

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL  
MISCELLANEOUS CRIMINAL CASE NO.11632 OF 2019**

**BETWEEN:-**

**NEERAJ SHRIVASTAVA AGED ABOUT 42 YEARS  
S/O LATE SHRI R.K. SHRIVASTAVA  
OCCUPATION BUSINESS R/O 40 APR COLONY  
KATANGA JABALPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI SURENDRA SINGH - SENIOR ADVOCATE WITH SHRI ASHWANI  
KUMAR DUBEY - ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH,  
THROUGH STATION HOUSE OFFICER  
GORAKHPUR, JABALPUR, DISTRICT  
JABALPUR (MADHYA PRADESH)**
- 2. PRATIK JAIN S/O SHRI PREETAM JAIN,  
ADULT WORKING AS PROPRIETOR OF  
SKODA SHOWROOM R/O H.NO. 599  
GORAKHPUR JABALPUR, (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(SHRI VINAY SHARMA – PANEL LAWYER FOR RESPONDENT NO.1/STATE)***

***(SHRI SANKALP KOCHAR – ADVOCATE FOR THE RESPONDENT NO.2)***

.....  
*Reserved on* : 23.08.2023

*Pronounced on* : 05.09.2023  
.....

*This petition having been heard and reserved for orders, coming on*

*for pronouncement this day, the Court pronounced the following:*

**ORDER**

This petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner to quash FIR No.279/2018 dated 20.04.2018 under Sections 420, 406, 467, 468/34 of IPC and the entire proceedings initiated pursuant to charge sheet filed by police station Gorakhpur, Jabalpur against the petitioner.

2. The factual matrix of the case in nutshell is that complainant/respondent No.2 i.e. Pratik Jain is a resident of House No.599, Gorakhpur, Jabalpur and runs business of construction work and also works as car dealer. It was alleged that in the month of April 2016 his cousin Bantu Jain (applicant No.2) along with applicant No.1 Neeraj Shrivastava, who is the relative of Bantu Jain, came to him and told that Neeraj Shrivastava runs Mining business at village Gosalpur, Tehsil Sihora and that he would make him as a partner with 50% share in the said business. It was also alleged that for becoming a partner, he was asked to pay a sum of Rs.80,00,000/- (Rupees: Eighty lakhs). On that he got ready to become a partner with the Neeraj Shrivastava in mining business. Thereafter, they executed a Joint Venture Agreement regarding partnership in Mines business and paid Rs.80,00,000/- (Rupees: Eighty lakhs) to Neeraj Shrivastava through RTGS and cash payment on the promise that Neeraj Shrivastava would make the complainant a partner in the Mines business and further an assurance was given that Neeraj

Shrivastava would get the necessary Government permission to make him a partner in the Mines business. Later when he contacted Neeraj Shrivastava again, he showed him a Government letter/NOC allowing him to become a partner and thereafter Joint Venture Agreement was executed. Later it was found that applicant No.1 had given him a forged letter and had committed fraud with him and took a sum of Rs.80,00,000/- (Rupees: Eighty lakhs) from him and cheated and embezzled that amount. After investigation, charge sheet has been filed for commission of offence under Sections 406, 420, 467,468/34 of IPC.

3. In this matter, it is an undisputed fact that petitioner No.1/applicant No.1 Neeraj Shrivastava has a valid Mining licence to mine iron ore over an area of 39.440 hectare situated at village Gosalpur, Tehsil Sihora, District Jabalpur and operates this mine under the name and style of M/s S.S. Enterprises.

