rs. 1.96 crores had to be paid by the Complainant to Municipal Corporation of Greater Bombay for safeguarding their interest.

ii) Assurance was given to the complainant at the time of entering into the agreement that the land in question will have FSI (Floor Space Index) to the tune of 1,20,000 sq. ft. but it actually turned out to be 86,725 sq. ft. That the assurance about additional land of 2,500 Sq.ft was also not met.

iii) The Company also mortgaged the subject land dishonestly and thereby caused wrongful loss to the complainant and wrongful gain to themselves.

7. According to the Complainant no action was taken on the said complaint by the Police. The record shows that on 27.5.2005 itself, Utility had already drafted a Complaint under Section 200 of the Code along with an application under Section 156(3) of the Code to be filed before a Metropolitan Magistrate at New Delhi without waiting for any action of the Police on their complaint dated 25.05.2005 and without approaching senior official of the Police in terms of the provisions contained under Section 154(3) of the Code.

8. The said Complaint along with the application under Section 156(3) of the Code was filed before the ACMM New Delhi. Shri S.K. Sharma, MM, New

Delhi, to whom the complaint was marked allowed the application also under Section 156(3) of the Code filed by the Complainant along with the Complaint under Section 200 of the Code and passed the order dated 01.07.2005 as noticed in the order of this Court dated 5.12.2005 (supra). The SHO Defence Colony in compliance to those directions registered FIR bearing No. 436/2005 without holding any preliminary inquiry in the matter. It has been fairly conceded by the Ld. Counsel for the Govt. of NCT of Delhi that in view of the order dated 01.07.05 of the Magistrate they had no other option. The said FIR has been annexed as Annexure P-1 with the present petition and reads as under:-

> 1. That the complainant is company duly incorporated under the provisions of Companies Act, 1956 having its office at C-20/1, LFG, Gautam Nagar, New Delhi-110 016 and presented this complaint 415/420/465/467/468/471/120-B/34 IPC before the Honble Court through the authorized representative Sanjay Deksha who is fully authorized to take legal action on behalf of the complainant in any police station court/tribunal before any other authority and to appear and to give evidence on behalf of the complainant (certified extract from the minutes of meeting of board of directors in favour of Sh. Sanjay Daksha to represent the complainant before this Honble Court is annexed herewith)
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> 2. That the complainant was approached by Accused Nos.1 to 8 from time to time and various meetings took place at various offices including complainants above mentioned office. The accused persons requested the complainant to buy property of M/s Shree Ram Mills Ltd., situated at all those pieces or parcels of land or ground bearing Cadestral Survey No.1547 (part), 1548 and 1549 (part), admeasuring 5796.17 square yards equivalent to 4848.1 square mtrs. Of thereabouts (notwithstanding the area stated herein, the Municipal F.S.I. was to be 120,000 square feet only) of Worli Estate of Lower Parel Division, situated at G.M. Bhosle Marg, Bombay 400 018, in the Registration District of Bombay City.
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> 3. That initially the complainants were apprehensive as the deal was for large sum of money but the accused persons induced complainant into buying the aforesaid property upon various assurances and presenting it as a profitable business proposition and are genuine deals with no legal hiccups.
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> 4. That the accused persons represented the complainant that there are sick industrial undertakings under BIFR and faced with the winding up recommendation in the year 1994. The accused

persons had preferred the appeal before AAFIR under

which rehabilitation scheme was worked out and it was represented to the complainant that AAIFR has constituted an asset sale committee, which has approved the sale of aforesaid land.

5. That the total consideration was Rs.21.60 Crores and the complaint accordingly made payment to the accuseds secured creditors, namely IDBI, Bank of India, Canara Bank, Central Bank of India, UCO Bank, Bank of Baroda and entered into three agreements through complainant and its group companies.

6. That further even though the total consideration to be paid in terms of aforesaid agreements was Rs.21.60 crores, as represented to complainant, however, it actually turned out to be Rs.23.68 crores, as the dues of the bank were under stated by the aforesaid Accused Nos.1 to 8.

7. That, however, subsequently to complainants shock and surprise, complainant came to know that Rs.1.96 crores was to be paid to Municipal Corporation of Greater Bombay in order to get various permissions and the complainant ended up in Rs.1.96 crores more to Municipal Corporation of Greater Bombay safeguard their interests and also complainant got the possession from which complainant started constructing flats and they are already nearing completion. Hence it is clear that despite the deal was at Rs.21.60 crores because of various concealments/misappropriations by accused Nos.1 to 8, complainant had to pay Rs.25.64 crores.

8. That after executing the above agreements and effecting payment in full, complainant got possession of the part of the agreed FSI from the SRM. These facts of transfer and assignment of 1,20,000 sq. ft. FSI was rightfully confirmed by the said company before AAIFR and its Assets Sale Committee. Shree Ram Mills and its directors have confirmed this fact before various Courts by way of their distinct affidavits and confirmations confirming the said facts. In fact, Late Sh. Abhay Kumar Kasliwal, ex-Chairman of the Company had also filed an affidavit dated 24.09.1996 before AAIFR in response to specific order of AAIFR requiring Shree Ram Mills Ltd. to explain its position in respect of various properties belonging to the accused. In the said affidavit dated 24.09.1996, accused categorically stated on oath that 1,20,000 sq.

ft. FSI has been sold to the complainant. Further the FSI that actually got available on said piece of land as per BMC rules turned out to be 82015 sq. ft. instead of 1,20,000 sq. ft. contemplated. Hence, because of the above various things, complainants litigation started with the accused persons and is pending before Delhi High Court vide Civil Writ Petition 9572-73 of 2003.

9. That however, recently to utter shock and surprise, the complainant came to know that these people have colluded with accused No.12 and 13, i.e., M/s Infrastructure Leasing and Financial Services Ltd. and M/s. IL & FS Trust Company Ltd. Officials of M/s. IL & FS and also accused No.10 M/s. Vijay Infrasture Technologies p. Ltd. and accused No.9 Mr. Shirish Chunilal Dalal and accused No.11. Mr. Virendra Kumar Jain, Director have created charge on complainants property. And then the complainant got search conducted with the Registrar of Companies, and came to know that accused No.13 (M/s. IL & FS Ltd.) had extended financial assistance by way of Term Finance to the tune of Rs.500 million to accused NO.10 (Ms. Vijay Infrastructure Technologies P. Ltd.) for which accused No.1 (M/s. Shree Ram Mills Ltd.) offered its guarantee and created mortgage of its entire property including that of complainant portion through Indenture of Mortgage dated 06.08.2004 in favour of accused No.13 (IL & FS Trust Company Ltd.) a security Trustee for the lender. It can be seen clearly from the agreement enclosed and charge registered in documents enclosed that survey number of property in both are same.

10. That now it is very clear that the accused persons despite having no right to the aforesaid property, have mortgaged the same dishonestly and has caused wrongful loss to complainant and wrongful gain to themselves. As these facts are akin to illustration (i) to see 415 IPC and as the complainant have given Rs.25.64 crores and have incurred substantial amount on development thereof, hence the accused persons have committed offence u/s 420 IPC. Further as the accused persons have created these documents of mortgage/charge which they were not authorized to create/execute and hence the accused persons have made false documents without authority and hence committed cognizable offence of forgery punishable u/s 465 IPC. Further, this making of false documents is in respect of valuable security, i.e., land and hence cognizable offence u/s 467 IPC has been committed. Further,

this forgery is for the purpose of cheating. Hence cognizable offence u/s 468 IPC has been committed and further these false documents have been used as genuine and hence offence u/s 471 IPC have been committed.

11. That the above mentioned accused Nos. 2 to 8 are Directors and are senior officers of Shree Ram Mills Ltd. and have conspired to commit offence of forgery and even inter-acted with complainant for the same from time to time personally and phone over a period these people have conspired to commit above mentioned offences and hence have committed offences U/s 120-B IPC. Specific role of each of these

accused persons shall be enumerated subsequently while submitting statements during investigation for the sake of brevity. Accused Nos. 9 to 13 are also beneficiaries of this cheating and have hand in glove with other accused and were well aware of complainants rights as already given in public notice of rights in the said property and the accused persons also have been in contact with us and were duly explained about our rights in the property and still the accused persons went ahead with aforesaid mortgage and creation of charge and hence all the aforesaid accused have had common intention to cause wrongful loss to the complainant and wrongful gain to the accused as contemplated in Sec.34 IPC.

9. The FIR is verbatim reproduction of the Complaint dated 1.7.2005 filed under Section 200 of the Code. The list of documents filed along with the complaint is as follows:-

1. Certified extract from the minutes of meeting of board of directors in favour of Sh. Sanjay Daksha to respondent the complainant before this Honble Court is annexed herewith.
2. Copy of the complaint duly received on 25.05.2005 at P.S.-Defence Colony.
3. Certified copy from the Office of Registrar of companies mentioning particulars of charge create
4. Copy of Indenture of mortgage.
5. Copy of affidavit of Abhay Kumar S. Kasliwal.
6. Any other further document with the permission of this Honble Court.

10. It is submitted that the addresses of the accused persons who admittedly are all resident of Bombay was not given either in the complaint or in the application u/s 156(3) of the Code. The date of original agreement entered into between the parties from where the alleged disputes arose, was also not

mentioned therein. Neither the copy of the agreement dated 27.04.1994 nor the subsequent agreements dated 22.06.1996 and 28.6.1996 settling all the disputes between them were filed along with the complaint.

11. Petitioners after coming to know of the registration of the FIR initially filed the first petition under Section 397 of the Code registered as Crl.M.C.Nos. 6133-34/2005 with the following prayers:-

> A. Allow the present petition and quash the complaint dated 1.7.2005 being Crl.Complaint No.1263/2005 and orders dated 1.7.2005 and 5.10.2005 passed by the learned Metropolitan Magistrate, Delhi and quash proceedings arising from or in any manner related to case FIR No. 436/2005 dated 6.8.2005 registered at Police Station Defence Colony, New Delhi
>
> B. Pass such order or further order (s) as this Honble Court deems fit and proper in the facts of the present case.

12. This Court on 29.11.2005 passed the following orders:-

> In this petition the petitioner has inter alia prayed for quashing of FIR No. 436/2005. The prayer clause reads as under:-
>
> Allow the present petition and quash the complaint dated 1.7.2005 being Crl.Complaint No.1263/2005 and orders dated 1.7.2005 and 5.10.2005 passed by the learned Metropolitan Magistrate, Delhi and quash proceedings arising from or in any manner related to case FIR No. 436/2005 dated 6.8.2005 registered at Police Station Defence Colony, New Delhi
>
> In view of the above prayer, Registry is directed to treat this petition as Criminal Miscellaneous Main or Writ Petition after necessary corrections or amendments in the petition are carried out by the petitioner.
>
> List before the appropriate Bench on 2nd December, 2005.

13. By way of abundant caution petitioners also filed a petition under Section 482 of the Code for quashing the aforesaid FIR. The said petition had been registered as Crl.M.C.Nos. 6122-23/2005.

14. Both the petitions thereafter have been listed together for hearing. In Crl.M.C.Nos. 6122-23/2005 this Court passed the following interim order on 5.12.2005:-

> Crl.M.No.11868/2005
>
> I have heard Mr. Sandeep Sethi, Sr.Advocate for the petitioners and Mr. Vijay Aggarwal, Advocate for respondent No.2/complainant on the point of admission and have gone through documents placed on the file.
>
> The complainant under Section 415/420/465/467/468/471/120-B/34 of Indian Penal Code accompanied with an application under Section 156(3) Cr.P.C. was filed in the court on the allegation that the accused No.1 approached the complainant time to time and requested him to buy the property of accused No.1. The property is situated at Mumbai. It is alleged that the complainant was induced to pay

> Rs.21.60 crores, agreements were written. The amount later got enhanced at Rs.23.68 crores. Then it was found that Rs.1.96 crore was payable to the Municipal Corporation of Mumbai. There are allegations of concealment and fabrication of documents and conspiracy. On 1.7.2005, the learned Metropolitan Magistrate passed the following order:
>
> 01.07.05.
> Present: AR of the complainant with counsel Sh. Vijay Aggarwal, Advocate.
>
> Fresh complaint received along with application U/s 156(3) Cr.P.C. Be checked and registered. Heard on the application U/s 156(3) Cr.P.C. Ld. Counsel for the complainant has relied upon a judgment of Allahabad High Court which is reported as "2008 CrI.L.J.2028". The perusal of the complaint reveals the commission of cognizable offence and the S.H.O. Police Station Defence Colony is directed to get the case registered and investigate the matter U/s 156(3) Cr.P.C. The compliance report be called for 05.10.2005.
>
> M.M./1.7.05.
>
> The above judgment has been cited before me by learned counsel for the respondent No.2-

complainant to highlight the argument that no report need be made to police before filing a complaint or application under Section 156 (3) before the court.