4. Learned senior counsel for the petitioner has submitted that no Joint Venture Agreement was executed between petitioner/applicant Neeraj Shrivastava and complainant Pratik Jain. In Joint Venture Agreement, there is no mention of the fact that applicant/petitioner No.1 showed him any no objection certificate received from the Mining Department or Pratik Jain had loaned Rs.80,00,000/-(Rupees: Eighty lakhs) to the applicant. It is submitted that said Joint Venture Agreement is not a registered document and Pratik Jain never informed the Mining Department that he has entered into a Joint

Venture Agreement with applicant No.1 Neeraj Shrivastava. It is submitted that whatsoever money alleged to have been given to Neeraj Shrivastava was not secured by any document. The Joint Venture Agreement (Annexure-A/3) is not a registered document. It is vehemently argued by learned senior counsel for the petitioners that in investigation, the so called no objection certificate/sanction order purportedly issued by the Government/Mining Department in favour of Neeraj Shrivastava was not seized from any of the parties and is not a part of the charge sheet. The entire case of the prosecution is that the Joint Venture Agreement (Annexure-A/3) was sent to hand-writing expert, who has opined that the signatures on the document are in the handwriting of the applicant. As no Joint Venture Agreement (Annexure-A/3) was entered into by Neeraj Shrivastava with complainant Pratik Jain, the signatures bearing on the said document (Annexure-A/3) are not in the handwriting of applicant Neeraj Shrivastava. The same are forged and Joint Venture Agreement (Annexure-A/3) is a forged and fabricated document.

5. Learned senior counsel for the petitioner has further submitted that in May 2016, petitioner Neeraj Shrivastava was in dire need of funds for the purpose of his Mining business. Respondent No.2 is a known money lender in the business circle, therefore, he approached him for a loan of Rs.30,00,000/-(Rupees: thirty lakhs). An agreement of loan dated 28.05.2016 (Annexure-A/1) was entered into between the parties and signed by them. Thereafter, a sum of Rs.30,00,000/-

(Rupees: thirty lakhs) was loaned to the applicant by respondent No.2 for a period of five months. It was agreed between the parties that Rs.3,00,000/- (Rupees three lakh) per month would be paid by way of interest. It is submitted that subsequent to the entering into this agreement of loan (Annexure-A/1) respondent No.2 transferred Rs.21,00,000/- (Rupees: twenty One lakhs) into the account of the applicant and also paid him Rs.9,00,000/- (Rupees nine lakhs) by cash. This loan was repaid by the petitioner within the stipulated period of time.

**6.** It is submitted that in September, 2016 petitioner received a large order from M/s Sharda Metals and Alloys Limited to supply iron ore to them immediately. This was a very lucrative order but required an investment of large amount of money. The petitioner therefore, approached respondent No.2 for a further loan of Rs.30,00,000/- (Rupees: thirty lakhs). Both the parties have entered into an Agreement of Loan on 29.09.2016. The loan of Rs.30,00,000/- (Rupees: thirty lakhs) was to be repaid within a period of one month with interest of Rs.20,00,000 (Rupees: Twenty lakhs). The final date for the repayment of the loan was 30.10.2016 and for the security of the loan, the petitioner had issued two post-dated cheques. The petitioner was required to pay Rs.50,00,000/- (Rupees: fifty lakhs) to respondent No.2 on the day on which the letter of credit was issued in favour of M/s. S.S. Enterprises by the Bank of Baroda against supply of material being made by M/s. S.S.

Enterprises to Sarda Metals and Alloys Limited gets discounted or before 30.10.2016 whichever was earlier. It is submitted that in the case of non-payment of loan by the petitioner within the stipulated time, respondent No.2 was entitled to present the postdated cheques to the bank and was also entitled to file a complaint against the applicant for commission of offence under Section 138 of the Negotiable Instruments Act for dishonour of cheques. It was agreed that respondent No.2 shall also be entitled for 50% share in the aforesaid Mines of the petitioner in case of non-payment of advanced amount by the petitioner before the agreed date. The petitioner could not repay the entire amount of Rs.80,00,000/- (Rupees: eighty lakhs) by 30.10.2016. Despite that, respondent No.2 took no steps to present the two undated cheques that were in his possession to the bank nor did he sent any legal notice to the petitioner for the repayment of Rs.50,00,000/- (Rupees: fifty lakhs).

7. It is submitted by learned senior counsel for the petitioners that when petitioner could not repay the loan amount, respondent No.2 started using illegal means to compel the petitioner for making him a partner in the said Mines. On this account, the petitioner made a complaint to the Director General of Police, Bhopal on 10.02.2017 and also submitted a complaint in writing to the S.P., Jabalpur on 07.04.2017. On direction of S.P., Jabalpur inquiry was conducted by C.S.P., Jabalpur and submitted his report dated 22.08.2017 in which he doubted the veracity of the Joint Venture Agreement and further

opined that the matter is of civil nature.

**8.** Learned senior counsel for the petitioner has submitted that no offence under Sections 406 or 420 of IPC is made out as it is not the case of respondent that petitioner dishonestly induced him to make a payment of Rs.80,00,000/- (Rupees: eighty lakhs). It is further submitted that no offence under Sections 467 and 468 of IPC is made out against the applicant, as so called fictitious no objection certificate/sanction order purportedly issued by the Mines Department has not been seized in this case. There is not even an iota of evidence that the said no objection certificate which is not in existence had been prepared by the petitioner or that it was ever shown by the petitioner. It is also submitted that Joint Venture Agreement (Annexure-A/3) nowhere states that applicant had shown no objection certificate issued by Mines Department nor does it state that respondent No.2 was investing Rs.80,00,000/- (Rupees: eighty lakhs) in order to become a partner in the said Mines. In such facts scenario, no offences under Section 420, 467 and 468 of IPC are made out.

**9.** Learned senior counsel has vehemently submitted that even if the entire recitals of the Joint Venture Agreement (Annexure-A/3) are taken in their entirety, no offence under the Indian Penal Code is made out against the petitioner and the only remedy available to respondent No.2 was to file a civil suit for enforcement of the agreement or to file for compensation for breach of contract. It is

submitted that the matter between the parties is a dispute of purely civil nature. As no offence punishable under various sections of IPC is made out, he has prayed to quash the entire criminal proceedings initiated by respondent No.2.

10. On the other hand, learned counsel for the State as well as learned counsel for the respondent No.2 have submitted that after investigation, charge sheet has already been filed and in S.T. No.278/2022 charges have already been framed against the petitioners Neeraj Shrivastava and Sameer @ Bantu Jain for commission of offence under Sections 420, 406, 467, 468 of IPC. It is contended that the submissions made on behalf of petitioners are without any substance and in facts contrary to the record. They further submitted that no case in favour of the petitioners is made out on the basis of which FIR can be quashed. It is submitted that the trial has already commenced as charges have already been framed and therefore, at this stage, it would be not proper to interfere in the matter and to quash the FIR. It is further submitted that it is a settled principle of law that while deciding a petition under Section 482 of Cr.P.C. evidence cannot be appreciated as it is for the trial Court to appreciate the evidence and whenever *prima facie* evidence is available on record, it is not proper for the High Court to quash the complaint/FIR under Section 482 of Cr.P.C.

11. Learned counsel for the respondent No.2 relying on **Kamladevi Agarwal vs. State of West Bengal and others - (2022) 1 SCC 555;**



**K. Jagdish Vs. Uday Kumar G.S. and another - (2020) 14 SCC 552; Syed Askari Hadi Ali Augustine vs. State and another - (2009) 5 SCC 528 and State of M.P. vs. Sunil Kori - (2012) 10 SCC 155** has submitted that criminal proceedings should not be quashed merely because of pendency of civil proceedings. It is further submitted that High Court should not quash FIR if the issues involved, whether factual or legal, are of wide magnitude and incapable of being seen in true perspective. Learned counsel placing reliance on **State of U.P. vs. Akhil Sharda and others - 2022 SCC online SC 820** and **C.B.I. vs. Aryan Singh - 2023 SCC online SC 379** has submitted that High Court cannot conduct a mini trial while deciding a petition under Section 482 of Cr.P.C. It is not permissible for the High Court to go into the correctness of the material placed by the prosecution at the stage of deciding a petition under Section 482 of Cr.P.C. and for the same learned counsel has relied on **Manik B. Vs. Kadapala Shreyas Reddy and another - 2023 Livelaw (SC) 642**. It is also the argument of learned counsel that scope of interference in a criminal revision against order framing charge is very limited because for framing charge mere strong suspension is enough. It is submitted that even in the absence of the document alleged to have been forged the Court can still hold the offence of forgery and the for the same reliance is placed on **Ashok Mondal vs. State of West Bengal and another passed in Criminal Revision No.881/2018**. Thus, they have prayed for dismissal of the petition.