I have gone through the judgment cited in the impugned order. Briefly the facts of the cited case are that the accused persons armed with guns, rifles, lathis, etc., came hurling abuses and threats to the complainant and the members of his family and fired upon them. Some of the accused persons climbed the house of the complainant and started demolishing the roof and continued firings. Then they looted the house, jewellery and other valuables and set the house on fire. The complainant and the members of his family raised hue and cry, threw stones on the accused persons and also fired in self-defence. The villagers intervened and saved the complainant and the members of his family. The police did not even record the report which the complainant wanted to register. Rather under the influence of the accused party, the complainant was arrested and involved in false cases. When no action was taken on the oral report of the complainant, the complainant sent an application through Jailor to SSP, Agra as also to DIG, Agra on 22.1.1992, but

still no action was taken. Thereafter, the complainant filed an application under Section 156(3) Cr.P.C. on 4.2.1992 and on this the learned Judge directed investigation of the case.

These introductory facts in the above judgment on the face of it show that in such a serious matter in which fire arms were used by both the sides and dacoity was committed, the police refused to record the FIR. Even the higher police officers failed to take notice of the complaint sent to them. Only thereafter he moved the court.

Whereas in the present case on the face of it, it is a civil dispute, there may be criminal conspiracy underneath. Therefore, the above mentioned judgment cannot be said to be of universal applicant for every complainant in the court accompanied by an application under Section 156(3) of the Cr.P.C. Facts

and circumstances vary from case to case. The above judgment is not attracted in the present case.

Learned counsel for the petitioner has submitted that all transactions took place at Bombay. Arbitration proceedings are going on at Bombay and, therefore, there is a threshold challenge to the very jurisdiction of the courts at Delhi. Learned counsel for the respondent No.2 has submitted that police officer cannot refuse to record FIR or investigation for want of territorial jurisdiction and has cited Satvinder Kaur Vs. State & Anr. Reported in AIR 1999 Supreme Court 3596 that was a case of a dispute between husband and wife. In that case, marriage was performed at Delhi, the daughter was born at Delhi.

Matrimonial home was in Patiala. Mother and the child were thrown out from the matrimonial home at Patiala in the clothes that they were wearing. A report was lodged at Patiala about torture and dowry demand. Thereafter, complainant came to Delhi and lived with her parents. Threats from her husband continued and then she lodged a report in crime against Women Cell at Delhi.

Subsequently a case under Section 498-A/406 IPC was registered whereupon the husband was arrested at Patiala and was brought to Delhi. The husband challenged the jurisdiction at Delhi.

The High Court of Delhi opined "since the return of istridhan and account thereof is being sought in Delhi, the courts at Delhi will have the jurisdiction to try the case." Again, I may say that the facts and circumstances of each case vary. Husband-wife disputes stand on a different footing.

In the present case the immovable property [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 14 of 69] is situated at Mumbai. Litigation about the said property is going on in Mumbai. So Delhi police will have to go to Mumbai for investigation of this prima-facie civil transaction.

Considering all the circumstances and the facts available on the record, I stay the operation of the impugned orders dated 1.7.2005 and 5.10.2005 passed by the learned Metropolitan Magistrate, till further orders.

Renotify on 20th March, 2006, for disposal Nothing said herein will tantamount to expression of opinion on the merits of the case.

15. Special Leave Petition filed by the second respondent/complainant before the Honble Supreme Court against the aforesaid order stands dismissed. I am conscious of the fact that the interim order does not decide the merits of the case. Accordingly, the matter was heard on all aspects at length. The learned counsel for the petitioners, complainant as also the counsel for the Govt. of NCT of Delhi have made their submissions orally and have also given written notes.

16. At this juncture, it would also be relevant to take note of the application filed by the second respondent under Section 156(3) of the Code:-

> 1. That the complainant prefers this complaint u/s 415/420/465/467/468/471/120-B/34 IPC before this Honble Court through its attorney Sanjay Daksha who is fully authorized to take legal action like as to file

complaints in any Police Station Court Tribunal or before any other authority and to appear and give evidence on behalf of the complainant (Certified extract from the minutes of meting of board of directors in favour of Shri Sanjay Daksha to represent the complainant before this Honble Court is annexed herewith).

2. That the complainant prefers this complaint u/s 415/420/465/467/468/471/120-B/34 IPC before this Honble Court and the details of which may be read and taken as the part and parcel of this application.

3. That as cognizable offences have been committed, the complainant made a police complaint against the above mentioned accused persons at P.S. Defence Colony, which is duly acknowledged as received on Dt. 25.05.2005 (Copy of the complaint duly acknowledged is annexed herewith)

4. That after having got received complaint in the Police Station, the complainant approached the police official through its Attorney, and other officials, [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 15 of 69] several times as well as contacted several times on telephone also, but of no use as no heed was ever given to this matter by the concerned police officials. (No details)

5. That though using/performing its best efforts, the complainant got failed to have the attraction of the police officials to this matter. In fact till now no efforts have been made to even contact the accused persons.

6. That the accused persons despite having no right to the aforesaid property, have mortgaged the same dishonestly and has caused wrongful loss to complainant and wrongful gain to the accused persons. These facts are akin to illustration (i) to Sec. 415 IPC. And the complainant paid Rs. 25.64 instead of Rs. 21.60 due to fraudulently and dishonestly concealment of facts by the accused. Hence the accused persons have committed the offence u/s 420.

7. That the accused persons have made/execute false documents of mortgage/charge without authority and hence committed cognizable offence of forgery punishable u/s 465 IPC.

8. That the accused persons made false documents in respect of valuable security, i.e. land and hence cognizable offence u/s 467 IPC has been committed.

9. That this forgery is for the purpose of cheating, hence accused persons have committed an offence punishable u/s 468 IPC and further these false documents, have been used as genuine and hence offence u/s 471 have been committed.

10. That as the accused persons cheated the complainant, made false documents and made these documents for valuable security and used these documents as genuine, hence various offence u/s 420, 465, 467, 468 and 471 have been committed. And as all these acts were committed by Accused Nos. 2 to 8 in conspiracy with each other in furtherance of their common intention, hence offence u/s 120-B/34 IPC has also been committed by them, as all these offences being offences involving

mens rea, it is needed to lead the evidence showing dishonest intention of the accused persons and in such cases in order to secure summoning/conviction by this Honble Court, it is essential that the evidence showing the dishonest intention of the accused persons from the beginning must be produced before this Honble Court and that is possible only by a thorough investigation by the police which would lead to the outcome in the investigaton by the police as there would be outcome in the investigation that

i) who are the other officers of the various accused company involved? And

ii) Who other persons have got benefited out of this cheating? And

iii) How actually has this mortgage been effected and who are the beneficiaries? And

iv) What was the status/economic conditions of [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 16 of 69] the accused persons at the time of executing sale agreement? And

v) For what purpose did the accused persons concealed the material facts from the complainant? And

vi) What were the conditions of the bank account of accused persons on the relevant dates? And

vii) Whether any recovery of the cheated amount and possession of the remaining piece of land can be effected to at the instance of accused persons as per requirement of Sec.27 of Evidence Act 1872.

11. That though the complainant has deep faith in police officials but have no hope to get his grievance settled by police authorities the complainant prefers this complaint and pays before this Honble Court.

Prayer It is, therefore, most respectfully prayed before this Honble Court to issue direction to the SHO/concerned police officer to register a case against the said accused and to investigate the matter further and to submit their final report in this regard.

17. It is submitted by the petitioners that the allegations made in the Complaint read with the prayer made in the application u/s 156(3), reflects the real purpose of filing of the complaint i.e to extract money and to get more more land despite having settled all these issues with the Company vide agreement dated 18.7.1994 and dated 22.6.96. They also wanted the police to recover money paid in 1994 in 2005 after enjoying the fruits of the agreement and having assigned their interest in the property to a third party for consideration.

18. The petitioners have prayed for quashing the Complaint and the Order dated 1.7.2005 as also the FIR No. 436/05 registered at PS Defence Colony New Delhi interalia on the following amongst other grounds:-

(i) The courts in Delhi have no jurisdiction over the matter. The Complaint has its registered office at Bombay. The Respondents are all of Bombay. The land in question is situated in Bombay. Jurisdiction is being sought to be conferred in Delhi on the plea that some discussion took place at the Delhi office of the complainant which does not exist.

(ii) The grievance of the Complainant relates to the mortgage deed executed by Shree Ram Mills [SRM, the owner of land] on 06.08.2004 in favour of M/s IL&FS.

Firstly, the mortgage has already been reconveyed [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 17 of 69] on 18.03.2006.

Secondly, the title of the land was always with SRM. The land had never been sold to Utility or to any other person. The Company is still the title holder of the land. Hence, it could create a mortgage of whatever rights it had remaining in the land. The very basis of the complaint is that the land in question is complainants property, which is an incorrect and false statement. The very basis on which the present complaint had been filed is ex-facie non-existent. The complainant had deliberately not annexed the agreement between the parties, which agreements he annexed before the Supreme Court.

Thirdly illustration (i) to Section 415 is not attracted at all. As per the said illustration, it is a precondition that there is a sale of land, which is not the case here. Besides, a grievance can be raised by the person in whose favour mortgage is created, which is again not the case here.

Fourthly, the Complainant has instituted arbitration proceedings claiming damages on this very account on the ground that it is breach of agreement.

(iii) After the interim order of 05.12.2005 was passed by this Court, Complainant also approached Bombay police and filed a complaint in Bombay. The complainant made similar allegations before the Bombay Police regarding creation of mortgage. The complainant has thus acted upon the interim order of the High court by approaching the Bombay Police, which has found that the matter is a civil dispute. This also shows that the jurisdiction was in Bombay and not in Delhi.

(iv) No case of cheating under Section 420 is made out. The allegations in this regard are very mechanical and do not fulfill the requirements of Section 420. There is no pleadings also that there was any intention to cheat from the very beginning or that the 1994 agreement was fraudulently executed. The contract was executed in 1994 and after that parties have even given effect to the agreement. Section 415, which also has no application, [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 18 of 69] is not even a cognizable offence.

(v) It is also not a case of committing any forgery because the Company had not created any false document of mortgage as defined under-Section 463. The mortgage deed was signed by the officers of SRM in their own capacity and in their own names. The said document was not executed with any intention to cheat. In any event, IL&FS, in whose favour the mortgage was created, has had no

grievance.

(vi) Even the role of each of the accused persons has not been specified and it is stated in the complaint that role would be enumerated subsequently.

(vii) Utility has no locus to make the present complaint. By virtue of its agreement dated 28.06.1996, it has already assigned its entire right under the agreement dated 27.04.1994 to Ansals. Utility had thus no right remained with itself to lodge a complaint or to claim that any loss was caused to it.

(viii) The Complainant has already instituted arbitration proceedings claiming damages against the Company. The matter is pending and presently cross-examination of the witnesses are on-going. On the same cause of action, the present criminal complaint has been filed clearly as an abuse of the process of law. The relationship between the parties arises out of contracts which were executed way back in the years 1994 and 1996. The Complainant has been approaching various forums to exercise pressure on the Company.

(ix). That the Magistrate while passing the order dated 01.07.2005 has not at all applied his mind to the facts of the case.

Thus, the said order and the FIR registered consequent thereto again without holding any inquiry is liable to be quashed in exercise of the power vested in this Court under Section 482 of the Code.

19. On the other hand, the respondent No.2 /complainant has opposed the petition by making following submissions:-

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 19 of 69]

i) The application filed before the Magistrate as part of a complaint under Section 200 of the Code was a complaint in terms of the definition of the complaint under Section 2(g) of the Criminal Procedure Code. The complaint discloses commission of cognizable offences in Delhi as per the averments made in the complaint by the petitioner.

ii) At that stage the Magistrate had the jurisdiction to direct investigation of the allegation made in the complaint and for that purpose, it was necessary to register an FIR as such there was no infirmity in the order passed by the Magistrate directing investigation of the case after registering the FIR.

(iii) It has been submitted that even when an application under Section 156(3) of the Code is filed along with the complaint under Section 200 of the Code, the Magistrate has a discreation either to proceed under Section 156(3) of the Code (Chapter XII) or under Section 200 of the Code (Chapter XV). When the Magistrate proceeds under Section 156(3) of the Code, he passes orders without taking cognizance of the offence and as such it is known as pre-

cognizance stage. However, if the Magistrate wishes to proceed under Section 200 of the Code then he has to take cognizance of the matter. At pre cognizance stage by virtue of Section 156 (3) of the Code the Magistrate is fully entitled to direct the Police to investigate all the matter and for that purpose also to direct registration of the FIR once he is satisfied that the complaint made by the complainant discloses commission of cognizable offences. The procedure prescribed under Chapter XV is an alternative procedure which the Magistrate may or may not adopt at the stage when he is examining the complaint under Section 156(3) of the Code

(iv) Even if it is presumed for the sake of arguments that Delhi Courts have no jurisdiction to try the matter or even to take cognizance of the [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 20 of 69] allegation made in the complaint, this would not make the proceedings illegal. This may give a cause of action to the petitioner to file an appropriate petition for transfer of a case after the investigation is complete and a challan is filed by exercising powers available to the petitioner under Section 406 of the Code. It is also his case that since it has been specifically averred by the respondent that they also have an office in Delhi and the deliberation between the parties had also took place in Delhi, Delhi Courts had the jurisdiction to entertain the complaint lodged by the complainant.

(v) It is submitted that once the FIR has already been registered, this Court should be slow to quash the proceedings by invoking jurisdiction under Section 482 of the Code till the investigation is complete and a report u/s 173 of the Code is filed.

(vi) It is also submitted that adequate safeguards now stands provided for arrest and apprehension under the guidelines issued by this Court.

20. In rebuttal, the petitioners further urged that even though a Magistrate can direct investigation in exercise of its powers under Section 156(3) of the Code even when such application is part of the Complaint under Section 200 of the Code, the manner in which the present case has proceeded makes it clear that the impugned order under Section 156(3) of the Code and consequent registration of FIR, are in utter violation of the laid down procedure besides being actuated with mala fides. The order has been passed without application of mind. The complainant has also suppressed material facts. Even otherwise the disputes between the parties are of civil nature and are already before an Arbitrator.

21. It has been submitted that in the facts of this case, the criminal proceedings initiated by the complainant are abuse of the process of the Court. The proceedings have been initiated purely to harass and intimidate the petitioners and others. Such proceedings including the FIR are liable to be quashed in exercise of the Jurisdiction vested in this court under Section 482 of the Code at this stage itself, also for the reason that the impugned order dated 1.7.2005 is without application of mind and has been procured by [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 21 of 69] suppression of material facts with ulterior motives.

22. The questions which arise for consideration are :-

(i) How and when powers under Section 156(3) of the Code are to be exercised by the Metropolitan Magistrate?

(ii) Whether the complaint instituted under Section 200, the order dated 1.7.2005 passed under Section 156(3) of the Code and also the FIR No.436/2005 dated 6.8.05 of PS Defence Colony New Delhi registered pursuant to the aforesaid order, are liable to be quashed in exercise of powers vested in this Court under Section 482 of the Code in the peculiar facts of this case?

23. Since the first question is one of public importance. I have heard all concerned including the intervenors at length for the purpose of understanding scope and ambit of the powers of a Magistrate under Section 156(3) of the Code in the light of the provisions contained in Chapter XII and Chapter XV of the Code. All parties have filed written submissions and have also cited case laws. The issue has also been addressed by both sides even while addressing the final arguments.

24. The petitioners have relied upon following judgments on the first question:-

i) Maksud Syed Vs. State of Gujarat & Ors. 2008 (5) SCC 668.

ii) Sakiri Vasu Vs. State of U.P. & Ors. 2008 (2) SCC 409.

iii) Dharmesh Bhai Vasudev Bhai & Ors. Vs. State of Gujarat 2009 (6) SCC 576.

iv) Raghu Raj Singh Rousha Vs. Shivam Sunderam Promoters Ltd.

2009 (2) SCC 363.

v) Skipper Beverages Pvt. Ltd. Vs. State 2001 (92) DLT 217.

25. The 2nd respondent/complainant has referred to the following Judgments:

(i) Kanti Bhadra Shah & Anr. Vs. State of West Bengal, 2000 (1) SCC

(ii) Acharya Arun Dev Vs. State & Anr. 2005 (2) JCC 897.

(iii) Puran Mal Gupta & Ors. Vs. State & Anr. 2008 (4) JCC 2347

(iv) Priya Gupta Vs. State 2007 (2) JCC 1058

(v) Vijay Bahadur Pandey Vs. State of U.P. & Ors. 2005 (5) CRJ. 647

(vi) Hira Lal Vs. State of U.P. 2008 Crl.L.J.113

(vii) Rajni Palriwala Vs. D. Mohan 2009 (3) JCC 1896

(viii) Ritu Rawat Vs. Tej Singh 2008 (4) Jcc 2854.

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(ix) Aloshia Joseph Vs. Dr. Joseph Kollamparambil & Anr. 2009 Crl.L.J. 2190

(x) Suresh Chand Jain Vs. State of M.P. 2001 (I) AD(Crl.) S.C. 34.

(xi) Ram Babu Gupta & Anr. Vs. State of U.P. & Anr. 2001 Crl.L.J.

(xii) S.P. Sharma Vs. NCT of Delhi 1991 JCC 59 (Delhi)

(xiii) Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. 2005 II AD (Crl.) S.C. 12

(xiv) Surinder Singh Sobti Vs. The State & Ors. 1999 (I) JCC 107 (S.C.)

(xv) Suprintendent of Police, CBI & Ors. Vs. Tapan Kumar Singh 2003 SCC (Crl.) 1305 (xvi) Renu Kumari Vs. Sanjay Kumar 2008 (2) JCC 1032. (xvii) H.S. Bains, Director, Small Saving-cum-Deputy Secretary Finance, Punjab Chandigarh Vs. State, 1980 (4) SCC 631 (xviii) Collector of Central Excise, Calcutta Vs. Alnoori Tobacco Products and Anr., 2004 (6) SCC 186 (xix) Sakiri Vasu Vs. State of U.P. & Ors. 2008 (2) SCC 409. (xx) Mohd. Yusuf Vs. Afaq Jahan (Smt.) and Anr., 2006 (1) SCC 627 (xxi) Dilawar Singh Vs. State of Delhi 2007 (12) SCC 641 (xxii) R.R. Chari Vs. State of U.P., 1962 Crl.L.J. 510. (xxiii) Tula Ram & Ors. Vs. Kishore Singh 1977 (4) SCC 459 (xxiv) Narayandas Bhagwandas Madhavdas Vs. State of West Bengal, 1959 Crl.L.J. 1368 (xxv) Devarapalli Lakshminarayan Reddy & Ors. Vs. V. Narayana Reddy & Ors., 1976(SCC) 252 (xxvi) Gopal Das Sindhi and Ors. Vs. State of Assam & Anr., 1961 Crl.L.J. 39 (xxvii) Jamuna Singh And Ors. Vs. Bhadai SAh. 1964 (2) Crl.L.J. 468 (xxviii)Sanjay Bansal & Anr. Vs. Jawaharlal Vats & Ors. 2007 (13) SCC (xxix) Madhu Bala Vs. Suresh Kumar & Ors., 1997 (8) SCC 476. (xxx) Supdt. & Remembrance W.B. Vs. Abani Kumar, 1951 Crl.L.J. 806.

26. The interveners cited following additional Judgments :-

i) S.P. Shenbagamooty Vs. Mu.Ka.Stelin 2003 Crl.LJ. 271

ii) Arvind Bhai Rajiv Bhai Patel Vs. State of Gujarat 1998 Crl.LJ 463

iii) Sukhwasi Vs. State of U.P. 2008 Crl.LJ 472

iv) Nirmaljit Singh Hoon Vs. State of W.B. 1973(3) SCC 753

v) Mahesh K. Garg Vs. State 64(1996) DLT 232

27. All these Judgments lays down as to how powers vested in the Court under Chapter XII and Chapter XV are to be exercised. It has been consistently held in all these cases that such power is to

be exercised only after application of mind. One can take judicial notice of the fact that provisions of law, especially those relating to the procedure, often find misuse, generally enabled by an erroneous interpretation of a statutory provision. Thus reference becomes necessary to Chapter XII of the Code which starts from Section 154 of the Code titled as "INFORMATION TO THE POLICE AND THEIR POWER TO INVESTIGATE".

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28. Section 154 of the Code enables every person who wishes to disclose information relating to commission of a cognizable offence to approach the concerned SHO, who then is required to reduce such information in writing and to register an FIR, if that information discloses commission of cognizable offences as provided for under Section 154(1) of the Code. Sub-Section (2) of the Code requires the SHO/ concerned official to supply a copy of the information so recorded to the complainant forthwith free of cost. However, if the SHO/ concerned officer is reluctant or refuses to register an FIR based upon the information with the complainant the complainant may approach senior officers in view of the provisions contained under Section 154(3) of the Code as they also have similar powers in view of the Section 36 of the Code. Once the FIR is registered, then the criminal law procedures are set into motion which will mean investigation under Section 156 of the Code till filing of report under Section 173 Of the Code The procedure for investigation has been prescribed under Section 157 of the Code which enables the Investigating Officer to proceed to the spot, to investigate the facts and circumstances of the case and, if necessary, to take measures for discovery and even arrest of the offender even without warrant. After investigation a report is filed in Court by the concerned IO. That report can either be for recommending prosecution or recommending closure. It is possible that in this process some degree of harassment may be there for the person who is sought to be made as an accused, which needs to be depricated. Use of this to cut short the civil disputes, jealousies or for other undesirable purposes is growing fast as will be noticed in the later part of the judgment.

29. The SHO/concerned Authority whenever approached by the complainant is bound to receive it, though he is not bound to register it in case no offence or wrong has taken place and a totally false complaint is filed. Holding a preliminary enquiry to that extent is permissible even as per Punjab Police Rules which are applicable even in Delhi. Rule 24.4 of the Punjab Police Rules reads as under:-

> 24.4 Action when reports are doubtful.---(1) if the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated.

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 24 of 69] (2) If the Inspector or other superior officer, on receipt of a copy of the station diary, is of opinion that the case should be

investigated, he shall pass an order to that effect, and shall, in any case, send on the diary or an extract therefrom to the District Magistrate for his perusal and orders.

(3) xxxxxx

(i) Even if the information discloses commission of cognizable offences and the SHO refuses to register a case, police manual provides that the complainant can go upto the higher officer (SSP) i.e. to the officers as provided for under Section 36 Cr.P.C with a petition that the concerned SHO has not registered/refused to register the complaint. This is also the requirement of Section 154(3) of the Code, which reads as under:-

> 154. Information in cognizable cases.
>
> (1) xxx xxx xxx
>
> (2) xxx xxx xxx
>
> (3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer Subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

(ii) Section 36 of the Code provides for the powers of the senior officers & reads as under:-

> 36. Powers of superior officers of police.
>
> Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to wish they are appointed, as may be exercised by such officer within the limits of his station.

(iii). It would be useful to also refer to Section 155 & Section 156 of the Code.

155. Information as to non-cognizable cases and investigation of such cases.

(1) When information is given to an officer in charge of a police station of the commission within the limits of [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 25 of 69] such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No Police officer shall investigate a non-cognizable case without the order of Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

30. As per section 155 of the of the Code, even if information given is in relation to commission of non-cognizable offence, it is required to be recorded in a book to be kept by an officer who is in-charge of the Police Station and in such a case investigation cannot be conducted by the Police without the permission of the Court whereas in the case of a cognizable offence investigation has to be conducted by the Police once it registers an FIR.