12. Countering the arguments advanced by learned counsel for the respondents, learned senior counsel for the petitioner has placed reliance on **Sheila Sebastian Vs. R.Jawaharaj and another etc. - AIR 2018 SC 2434, Uma Shankar Gopalika vs. State of Bihar and another - (2005) 10 SCC 336, Ghulam Hassan Beigh vs. Mohammad Maqbool Magery and others - AIR 2022 SC 5454, Rajiv Thapar and others vs. Madanlal Kapoor - (2013) 3 SCC 330, Satish Mehra vs. State of N.C.T. of Delhi and Anr. - AIR 2013 SC 506, Sardar Ali Khan vs. State of U.P. through Principal Secretary Home Department and another - AIR 2020 SC 626, Rajeshbhai Muljibhai Patel and others vs. State of Gujarat and another - (2020) 3 SCC 794, Paramjeet Batra vs. State of Uttarakhand and others - (2013) 11 SCC 673 and Ramji Dayawala & sons (P.) Ltd. vs. Invest Import - AIR 1981 SC 2085, Lalit Popli vs. Canara Bank and others - (2003) 3 SCC 583, Mohammad Ibrahim and others vs. State of Bihar and another - (2009) 8 SCC 751, Sanjay Kumar Rai vs. State of Uttar Pradesh and another - 2021 SCC OnLine SC 367, Vijay Kumar Ghai and others vs. State of West Bengal and others - (2022) 7 SCC 124 and Mohammad Wajid and another vs. State of U.P. and others passed in Cr.A.No.2340 of 2023 arising out of S.L.P. (Criminal) No.10656 of 2022.**

13. In this case, the main contention of the learned senior counsel for the petitioner is that it is a case of purely civil nature and a civil

dispute has been given a criminal cloak. In this case, even if the entirety of allegations mentioned in the FIR and material are taken as true even then no ingredients of criminal offences are made out.

**14.** On the other hand, the crux of the argument of learned counsel for the respondents is that after framing of charge, High Court cannot appreciate the material/evidence in a petition under Section 482 of Cr.P.C. and there is no bar to simultaneous continuance of a criminal proceeding and a civil proceeding, if the two arise from separate cause of action.

**15.** I have heard learned counsel for the parties at length, perused FIR/charge sheet and other material on record. Having perused the relevant facts and heard the contentions made by learned senior counsel for the petitioners and respondents herein, I am of the considered opinion that the following three issues require determination in the instant case:

(i) Whether the High Court to prevent the abuse of process of Court can exercise its inherent power under Section 482 of Cr.P.C. and can quash the proceedings even after framing of charge, if it comes to a conclusion that such proceeding is frivolous, vexatious or civil proceedings have been given a criminal colour ?

(ii) Whether the necessary ingredients of offence under Sections 406, 420, 467 and 468 of IPC are *prima facie* made out or not ?

(iii) Whether the dispute is one of entirely civil nature and therefore liable to be quashed ?

**Issue No.1**

16. Hon'ble Apex Court in **Prashant Bharti vs. State of (NCT of Delhi) (2013) 9 SCC 293** has observed that exercising the power provided under Section 482 of Cr.P.C. for quashing the proceeding, the same parameters would be applicable even at the later stage, which are available at the initial stage like before commencement of actual trial, at the stage of issuing process or at the stage of committal. This Court is aware of the fact that exercise of inherent power provided under Section 482 of Cr.P.C. the High Court would not ordinarily embark upon an inquiry to ascertain whether the evidence in question is reliable or not and inherent jurisdiction has to be exercised sparingly and carefully with caution, but at the same time, Section 482 empowers the High Court to prevent the abuse of process of Court.