31. Section 156 of the Code reads as under:-

> 156. Police officer's power to investigate cognizable cases.
>
> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
>
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.
>
> (3) Any Magistrate empowered under section 190 may order such an investigation as above mentioned.

32. It is the contention of the petitioners that the powers vested in the Court under Section 156(3) of the Code can be exercised by the Court only in two situations, i.e., [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 26 of 69]

(i) Where the Police despite having registered an FIR on the basis of information disclosing commission of cognizable offences is neither interested in investigating the crime nor the investigation is proceeding properly; Or

(ii) When the SHO has refused to record the information given by the complainant in writing, and/or to register an FIR even though commission of cognizable offences are disclosed. The senior officers also despite being approached have failed to take appropriate action in the matter as provided for under Section 154(3) of the Code.

Provided the Magistrate is satisfied that the information discloses commission of cognizable offences and, intervention of Police is necessary for digging out the evidence which is neither in the possession of complainant nor can be produced by him. It is also submitted that such power may also be exercised even if a request is made by way of an application filed along with a complaint under Section 200 Cr.P.C but only if the Magistrate decides not to take cognizance on the basis of the Complaint under Section 190 of the Code for cogent reasons.

33. At this stage, I may also refer to the provisions of Chapter XV of the Code which provide for an alternative mode to the Complainant aggrieved from the inaction of the police in a case where the Complaint approaches the police with information disclosing Commission of Cognizable offence for the purpose of registration of an FIR. This starts from Section 200 and ends up to 210 of the Code. These provisions enable the Magistrate to take cognizance of the offences disclosed in the complaint in accordance with procedure prescribed in this Chapter. The relevant provisions are reproduced hereunder for the sake of reference:-

> 200. Examination of complainant.
>
> A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 27 of 69] Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint; or

(b) If the Magistrate makes over the case for inquiry, or trial to another Magistrate under section 192:

> Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201. Procedure by Magistrate not competent to take cognizance of the case.

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall, -

(a) If the complaint is in writing, return it for presentation to the proper court with to that effect;

(b) If the complaint is not in writing, direct the complainant to the proper court.

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by, a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made, -

> (a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or
>
> (b) Where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 28 of 69] the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an offer in charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

34. These provisions thus provide additional remedy to the complainant aggrieved of inaction on the part of the Police by filing a Complaint under Section 200 of the Code to seek redressal of his grievance. He can do so even when he is not satisfied with the police action under Chapter XII by approaching the senior officer under Section 154(3). However when Complaint is filed under Section 200 of the Code the Magistrate has a duty to record evidence led by the complainant and also to examine his witnesses and if necessary even to call for a police report, and then to decide as to whether he has to proceed under Chapter XV or has to dismiss the complaint.

35. However when the complainant without approaching senior police officers approaches the Magistrate directly with a Complaint under Section 200 of the Code, whether the Magistrate can still

exercise powers under Section 156(3) of the code instead of proceeding under Chapter XV is the real Controversy involved in this matter.

36. At this stage it will be appropriate to take note of the observations made by the Apex Court in few cases. In the case of All India Institute of Medical Sciences Employees Union (Regd.) Through its President Vs. Union of India and Ors., (1996) 11 SCC 582 regarding the procedure to be followed if FIR is not registered under Section 154 of the Code The relevant observations made by the Court are reproduced hereunder:-

> 3. The Code of Criminal Procedure, 1973 (for short, the 'Code') prescribes the procedure to investigate into the cognizable offences defined under the Code.

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 29 of 69] In respect of cognizable offence. Chapter XII of the Code prescribes the procedure for disclosing information to the police and their powers to investigate the cognizable offence. Sub-section (1) of Section 154 envisages that "every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant: and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf," On such information being received and reduced to writing, the officer in charge of the police station has been empowered under Section 156 to investigate into the cognizable cases. The procedure for investigation has been given under Section 157 of the Code, the details of which are not material. After conducting the investigation prescribed in the manner envisaged in Chapter XII, charge--sheet shall be submitted to the court having jurisdiction to take cognizance of the offence. Section 173 envisages that: (1) Every investigation under this Chapter shall be completed without unnecessary delay. (2) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report in the form prescribed by the State Government giving details therein. Upon receipt of the report, the Court under Section 190 is empowered to take cognizance of the offence. Under Section 173(8), the investigating officer has power to make further investigation into the offence.

4. When the information is laid with the police but no action in that behalf was taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to inquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the concerned police to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the evidence recorded prima facie discloses commission of the offence, he is empowered to take cognizance of the offence and would issue process to the accused.

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 30 of 69]

5. In this case, the petitioner had not adopted either of the procedure provided under the Code. As a consequence, without availing of the above procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence.

37. This judgment was followed by the Apex Court in Aleque Padamsee and Ors. Vs. Union of India and Ors., (2007) 6 SCC 171, which is a three Judges Bench judgment. The relevant observations made in the said judgment are as under:-

> 7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in All India Institute of Medical Sciences's case (supra) and re- iterated in Gangadhar's case (supra) the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra), Minu Kumari's case (supra) and Ramesh Kumari's case (supra), we find that the view expressed in Ramesh Kumari's case (supra) related to the action required to be taken by the police when any cognizable offence is brought to its notice. In Ramesh Kumari's case (supra) the basic issue did not relate to the methodology to be adopted which was expressly dealt with in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Minu Kumari's case (supra) and Hari Singh's case (supra). The view expressed in Ramesh Kumari's case (supra) was re- iterated in Lallan Chaudhary and Ors. v. State of Bihar AIR2006SC3376 . The course available, when the police does not carry out the statutory requirements under Section 154 was directly in issue in All India Institute of Medical Sciences's case (supra), Gangadhar's case (supra), Hari Singh's case (supra) and Minu Kumari's case (supra). The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Sections 190 read with Section 200 of the Code.....
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> 8. The writ petitions are finally disposed of with the following directions:

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 31 of 69] (1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

38. The matter was also dealt with by the Apex Court in the case of Sakiri Vasu Vs. State of Uttar Pradesh and Others, (2008) 2 SCC 409, relied upon by both the sides. In this case, the Apex Court has discussed relevant provisions of Chapter XII and Chapter XV of the Code and has made the following observations:-

> 25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).
>
> 26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 32 of 69] proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

30. It may be further mentioned that in view of Section 36 Cr.P.C. if a person is aggrieved that a proper investigation has not been made by the officer-in- charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer-in- charge of the police station and such superior officer can, if he so wishes, do the investigation vide CBI v. State of Rajasthan and Anr. 2001CriLJ968, R.P. Kapur v. S.P. Singh [1961]2SCR143 etc. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence registered at a police station vide State of Bihar v. A.C. Saldanna 1980 (1) SCC554.

39. A Division Bench of the Karnataka High Court in Guruduth Prabhu and Ors. Vs. M.S. Krishna Bhat and Ors., 1999 Crl.L.J. 3909 has also discussed the issue in detail both in the context of Chapter XII and XV of the Code. The relevant paragraphs reads as under:-

> 10. Let us first consider whether the learned Magistrate had jurisdiction to refer the matter for Police investigation under Section 156(3), Cr. P.C.
>
> Sub-section (1) of Section 156 confers on the police unrestricted power to investigate a cognizable offence without the order of a Magistrate or without a formal first information report. The police are entitled to investigate cognizable offence either on information under Section 154 or on their own motion, on their own knowledge or from other reliable information. This statutory right to investigate cognizable offence cannot be interfered with or controlled by the Courts including the High Court. It is open to the Court to take or not to take action when the police prefer a chargesheet after investigation. But the Court's function does not begin until the chargesheet is filed. Under Sub-section (2) police can investigate any offence taking the matter to be a cognizable offence although ultimately charges are filed for a non-

cognizable offence since while investigating a cognizable offence, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including it in the report to be filed by them under Section 173, Cr. P.C., Sub-section (3) empowers the Magistrate to refer and direct the police to investigate a cognizable offence. But there is a restriction on the Magistrate before directing the police [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 33 of 69] to investigate under Sub-section (3), the Magistrate should form an opinion that the complaint filed by the complainant before him disclose a cognizable offence. When the allegation made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction tc order police investigation under Sub- section (3). In the present case, the learned Magistrate without applying his mind had directed an investigation by the police. Such an order which is passed without application of mind is clearly an order without jurisdiction. Therefore, the order passed directing the police to investigate under Sub-section (3) of Section 156, Cr. P.C, passed without jurisdiction is liable to be quashed by this Court either under Section 482, Cr.P.C, or under Article 226 of the Constitution of India. We find from the materials on record, the learned Magistrate has not at all applied his mind before directing police investigation under Section 156(3), Cr. P.C If the Magistrate had applied his mind, the Magistrate could have found that no cognizable offence is made out even if the entire allegations made in the complaint are accepted. We have already come to the conclusion that none of the complaints filed by the complainants disclose a cognizable offence alleged under Section 167, IPC. On this count alone the direction given by the Magistrate is liable to be quashed. The Hon'ble Supreme Court in State of Haryana v. Bhajan Lal 1992CriLJ527 has held that the High Court could either exercise its power under Article 226 of the Constitution of India or under Section 482, Cr. P.C and quash the investigation to prevent abuse of the process of law or to secure the end of justice.

11. Sub-section (3) of Section 156 Cr. P.C, empowers Magistrate to order an investigation. Under Section 157(1), Cr. P.C. an officer in charge of a Police Station having reason to suspect the

commission of an offence which he is empowered under Section 156, Cr.P.C. to investigate should send a report to the Magistrate empowered to take cognizance of the offence upon a Police report and should proceed in person or depute one of his prescribed deputies to proceed to the spot to investigate under Section 157(1)(a) when the offender is named and if the case is not of a serious nature the officer need proceed in person or depute his subordinate. Under Section 157(1)(b) if it appears to such Police Officer that there is no sufficient ground for entering on an investigation he shall not investigate the case and the officer should inform the complainant under the prescribed manner. Thus, the Police Officer who is empowered to investigate on the information received by him of the commission of a cognizable offence can decide whether there is no sufficient ground for entering into an investigation and if there is no sufficient ground he should not investigate the case. But once the Magistrate orders an investigation under [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 34 of 69] Section 156(3), Cr. P.C. the Police Officer is bound to investigate the matter and there is no question of his deciding not to investigate. Thus, by an order of the Magistrate under Section 156(3) the discretion given to the Police Officer under Section 157 is taken away. It is therefore very important that the Magistrate applies his mind and finds that the allegations made in the complaint filed under Section 200, Cr. P.C, before him discloses an offence. If every complaint filed under Section 200, Cr.P.C, is referred to the police under Section 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants in order to harass the alleged accused named by them in their complaints making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police if he does not take cognizance of the offence.

40. The aforesaid Judgment also emphasis that there should be application of mind before a Complaint is sent to Police for investigation and holds that it is not necessary to refer every Complaint filed under Section 200 to the police for investigation under Section156(3) of the Code. It has been stated that if such order is passed in routine without application of mind there is every likelihood of causing harassment to the accused persons by unscrupulous Complainants.

41. In another judgment delivered by this Court in the case of Skipper Beverages Pvt. Ltd. Vs. State (supra) also relied upon by the petitioner a similar view has been taken by this Court also. In that case the judgment of the Apex Court in Suresh Chand Jain Vs. State of Madhya Pradesh(Supra) relied upon by the complainant has also been referred to. The relevant paragraphs of that judgment are also reproduced for the sake of reference:

> 7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that

> the nature of the allegations is such that the complainant [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 35 of 69] himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to held the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled "Suresh Chand Jain Vs. State of Madhya Pradesh & Ors."
>
> 10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.

42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with the word May. The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) if the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.

43. Even though the judgments cited by the complainant/interveners have been given on the peculiar facts in each case, they do not lay down any new or [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 36 of 69] different principle than what has been discussed above. The Judgments discuss about the discretion of the Magistrate weather to take Cognizance of the offence or to proceed without taking cognizance in the matter i.e either to proceed under Chapter XV or under Chapter XII of the Code. However all the judgments are unanimous about application of judicial mind before any such order is passed.

44. It would be appropriate to discuss one of the judgments relied upon by the Complainant, which has also been referred in other cases also cited by him. This is the judgment delivered in the case of Deverapalli Laxminarayana Reddy and Ors. Vs. Narayana Reddy and Ors., 1976 (3) SCC 252. In this judgment, it has been said, "Section 156(3) occurs in Chapter XII, under the caption : "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading: "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(l)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation "for the purpose of deciding whether or not there is [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 37 of 69] sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

45. The decision to take cognizance under Chapter XV or to refer matter under Chapters XII should be taken only after application of judicial mind has also been laid emphasis even in the case of Ram Babu Gupta (supra) also relied upon by Respondent No.2/Complainant heavily. The relevant observations made in this regard reads as under:-

> 17. In view of the aforesaid discussion on the legal provisions and decisions of the Supreme Court as on date, it is hereby held that on receiving a complaint, the Magistrate has to apply his mind to the allegations in the complaint upon which he may not at once proceed to take cognizance and may order it to go to the police station for being registered and investigated. The Magistrate's order must indicate application of mind. If the Magistrate takes cognizance, he proceeds to follow the procedure provided in Chapter XV of Cr P.C. The first question stands answered thus.

46. A learned Judge of this Court in the case of State Vs. Mohd. Iqbal Ghazi and Ors., 154 (2008) DLT 481 has explained as to how application of mind can be made by the Magistrate in such matters. The relevant observation is reproduced hereunder:-

> 31. But, for the guidance of the learned Metropolitan Magistrate, the facts of the instant case require something more to be stated. I have noted hereinabove the language of Section 154(1) of the Code of Criminal Procedure 1973. A bare look at the language of said provision reveals that the pre- requisite of registration of a FIR is that the information disclosed must relate to the commission of a cognizable offence. Thus, even a Magistrate cannot proceed to issue any direction under Section 156(3) of the Code unless he is prima facie satisfied that the information before him relates to the commission of a cognizable offence for the reason an order directing the police to investigate any cognizable offence would require the registration of a FIR inasmuch as relating to the commission of a cognizable offence no investigation can proceed without the registration of a FIR.....

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 38 of 69]

33. It means that the person required to apply his mind has to come to grips with the facts before him and has to bring into focus the law on the subject and applying the facts to the law, to arrive at a conclusion by a process of reasoning, evidencing that all relevant facts have been taken note of and properly analyzed in the light of the law applicable. A truncated and an gibberish reproduction of facts, excluding relevant facts from the focus of the mind, would result in a decision being taken which can be classified as a decision without the application of mind. Informed reasoning is the heart of the matter.

47. Another aspect discussed in this judgment is about holding a preliminary enquiry (another facet of application of mind) before an FIR is registered by the SHO concerned, which naturally will also be applicable to a Magistrate before directing registration of an FIR. The relevant paragraphs are reproduced hereunder:-

> 35. In the decision reported as 84 (2000) DLT 199 (DB)Satish Kumar Goel Vs. State & Ors. the Division Bench of this Court drew a clear distinction where the information laid was vague, indefinite or doubtful. Should an FIR be registered on such a complaint or should some inquiry proceed before the registration of an FIR. The Division Bench held:-
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> FIR. However, where the information recorded in the complaint is uncertain, indistinct and not clearly expressed which creates a doubt as to whether the information laid before the incharge of the police station discloses commission of a cogniza "Thus, the legal position appears to be that where allegations made in the complaint lodged before the police clearly and specifically disclose commission of a cognizable offence, the office incharge of the concerned police station is duty bound to register an ble offence therefrom, some inquiry should proceed before the registration of an FIR"
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> 36. In a decision pronounced on 12.10.2007 in Crl.App.No.1432/2007 Rajender Singh Katoch Vs. Chandigarh Administration & Anr., Hon'ble Supreme Court held:-

"8. Although the officer incharge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary inquiry, in a given case, [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 39 of 69] in order to find out as to whether the first information sought to be lodged had any substance or not."

37. It is apparent that the principle that every information relatable to the commission of a cognizable offence must lead to the registration of a FIR has to be understood in its correct perspective, being that, if the information is prima facie credible; is definite and has a substance, the FIR must be registered. But where the information is vague and prima facie lacks credibility, a FIR need not be registered and some preliminary inquiry would be permissible to find out whether the information sought to be lodged has any substance therein or not. In the decision reported as 1992 Supply (1) SCC 335 State of Haryana & Ors. Vs. Bhajan Lal & Ors., the dictum laid down in the earlier decision of the Hon'ble Supreme Court reported as (1970) 1 SCC 595 P.Sirajuddin Vs. State of Madras was noted with approval in the following words:-

"Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious mis- demeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general ... The means adopted no less than the end to be achieved must be impeccable."

48. Another judgment recently delivered by a Ld. Judge of this Court in Crl.M.C.3601/2009 titled as Mohd. Salim Vs. State decided on 10.03.2010 also needs mention. The relevant paragraphs are reproduced hereunder:-

11. The use of the expression "may? in Sub-section (3) of Section 156 of the Code leaves no doubt that the power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 40 of 69] and proceed under Section 200 of the Code by examining the complainant and his

witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.

49. I am in complete agreement with the views expressed by ld. Brother Judges of this Court in the judgments cited above. I may also observe that if the Magistrate decides to proceed under Section 200 of the Code, then also the Magistrate has power to call for a police report before issuing the process as provided for under Section 202 of the Code. However, before calling for such a report, the Magistrate will have to record evidence of the complainant as may be produced. If such a procedure is followed, chances of abuse of the process are less. Another safeguard can be to call for a status report from the police about the stage of investigation if the complainant has already approached the police before taking a view as to whether he should proceed under Chapter XII or under Chapter XV.

50. This Court would also like to reiterate the observations made by the Division Bench of Karnataka High Court in the case of Guru Dutt Prabhu & Ors. (supra) expressing the fear in sending every complaint filed under Section 156(3) Cr.P.C for Police investigation without application of mind, which certainly can be used as a tool of harassment in the hands of unscrupulous complainant and there are chances where this provision can be highly misused if the orders are passed under Section 156(3) of the Code in routine, even where a complaint is filed under Section 200 of the Code.

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 41 of 69]

51. The judgment delivered by another Single Judge of this Court long ago in the case of Acharya Arun Dev Vs. State & Anr. 2005 (2) JCC 897 relied upon by the Complainant dealing with similar direction given by the Magistrate under Section 156(3) of the Code can also be referred to. Only because in that case, the Court felt that there was a necessity for directing investigation by the Police for the purpose of collection of evidence. However, in the present case situation is different. Here the agreement, the subject matter of dispute, was very much with the complainant, yet he did not feel it appropriate to place it on record intentionally. He also failed to produce subsequent agreements whereby his entire interest in the property in question stood assigned/transferred to a

third party who has not cared to come to the court even after mortgage which now stand re-conveyed. The narration of events mentioned by the Apex Court in the arbitration dispute (supra) also goes to show that the issues concerning the original agreement stood even otherwise settled between the parties. However, subsequently the complainant appears to have changed his mind and started litigating with the petitioners to force his design to insist upon giving him more land. None of these issues have been even discussed by the Metropolitan Magistrate. The Magistrate has not even cared to find out as to whether Delhi Courts will have jurisdiction or not and which part of the offence(s) if any has been committed in Delhi requiring investigation by Delhi Police. The Magistrate has neither discussed as to what offences are made out nor has discussed as to who are the persons actually responsible for the commission of such offence, if any.

52. The facts as they are before me goes to show that on the same day when Utility claims to have lodged a report with the police, they also prepared a complaint under Section 200 of the Code along with the application under Section 156(3) of the Code, which is dated 27.5.2005. This shows that the modus operandi of the complainant was to approach the Magistrate under Section 156(3) of the Code immediately without waiting for police investigation and without approaching higher authorities even if the SHO refused to register an FIR. This also casts aspersions as to whether such a complaint was filed with the Police at all. The Govt. of NCT of Delhi has taken a stand that such a complaint was received in the concerned Police Station, but with a rider that records are not available which makes it impossible for the court to verify the facts as they are. This concludes the discussion on the first question. 52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code is summarized as under:-

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 42 of 69]

(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him.

Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing`, a status report by the police is to be called for before passing final orders.

iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 43 of 69] requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.

53. On the principles as stated above, in the facts of this case, I am satisfied that the impugned order dated 1.7.2005 passed by the Magistrate directing investigation under section 156(3) of the Code after registering the FIR instead of proceeding under chapter XV even though the complainant had approached the Magistrate without approaching Senior Police officers as required under Section 154(3) of the Code and also without discussing all the facts to find out as to whether any cognizable offence was committed within the Jurisdiction of that Court. He also failed to appreciate that it was not a case where there was any need for police investigation at all as all the relevant documents were already in possession of the Complainant who had not produced the same intentionally only to suppress material facts and to mislead the Court. He has also not grasped the facts of the case before passing the impugned order without application of mind. Thus the said order cannot be sustained.

54. Coming then to the second question, I need not narrate the facts again which have been discussed above. According to the petitioner a bare reading of the FIR shows that no cognizable offence has been disclosed therein. The Court of the Metropolitan Magistrate New Delhi where the Complaint was filed had no Jurisdiction to try the same. The disputes raised by the Complainant are civil disputes and for which the Complainant had also approached Civil Courts by invoking Arbitration Clause even though those disputes were settled long back. The complainant was also not left with any locus to file the complaint as he had assigned his rights in the property by way of a tripartite agreement to Ansal Housing Ltd, a third party for consideration, who has not raised any dispute. It is submitted that in these circumstances initiation of the Criminal litigation by the Complainant that also at Delhi is only an attempt of a frustrated litigant to get something more knowing it fully well that he has no legs to stand in view of the agreement dated 18.07.94, 22.6.96 and 28.6.96.

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 44 of 69] The only purpose appears to be an attempt to harass the petitioners just to blackmail them by summoning them to Delhi though neither of the accused is resident of Delhi, nor any other cause has arisen in Delhi. The land is also not situated at Delhi, nor any offence has been committed in Delhi. Even the mortgage was executed at Bombay & stands re-conveyed. More over the criminal proceedings are initiated on distorted facts and by suppressing relevant material which is very much in the possession of the Complainant. It is also a matter of record that after the interim order was passed by this Court the complainant did approach the Bombay Police for the same grievance but without success. All this also reflects mala fides of the Complainant.

55. The petitioner has also relied upon the following judgments to contend that in the aforesaid facts the Criminal Proceedings initiated by the Complainant are liable to be quashed.

i) Maksud Saiyed Vs. State of Gujarat & Ors. 2008 (5) SCC 668

ii) G. Sagar Suri & Anr. Vs. State of U.P. & Ors. 2000 (2) SCC 363

iii) Electronics Corporation of India Ltd. & Ors. Vs. Secretary, Revenue Department, Govt. of Andhra Pradesh & Ors. 1999 (4) SCC 458

iv) State of West Bengal & Ors. Vs. Swapan Kumar Guha & Ors. 1982 (1) SCC 561

v) Ajay Mitra Vs. State of M.P. & Ors. 2003 (3) SCC 11.

vi) Devendra & Ors. Vs. State of U.P. & Ors. 2009 (7) SC 495

vii) Mohammed Ibrahim & Ors. Vs. State of Bihar & Ors. 2009 (8) SCC

viii) A.K. Khosla & Ors. Vs. T.S. Venkatesan & Ors. 1992 Crl.L.J.

ix) Indian Oil Corporation Vs. NEPC India Ltd. & Ors. (2006) 7 Scale

x) Srikrishna Polymers Ltd. Vs. State & Ors. (2007) 99 DRJ 167

xi) Hridaya Ranjan Prasad Verma Vs. State of Bihar (2000) 4 SCC 168

xii) Anil Mahajan Vs. Bhor Industries Ltd. & Anr. (2005) 10 SCC 228

xiii) All Cargo Movers India (P) Ltd. Vs. Dhanesh Badarmal Jain (2007) 14 SCC 776

xiv) B.Suresh Yadav Vs. Sharifa Bee & Anr. (2007) 13 SCC 107

xv) Uma Shankar Gopalika Vs. State of Bihar & Anr. (2005) 10 SCC xvi) Harmanpreet Singh Ahluwalia Vs. State of Punjab & Ors. (2009) 7 SCC 712 xvii) Sunil Kapoor & Anr. Vs. State & Anr.

Crl.M.C.No. 102/2004 decided on 6.10.2009 xviii) Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.

(2007) 12 SCC 1 xix) Kalpana Kutty, Proprietor of K. Film Kompanie Vs. the State of Maharashtra & Ors. (2007) 109 BOMLR 2342 xx) Kusum Sandhu & Anr. Vs. Ved Prakash Narang 2008 (106) DRJ xxi) Utam Kumar Bose Vs. National Capital Territory Delhi 2004 (76) [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 45 of 69] DRJ 197 xxii) Mohd. Salim Vs. State Crl.M.C. No. 3601/2009 Decided on 10.03.2010.

xxiii) Sanjay Poddar Vs. CBI 103 (2003) DLT 801 (DB) xxiv) Sundar Babu & Ors. Vs. State of Tamil Nadu 2009 (5) SCALE xxv) M/s Cogent Enterprises Ltd. Vs. State 2008 (2) JCC 1277

56. Regarding jurisdiction it has been submitted that the courts in Delhi have no jurisdiction since the complainant has its registered office at Bombay. All the respondents are at Bombay. The land in question is also situated at Bombay. All the agreements were executed in Bombay. The complainant has tried to confer jurisdiction to Delhi Courts merely on a bald assertion that some discussion took place in Delhi office of the complainant without giving any further details. It is submitted that such plea does not confer jurisdiction. Reliance in this regard has been placed upon a judgment delivered by this Court in the case of Shree Krishna Polysters Ltd. v. State and Ors., 2007(99) DRJ 167. The relevant paragraph is reproduced hereunder:-

> 45. Therefore, the factual scenario would be that the three pay orders stand delivered by the complainant to the accused persons at Bombay. The complainant relies upon the agreements dated 17.9.1999 recording that they have been executed at Bombay. The bald version that certain negotiations took place at Delhi would, in my opinion, would not confer jurisdiction on the courts at Delhi in view of the legal position that where offence of cheating and dishonest inducement results in delivery of property, courts within local jurisdiction whereof property was delivered by the person deceived or was received by accused persons would be the courts which would have territorial jurisdiction to entertain the complaint.

57. The petitioners also submitted that under Section 177 of the Code every offence shall ordinarily be enquired into and tried by a Court within whose jurisdiction the offence was committed. Under Section 156(1) an officer in charge of a police station may investigate any cognizable offence which the court having jurisdiction over the local area within the limits of such police station would have power to enquire into. Thus, neither the learned MM had power to direct registration of FIR under Section 156(3), nor could Delhi Police can investigate into such an offence under Section 156(1) of the Code.

58. The counsel for the complainant while rebutting this argument has submitted that the lack of jurisdiction cannot be a ground for quashing the proceedings by relying upon the following judgments:

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 46 of 69]

i) Trisun Chemical Industries Vs. Rajesh Aggarwal 1999 Crl.L.J.

ii) Vishwanatha Tantri Vs. State 2007 (4) JCC 3181
iii) Prabhakar Vs. State 2008 (147) DLT 63
iv) State of M.P. Vs. Suresh Kaushal & Anr. 2004 (4) SCC Crl. 1185
v) Rajiv Modi Vs. Sanjay Jain 2010 (1) CRJ 177
vi) Sushil Kumar Deorah Vs. State 2006 (1) JCC 338
vii) Satvinder Kaur Vs. State (Govt. of NCT of Delhi) AIR 1999 SC 3596

viii) Asit Bhattacharjee Vs. Hanuman Prasad Ojha & Ors 2007(5)SCC786

59. I have perused the aforesaid judgments and find that in all those judgments it has been held that jurisdiction can be conferred on the Court either where the offence has been commenced or where it has been completed and even where part of the offence was committed. Therefore, only plea raised by the complainant that a meeting had taken place in Delhi office of the complainant without giving any details as to when and for what purpose such a meeting had taken place, of which no minutes has been provided by the complainant, jurisdiction cannot be conferred in Delhi.

60. According to the petitioner the allegations made in the complaint does not make out any offence under Section 415 IPC or under Section 463, 464, 467, 468 and 471 IPC. Section 415 of the Penal code and illustration (i) reads as under:

> 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 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.
>
> Illustrations
>
> (i) A sells and conveys an estate to B.A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

61. It is submitted that following essential ingredients of Section 415 IPC are missing in this case:-

i. Deception of any person.
ii. (a) Fraudulently or dishonestly inducing that person.

(1) To deliver any property to any person: or [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 47 of 69] (2) To consent that any persons shall retain any property; or iii. Intentionally inducing that person to do or omit to anything which he would not do or omit if he were not so deceived, and iv. Which act or omission or is likely to cause damage or harm to that person in body, mind, reputation or property.

It is stated that for attracting the offence of cheating, there has to be deception of the complainant. The mortgage transaction was between the petitioner and IL&FS wherein IL&FS released money. In that background, in absence of IL&FS having no grievance, the complainant cannot claim to have been cheated. The complainant has not stated in what manner has it been cheated, i.e., how and when the accused persons have induced the complainant insofar as the execution of the mortgage deed is concerned. Allegation in the FIR is not that entering into the agreement with the complainant in 1994 and payment of moneys thereafter was cheating or forgery, but the allegation is that the subsequent act of creating mortgage of the property on 06.08.2004 in favour of IL&FS is cheating and forgery.

62. A reading of illustration (i) makes it clear that the complainant cannot complain about being cheated. Firstly, bare perusal of the said illustration proceeds on the premise that there has to be a "sale" and "conveyance" in favour of the complainant. In the present case, there has been no sale or conveyance of the land in favour of the complainant. No conveyance has been mentioned or brought on record, because there is none. Secondly, as per this illustration, offence of cheating would have been done against Z since the fact of previous sale had not been disclosed to Z and still money had been received. As per the said illustration, no offence can be said to have been committed against the earlier purchaser. In the present case, the party in whose favour the mortgage had been made has not alleged commision of any offence. This aspect has also been discussed by the Honble Supreme Court in the case of Indian Oil Corporation Vs. NEPC (supra). As necessary ingredients for the offence for cheating are not made out as defined under Section 415, no case of cheating under Section 420 can be made out.

63. As regards inducement, it is submitted that there is no allegation of deceit, cheating or fraudulent intention of the accused at the time of entering into the contract. There is no pleading that there was any intention to cheat from the very beginning or that the 1994 agreement was fraudulently executed. The contract was executed in 1994 and after that parties have even given effect to the agreement. The assignee of the rights of the Company has already constructed the Flats over the land. Even otherwise a subsequent breach of a contract i.e creation of Mortgage cannot be construed as cheating. 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 [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 48 of 69] to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. The element of mens rea is totally missing.

64. To constitute an offence under Section 420 IPC, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person so deceived to deliver any property or to make, alter or destroy a valuable security. It is not the case of the

complainant that the accused person tried to deceive him either by making false or misleading misrepresentation or by any other action. It is also not the case that the accused persons offered him any fraudulent or dishonest inducement to deliver any property or to intentionally induce him to do or omit to do anything which he would not do or omit to do if he were not deceived. In the absence of any allegation to that effect, a case of breach of contract would constitute a civil wrong only. In the claim petition before the Tribunal, the Respondent has asserted "breach of contract" to claim Rs.10 crores on account of creating mortgage.

65. Reliance has also been placed by the petitioner upon a judgment delivered in the case of Mohd. Ibrahim Vs. State of Bihar 2009(8) SCC 751. Relevant paragraphs are paras 19-23, which are reproduced hereunder:

> 19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived
>
> (i) to deliver any property to any person, or
>
> (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).
>
> 20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 49 of 69] executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be

understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

The ratio of this judgment squarely applied to the facts of this case.

66. Coming to the allegations of commission of forgery it would be relevant to take note of Sections 463 and 464 of IPC.

463. Forgery.

Whoever makes any false documents or electronic record 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.

464. Making a false document.:- A person is said to make a false document or false electronic record-

First- Who dishonestly or fraudulently-

c. 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;

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(c)    Affixes any digital signature on any
electronic record;
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(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, With the intention of causing it to be believed that [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 50 of 69] such document or part of document, electronic record or digital signature was make, 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 digital signature either by himself or by any other person, 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 to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of unsoundness of deception racticed upon him, he does not know the contents of the document or electronic record or the nature of the alterations.

67. Basic ingredients of the offence under Section 467, 468 and 471 are that there should be forgery under Section 463 and forgery in turn depends upon creation of a false document as defined in Section 464 IPC.

68. A person is said to have made a false document, if

i) He made or executed a document claiming to be someone else or authorized by someone else; or

ii) He altered or tampered a document; or

iii) He obtained a document by practicing deception or from a person not in control of his senses

69. Thus execution of a document without authority is not forgery. Reference made to illustration (h) of Section 464 would apply if only there is an antedating. The contention of the respondent that creation of mortgage was without any legal authority would be an aspect which is beyond the jurisdiction of the Police investigation and does not constitute an offence of forgery within the meaning of Section 463, 464, 465, 467 or Section 468 of IPC. Therefore, no case of forgery is made out. The Company has not created any false document of mortgage as defined under Section 463 IPC.

70. It is also submitted that the allegation made in the FIR makes it clear that the present is a simple case of civil dispute as they are before an [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 51 of 69] Arbitrator. As such the criminal proceedings deserve to be quashed. Reliance in this regard has been placed upon Anil Mahajan Vs. Bhor Industries Ltd. & Anr. 2005 (10) SCC 228, wherein it was held:

> 8. The substance of the complaint is to be seen. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay. According to the complainant, a sum of Rs.3,05,39,086 out of the total amount of Rs.3,38,62,860 was paid leaving balance of Rs.33,23,774. We need not go into the question of the difference of the amounts mentioned in the complaint which is much more than what is mentioned in the notice and also the defence of the accused and the stand taken in reply to notice because the complainants own case is that over rupees three crores was paid and for balance, the accused was giving reasons as above- noticed. The additional reason for not going into these aspects is that a civil suit is pending inter se the parties for the amounts in question.

71. It is also the contention of the petitioner that the complainant had no locus to lodge the present FIR because the title of the land was always with SRM. The land was never sold to UTILITY or to any other person. SRM is still the title holder of the land and therefore, it could create a mortgage of

whatever rights it had remaining on the land. It is also submitted that the petitioner had mortgaged not only this land but also his remaining land. It is also his submission that if the respondent had any right, it was only over the flats that were to be built on the said land and not on the land. The mortgage was, however, executed in favour of IL&FS and on their satisfaction the complainant cannot raise any grievance. Moreover, the said mortgage stands re-conveyed. There is nothing on record to show that any loss has been sustained by the Complainant on that score who even otherwise lost interest in the said property much earlier.

72. Moreover, the very basis of the complaint is that the land in question is complainants property, which is an incorrect and false statement. By virtue of the agreement dated 28.06.1996 and supplementary agreement dated 12.10.2004, the complainant has already assigned its entire rights under the agreement dated 27.04.1994 to Ansals which is nothing else but right of development and construction of flats on the land in question. Thus no right remained with them to lodge a complaint more so when there is nothing on record to show any loss was caused to it. This aspect has been confirmed to [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 52 of 69] the petitioners by Ansals in its letter dated 04.03.2005.

73. The Apex Court has laid down in the case of Mohd. Ibrahim (supra) that only the person aggrieved in such cases is the person in whose favour the sale or mortgage has been done, which is not the case.

74. On the other hand, counsel for the Complainant has submitted that the complainant has locus to maintain the present complaint. They also claims that the criminal law can be set into motion even by a third party. In this regard they have relied upon the following judgments:

i) Manohar Lal Vs. Vinesh Anand 2001 Crl.L.J. 2044

ii) N.Natarajan Vs. B.K. Subba Rao AIR 2003 SC 541

75. The aforesaid judgments were given in the peculiar facts of those cases where it was held that society cannot afford to allow any criminal to escape through his liability since that would bring a state of social pollution. However, this is not applicable in the facts of this case. Rather the attempt of the Complainant was to get something more from the petitioners having lost in earlier civil litigations. The action of the Complainant is only an attempt of a frustrated litigant who cannot be permitted to invoke the criminal jurisdiction for the purpose of abusing the same to the detriment of the petitioners and others without any rhyme or reason.

76. The counsel for respondent no.2 also submits that the Complaint clearly discloses commission of cognizable offence. It is also stated that complaint is not required to reproduce verbatim all the ingredients of offences as alleged in the body of the complaint. Reliance in this regard has been placed upon

i) Rajesh Bajaj Vs. State of NCT of Delhi & Ors., 1999 Crl.LJ 1833.

ii) Acharya Arun Dev Vs. State & Anr. 2005 (2) JCC 897

iii) Punit Pruti Vs. State (Govt. NCT of Delhi) 2009 (4) JCC 3006

iv) Devendra Singla Vs. Krishna Singla 2004 (iii) AD(Cr.) SC 217

v) Shri Bhagwan Samradha v. State of U.P 1999 CriLJ 3661

vi) G.V. Raon Vs. LHV Prasad & Ors. (2001) (1) JCC (SC) 386. 242 However, perusal of these judgments does not help the complainant taking into consideration the totality of the facts.

77. Before proceeding further it may also be observed that as on the date of filing of the complaint, the complainant admittedly has been left with no interest in the property subject matter of litigation inasmuch as, firstly the [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 53 of 69] complainant by entering into the agreement dated 22.06.1996 with the Company lost all interest in the property by accepting FSI of 86,725 Sq.ft. only and secondly, they entered into an agreement with Ansals dated 28.06.1996 whereby they also assigned all their rights and obligations vide agreement dated 28.6.96 with Ansals to build flats on the aforesaid area. These facts were not informed to the Magistrate for reasons best known to them. The allegation of the Company that this was to hide the truth, gain strength in this way.

78. The respondents on the other hand have submitted that even if the disputes raised by the Complainant are civil dispute as the parties are before an Arbitrator and other Courts of higher status, it cannot be made basis for quashing of the criminal proceedings because the complainant is entitled to take out criminal proceedings if the same set of facts also discloses commission of Criminal proceedings as held in the following judgments:

i) Trisuns Chemical Industry Vs. Rajesh Aggarwal 1999 Crl.LJ 4325

ii) Kamla Devi Aggarwal Vs. State of W.B. & Ors. 2001 (2) JCC 352.

iii) Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. 2005 (II) AD. Crl.SC 12.

iv) M.S. Sheriff Vs. State of Madras AIR 1954 SC 397.

79. No doubt that as per these judgments even where there are civil disputes, the possibility of commission of criminal offences cannot be ruled out and in appropriate cases both civil as well as criminal proceedings can go on. However, in the facts of this case as narrated above, the initiation of criminal proceedings at the fag end of the litigation and the complainant having also entered into agreements dated 18.07.94, 22.6.96 and 28.6.96 as also the agreement dated 19.1.2005, subsequent to the original agreement whereby terms of the original agreement were confined in the land only to the extent of developing FSI equivalent to 87,625 sq.ft. and which rights were also assigned to a third party for consideration by them, they cannot take benefits of these judgments.

80. It is also the case of petitioners that the FIR is a result of mala fide and has been got registered out of personal vendetta. The complainant before filing the FIR had been filing various proceedings against the petitioners to create pressure. He made complaint to the AAIFR, which was rejected on 12.09.2001. He filed a Section 9 petition, which also was rejected on 04.05.2001 and appeal against it, was also dismissed. In Writ Petition (C) No.9572-73 of 2003, the complainant had filed a contempt petition alleging that creation of the mortgage [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 54 of 69] on 06.08.2004 which was dismissed as not pressed on 20.08.2007. At the same time, the respondent filed the present criminal complaint alleging commission of criminal offence in respect of the very same mortgage. Subsequently, in the arbitration proceedings against the petitioner company, the respondent has alleged that the grant of the questioned mortgage has constituted breach of contract and has demanded damages. Thus, all along, the complainant has been seeking to misuse the pressure of law and create pressure on the petitioners to seek wrongful gains. As observed earlier, the complaint was filed after the petitioner had approached the Supreme Court for continuation of arbitration proceedings but without disclosing the sequence of events as noticed by the Supreme Court in view of the date of the execution of the agreement, entering into subsequent agreements by the parties, whereby not only the complainant transferred his interest in the property to a third party but had also settled the question of transfer of land for development limited to the extent of 86, 725 sq.ft. FSI. Moreover, the original agreement was entered into between the parties way back in 1994, the parties had been in litigation for a number of years before filing of the present complaint. However, this material fact was not brought to the notice of the Court nor the relevant documents were filed. Reliance is placed upon the judgment of the Supreme Court in the case of Chandrapal Singh & Ors. Vs. Maharaj Singh & Anr., AIR 1982 SC 1238 that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. The relevant paragraphs of the aforesaid judgment read as under:

> 1. A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.
>
> 14.....We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 CrPC.

[Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 55 of 69]

81. The counsel for the complainant relying upon the judgment delivered in the case of Renu Kumari Vs. Sanjay Kumar & Ors. 2008 (2) JCC 1032 has submitted that in a case where the FIR has been registered by the Police, the allegation of mala fide are of no relevance inasmuch as those allegations have to be examined only by the investigating agency while investigating the crime. It would be appropriate to take note of the observations made by the Court in this regard:

> 9. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary and Raghubir Saran (Dr.) v. State of Bihar.1992 (4) SCC 305. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the 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 proceedings. [See Dhanalakshmi v. R. Prasanna Kumar 1990 Supp SCC 686, State of Bihar v. P.P. Sharma 1992 (1) Supp SCC 222, Rupan Deol Bajaj v. Kanwar Pal Singh Gill 1995 (6) SCC 194, State of Kerala v. O.C. Kuttan 1999 (2) SCC 651, State of U.P. v. O.P. Sharma 1996 (7) SCC 705 , Rashmi Kumar v. Mahesh Kumar Bhada1997(2)SCC 397, Satvinder Kaur v. State (Govt. of NCT of Delhi 1999(8) SCC 728 and Rajesh Bajaj v. State NCT of Delhi(supra)]"

82. There can be no dispute with the proposition laid down in the aforesaid judgment. However, the judgment has to be applied to the facts of the case. As discussed above, in this case the matter of mala fide cannot be left for Police investigation inasmuch the very registration of the FIR is a subject matter of [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 56 of 69] the dispute before this Court. If the registration of the FIR itself is mala fide, then to say that the allegation be now enquired by the investigating agency and be left to them, would again be doing injustice to the petitioners who would be made to suffer investigation which ought not to proceed that also at Delhi, even though he has not committed any offence which is triable in Delhi in the facts of this case.

83. The counsel appearing for the petitioners also stated that in view of the settled law laid down by Honble Supreme Court in the case of Bhajan Lal (supra) it is a fit case to quash the FIR registered in this case in exercise of the powers vested in this court under Section 482 of the Code, as the allegations made in the first information report even if they are taken on their face value and accepted in its entirety, do not prima facie constitute any offence or make out a case against the accused person. The relevant observations made by the Apex Court in the aforesaid judgment reads as under:-

> 60. The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of Divine Power which no authority on earth can enjoy.

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98. Speaker for the bench, Ranganath Misra, J. as he then was in Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre 1988(1)SCC 692 has expounded the law as follows:

7. "The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage."

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 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.

(4) Where, the allegations in the FIR do not [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 58 of 69] 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.

84. The case in hand is squarely covered by Clause (1)(3)&(4) of para 102 of the aforesaid judgment. The same view was reiterated in Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. 2007 (12) SCC 1.

23. This Court in a number of cases has laid down the scope and ambit of courts powers under Section 482 CrPC. Every High Court has inherent power to act ex debito justitiae to do real and

substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

(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.

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

25. Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. DPP 1964 AC 1254. Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 59 of 69] proceed to trial. Lord Salmon in DPP v. Humphrys 1977 AC 1, stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the courts power to prevent such abuse is of great constitutional importance and should be jealously preserved.

26. In R.P. Kapur v. State of Punjab AIR 1960 SC 866, this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the 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 such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

85. Lastly, while opposing the aforesaid contention of the petitioner, counsel for respondent No.2 submitted that a petition under Section 482 of the Code is not maintainable when the investigation has not been completed and at this stage it is impermissible for the High Court to look into the material which is essentially a matter to be looked into by the Trial Court at the time of trial. It is his submission that while exercising jurisdiction under Section 482 of the Code the High Court cannot act as if it is a Trial Court but has to act with due care and circumspection while quashing any criminal proceedings at the inception stage. Reliance in this regard has been placed upon the following judgments:

i) State of M.P. Vs. Awadh Kishore Gupta 2004 (2) CRJ 161 [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 60 of 69]

ii) Angad Paul & Ors. Vs. M.D. Jindal (Delhi) 2005 (2) JCC 1093

iii) State of Orissa & Anr. Vs. Saroj Kumar Sahu 2006 (2) CRJ 569

iv) State of Bihar & Anr. Vs. P.P. Sharma, IAS & Anr., 1992 Supp (I) SCC 222.

v) State of Karnataka & Anr. Vs. Pastor P. Raju, 2006 (3) JCC 1398

vi) Major S.J. Dubey Vs. State of Punjab & Ors. 1986 (Supp.) SCC

vii) Dr. Ram Chander Singh Sagar and Anr. Vs. State of Tamil Nadu & Anr. (1978) 2 SCC 35

viii) Ashabai Machindra AdhagaleVs.State of Maharashtra(2009)3SCC

86. However, in view of the judgments of the Apex Court as discussed above, I do not find any strength in the argument advanced. Now, I may also refer to observations made by a learned Single Judge of this court in the case of Mohd. Salim (supra) regarding applicability of Section 482 of the Code, in particular in a case when the power under Section 156(3) of the Code has been exercised by the Magistrate. Relevant observations made in paragraphs 14 to 18 of this judgment are reproduced hereunder:-

> 14. A judicial order can be of three types. It may be a final order, an intermediate order or an interlocutory order. If an order finally disposes of a matter in dispute, it is termed as a final order. As held by the Hon'ble Supreme Court in Amar Nath v. State of Haryana and Anr. (1977) 4 SCC 137, the term interlocutory order denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights

> of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order. As held by the Supreme Court, the orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order.

15. Taking a view most favourable to the complainant/respondent and assuming an order passed under Section 156(3) of the Code of Criminal Procedure to be an interlocutory order was such an order can, in appropriate cases, definitely be challenged by filing a petition under Section 482 of the Code of Criminal Procedure of the Code of Criminal Procedure. As noted by the Supreme Court in CBI v. Ravi Shankar Srivastava 2006 (7) SCC 188, Section 482 of the Code does not confer any new powers on the High Court. It only saves the inherent power, which the High Court possessed even before the enactment of the Code. Since no procedural enactment can provide for all the cases that may come up before the Courts, they do possess inherent powers, apart from express provisions of law which are necessary for proper discharge of functions and duties imposed by law on them. This doctrine finds statutory recognition in Section 482 of the Code of [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 61 of 69] Criminal Procedure. In the case of Madhu Limaye v. The State of Maharashtra' (1977) 4 SCC 551, the Hon'ble Supreme Court held that the inherent powers of the High Court come into play when there is no provision for redressal of the grievance of the aggrieved party. Of course, the power under Section 482 of the Code needs to be exercised very sparingly and only to prevent abuse of the process of the Court or to otherwise secure the ends of justice.

16. When the High Court, on examination of the record finds that there is a grave miscarriage of justice or abuse of the process of the Court or there is failure of justice on account of the order passed by the Court below, it becomes the duty of the High Court to correct such an order at the very inception, lest miscarriage of justice ensues. It is with a view to meet the ends of justice and prevent abuse of the process that the High Court has been vested with inherent powers, which have been recognized by the Legislature in statutory recognition in Section 482 of the Code of Criminal Procedure. Therefore, the order passed by the Magistrate under Section 156(3) of the Code of Criminal Procedure irrespective of whether it directs investigation by the Police or it declines to give such a direction, can be challenged before the High Court under Section 482 of the Code of Criminal Procedure.

17. Even an order which is incapable of being challenged under Section 482 of the Code of Criminal Procedure can be challenged by way of a writ petition under Article 226/227 of the Constitution. Recently, I had an opportunity to examine this issue while deciding Criminal Revision Petition No. 293/2006 titled R.C. Sabharwal v. Central Bureau of Investigation and connected cases 166 (2010) DLT

362. After reviewing case law on the subject, I held that even an interlocutory order passed by a Special Judge exercising power under Prevention of Corruption Act can be challenged by way of a writ petition. It was noted that Article 227 of the Constitution gives, to High Court, the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction and this jurisdiction conferred upon the High Court cannot be limited or

fettered even by an Act of the State Legislature. Referring to the decision of the Supreme Court in Industrial Credit and Investment Corporation of India Limited v. Grapco Industries Limited, 1999 (4) SCC 710, where it was held that there was no bar on the High Court examining the merits of the case in exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require, the decision of the Supreme Court in Surya Dev Rai v. Ram Chander Rai and Ors. (2003) 6 SCC 675, holding that the amendment of the Section 115 of Code of Criminal [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 62 of 69] Procedure could not have taken away the constitutional jurisdiction of the High Court to issue a writ of Certiorari nor can the power of the superintendence conferred on the High Court under Article 227 of the Constitution be taken away, the decision of the Supreme Court in Rupa Ashok Hurra (2002) 4 SCC 388, holding that the orders and proceedings of a judicial court subordinate to the High Court can be challenged under Article 226 of the Constitution, and also relying upon the decision of a Constitution Bench of Supreme Court in L. Chandra Kumar v. Union of India 1997 (3) SCC 261, holding therein that the jurisdiction conferred on the High Court under Article 226 and 227 of the Constitution is a part of the basic structure of the Constitution, forming its integral and essential feature, which cannot be tampered with or taken away even by constitutional amendment, it was held that irrespective of the embargo placed by Section 19(3)(C), 115 of Prevention of Corruption Act, an interlocutory order passed by the Special Judge can be challenged by way of a writ petition under Article 226/227 of the Constitution.

18. In Vanshu v. State of U.P. 2007 Crl. L.J. 4677, Allahabad High Court held that the order passed by the Magistrate, directing registration of FIR and investigation of the case, being an interlocutory order, is not amenable to revisional jurisdiction of the High Court. In the case before Allahabad High Court, the order passed by the Magistrate under Section 156(3) of the Code of Criminal Procedure was challenged by the accused persons by filing a revision petition before the Sessions Judge, who set-aside the order passed by the Magistrate. The order passed by the Magistrate was then challenged before the High Court on the ground that the order being a pre-cognizance order, Sessions Judge had no jurisdiction to entertain the revision filed by the accused. The High Court felt that while passing order under Section 156(3) of the Code of Criminal Procedure, the Magistrate had not applied his mind against anybody and since the accused does not have right to appear before the Magistrate at pre- cognizance stage, he cannot challenged an interlocutory order passed in such a proceedings. The High Court observed that the order passed by the Magistrate was only a preemptory reminder or intimation to the police to exercise their plenary power of the investigation. The petition before this Court being under Section 482 of the Code of Criminal Procedure, the decision of Allahabad High Court taking a view that the order passed by the Magistrate being an interlocutory order, could not be challenged under Section 397(2) of the Code does not apply to this petition. Even an interlocutory order can definitely be challenged by way of a petition under Section 482 of the Code of Criminal Procedure, as noted earlier.

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87. It would be also useful to refer to para 16 of the judgment delivered by the Apex Court in the case of All India Cargo Movers India Pvt. Ltd. and Ors. Vs. Dhanesh Badarmal Jain & Anr. 2007 (14) SCC 776. The relevant paragraph is reproduced hereunder:

> We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice.

88. At this stage, it would also be relevant to refer the judgment of the Supreme Court in the case of State of West Bengal & Ors. Vs. Swapan Kumar Guha & Ors. 1982 (1) SCC 561. The relevant observations made in this regard are as under:-

> 10. The question as to whether the first information report prima facie discloses an offence under Section 4 read with Section 3 of the Act has to be decided in the light of these requirements of Section 2(c) of the Act. I have already reproduced in extenso the FIR lodged by the Commercial Tax Officer, Bureau of Investigation. Analysing it carefully, and even liberally, it makes the following allegations against the firm "Sanchaita Investments" and its three partners:
>
> (1) The firm had been offering fabulous interest at the rate of 48 per cent per annum to its members, which rate of interest was later reduced to 36 per cent per annum;
>
> (2) Such high rate of interest was being paid even [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 64 of 69] though the loan certificate receipts show that interest was liable to be paid at the rate of 12 per cent per annum only; and (3) The fact that interest was paid in excess of 12 per cent shows clearly that a "money circulation scheme" was being promoted and conducted for the making of quick or easy money.
>
> It seems to me impossible to hold on the basis of these allegations that any offence can be said to be made out prima facie under Section 3 of the Act. In the first place, the FIR does not allege, directly or indirectly, that the firm was promoting or conducting a scheme for the making of quick or easy money, dependent on any event

> or contingency relative or applicable to the enrolment of members into the scheme. Secondly, the FIR does not contain any allegation whatsoever that persons who advanced or deposited their monies with the firm were participants of a scheme for the making of quick or easy money, dependent upon any such event or contingency. The FIR bears on its face the stamp of hurry and want of care. It seems to assume, what was argued before us by Shri Somnath Chatterjee on behalf of the prosecution, that it is enough for the purposes of Section 2(c) to show that the accused is promoting or conducting a scheme for the making of quick or easy money, an assumption which I have shown to be fallacious. An essential ingredient of Section 2(c) is that the scheme for making quick or easy money must be dependent on any event or contingency relative or applicable to the enrolment of members into the scheme. A first information report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, cannot form the foundation or constitute the starting point of a lawful investigation.
>
> 13. It is clear from these averments that even at the stage when the State of West Bengal and its concerned officers submitted detailed affidavits to the High Court, there was no clear basis for alleging and no material was disclosed to show that, prima facie, the firm was promoting or conducting a scheme for making quick or easy money which was dependent upon an event or contingency relative or applicable to the enrolment of members into that scheme. The burden of the States song is that the scheme conducted by the accused generates black money and will paralyse the economy of the country. These are serious matters indeed and it is unquestionable that a private party cannot be permitted to issue bearer bonds by the back door.

The fact that the accused are indulging in an economic activity which is highly detrimental to national interests is a matter which must engage the prompt and serious attention of the State and [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 65 of 69] Central Governments. But the narrow question for our consideration is whether on the basis of the allegations made against the accused, there is reason to suspect that they are guilty of an offence under Section 4 read with Sections 3 and 2(c) of the Act. The allegation which we have reproduced in clause (ix) above from the affidavit of Arun Kanti Roy is the nearest that can be considered relevant for the purposes of Section 2(c) of the Act. But even that allegation does not meet the requirement of that section since, what it says is that "the payment of quick and easy money by way of high rate of interest is dependent upon the period of investment and/or efflux of time which are very much relative and/or applicable to the membership of the depositors of the scheme to which the depositor agrees to subscribe". This is too tenuous to show that the scheme is dependent upon an event or contingency of the description mentioned in Section 2(c), apart from the fact that the only participation which is alleged as against the depositors is that they become members of the "investment scheme" by subscribing to it. There is no allegation even in any of the affidavits filed on behalf of the State of West Bengal and its concerned officers that the depositors and the promoters are animated by a community of interest in the matter of the scheme being dependent upon any event or contingency relative or applicable to the enrolment of members into it. That being an essential ingredient of the offence charged, it cannot be said in the absence of any allegation whatsoever in that behalf, that

there is "reason to suspect" the commission of that offence within the meaning of Section 157 of the Code of Criminal Procedure, so as to justify the investigation undertaken by the State authorities.

65. In my opinion, the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. The observations of the Judicial Committee and the observations of this Court in the various decisions which I have earlier quoted, make this position abundantly clear. The propositions enunciated by the Judicial Committee and this Court in the various decisions which I have earlier noted, are based on sound principles of justice. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 66 of 69] jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed. The decisions on which Mr Chatterjee has relied are based on this sound principle, and in all these cases, an offence had been disclosed. Relying on the well settled and sound principle that the court should not interfere with an investigation into an offence at the stage of investigation and should allow the investigation to be completed, this Court had made the observations in the said decisions which I have earlier quoted reiterating and reaffirming the sound principles of justice. The decisions relied on by Mr. Chatterjee, do not lay down, as it cannot possibly be laid down as a broad proposition of law, that an investigation must necessarily be permitted to continue and will not be prevented by the court at the stage of investigation, even if no offence is disclosed. While adverting to this specific question as to whether an investigation can go on even if no offence is disclosed, the Judicial Committee in the case of King-Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18 and this Court in R.P. Kapur v. State of Punjab (supra), Jehan Singh v. Delhi Administration 1974(4)SCC522 and S.N. Sharma v. Bipen Kumar Tiwari 1970(1)SCC653, have clearly laid down that no investigation can be permitted and have made the observations which I have earlier quoted and which were relied on by Mr Sen. As I have earlier observed this proposition is not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed, cannot be put to any harassment by the process of investigation which is likely to put his personal liberty and also property which are considered sacred and sacrosanct into peril and jeopardy.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the court has mainly to take into consideration the complaint or the FIR and the court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

82. As no offence under the Act is at all disclosed, it will be manifestly unjust to allow the process of criminal code to be issued or continued against the firm and to allow any investigation which will be clearly without any authority.

84. I, therefore, hold that the proceedings against the firm and its partners arising out of the FIR must be quashed as the FIR and the other materials do not disclose any offence under the Act and as such no investigation into the affairs of the firm under the Act can be permitted or allowed to be continued. I, accordingly, quash the proceedings against that firm and its partners and order that no investigation under the Act into the affairs of the firm is to be carried on or continued.

89. The same view was also followed by the Apex Court in its subsequent judgment in the case of Ajay Mitra (supra) as also in the judgment delivered by this Court in the case of Uttam Kumar Bose Vs. National Capital Territory Delhi 2004 (76) DRJ 197.

90. Applying the aforesaid legal position to the facts of this case as discussed above, it is apparent that while passing the order under Section 156(3) of the Code, the Magistrate has neither perused the agreement dated 27.04.1994, the agreement dated 18.07.1994 nor the agreements dated 22.06.1996 and 28.06.1996 which settled all the disputes in relation to the availability of FSI [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 68 of 69] only to the extent of 86,725 sq. ft. to the satisfaction of the complainant. Reading of these agreements also makes it abundantly clear that the ownership and possession of the land in question remained with the Company. The mortgage which was created along with all other properties by the Company also stands reconveyed. The factum of transfer of rights of the complainant to Ansals, a third party, who has not raised any grievance against the Company was also not disclosed to the Magistrate. There is nothing on record to show that on account of such mortgage having been created which may at the most constitute a breach of agreement any loss has been caused to the Complainant. On the facts of this case, even if proper procedure had been followed by the Magistrate, no offence is made out. The filing of the complaint was mala fide and an abuse of process.

91. In these circumstances, I am satisfied that the order dated 01.07.2005 directing investigation of the complaint and registration of the FIR in this case as well as the FIR registered pursuant thereto bearing No. No.436/2005 dated 06.08.2005 registered at Police Station Defence Colony under Section 420/467/468/471/120-B/34 IPC amount to abusing the process of the Court and thus, are liable to be quashed. Accordingly, the order dated 01.07.2005 passed by the Metropolitan Magistrate, New Delhi as well as the FIR No. 436/2005 registered at the Defence Colony, Police Station, New Delhi are hereby quashed. Both the petitions are allowed. The Complainant/Respondent No.2 in the facts of this case is also burdened with a costs of Rs. 2,00,000.00/- (Two lacs) to be paid to the Delhi Legal Services Authority within one month from today. Further, the Petitioners will also be free to take such other action against the Complainant and others involved for recovery of costs, damages, etc. as may be permissible in law.

92. Before closing, I must appreciate the laborious assistance rendered by the counsel involved in this case and the others who were requested to assist, which has enabled me to cover a wide range of case law.

93. A copy of this judgment be sent to the Chairman, Delhi Judicial Academy. Further, as this problem arises often, and to prevent parties from misusing the process of law (section 156(3) Cr.P.C), the Registrar General of this court will ensure that a copy of paragraph 52A (containing the guidelines) is circulated as an excerpt to all subordinate judicial officers in Delhi.

MOOL CHAND GARG, J JULY 09, 2010 ag/dc/anb [Crl.M.C.Nos.6122-23/2005 & Crl.M.C.Nos.6133-34/2005 Page 69 of 69]