17. Hon'ble Supreme Court in the case of **Mahmood Ali and ors. vs. State of U.P. and ors.** passed in Criminal Appeal No.2341 of 2023 arising out of S.L.P. (Criminal) No.12459 of 2022 judgment dated 08.08.2023 observed in para 12 as under:-

“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the

ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

**18. In Prashant Bharti’s case (supra), Hon’ble Supreme Court while taking note of the law laid down in Rajeev Thapar vs. Madan Lal Kapoor; (2013) 3 SCC 330 has observed as under:-**

“22. The proposition of law, pertaining to quashing of

criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Cr.P.C.") has been dealt with by this Court in *Rajiv Thapar & Ors. vs. Madan Lal Kapoor* (supra) wherein this Court inter alia held as under:

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/ complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section - 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or

alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

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

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

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

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

30.5 If the answer to all the steps is in the affirmative,

judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

**19.** In **Satish Mehra (Supra)** Hon’ble Supreme Court observed in para 15 as under:

“15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that



stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.”

**20. In State of Haryana and others vs. Bhajan Lal and others 1992 SCC (Cri) 426** Hon’ble Supreme Court identified the following cases in which FIR/complaint can be quashed:-

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

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

(3) Where the 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 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 Act concerned (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 Act concerned, 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.”

**21.** The above observations by the Hon’ble Apex Court makes it clear that the High Court while exercising power under section 482 of Cr.P.C. can consider the facts and material of the case and it can consider whether it is expedient and in the interest of justice to permit the prosecution to continue or the continuance of prosecution would be abuse of process of Court. It is clear that if High Court comes to a conclusion that 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. Further 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, the power can be

exercised and FIR can be quashed.

22. In the light of above discussion and settled position of law arguments advanced by learned counsel for the respondent that material on record cannot be appreciated in a petition under Section 482 of Cr.P.C. after framing of charge being untenable is repelled.

### **Issue No.2**

“(ii) Whether the necessary ingredients of offence under Sections 406, 420, 467 and 468 of IPC are *prima facie* made out or not ?”

23. In the case on hand, the charge sheet has been filed for commission of offence under Sections 420, 406, 467, 468 of IPC and charges have been framed. In order to ascertain the veracity of contentions made by the parties herein, it is imperative to firstly examine whether the relevant ingredients of offences which the petitioner herein with co-accused had been charged with, are *prima facie* made out. The relevant sections read as follows:-

#### **Section 405 of IPC defines Criminal Breach of Trust which reads as under: -**

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

“criminal breach of trust”.

**24.** The essential ingredients of the offence of Criminal Breach of Trust are:-

- (1) The accused must be entrusted with the property or with dominion over it,
- (2) The person so entrusted must use that property, or;
- (3) The accused must dishonestly use or dispose of that property or willfully suffer any other person to do so in violation,
  - (a) of any direction of law prescribing the mode in which such trust is to be discharged, or;
  - (b) of any legal contract made touching the discharge of such trust.”

**25.** “Entrustment” of property under Section 405 of the Indian Penal Code is pivotal to constitute an offence under this. The words used are, ‘in any manner entrusted with property’. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of ‘trust’. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

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

**26.** It is clear that the act of Criminal Breach of Trust would, inter

alia, mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

**27.** Section 415 of IPC defines cheating which 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 shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.” The essential ingredients of the offense of cheating are:

1. Deception of any person
2. (a) Fraudulently or dishonestly inducing that person-
  - (i) to deliver any property to any person: or
  - (ii) to consent that any person shall retain any property; or
  - (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were no 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.”

**28.** A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

**29.** Section 420 IPC defines cheating and dishonestly inducing delivery of property which reads as under: -

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

Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.”

**30.** To establish the offence of Cheating in inducing the delivery of property, the following ingredients need to be proved:-

“(i) The representation made by the person was false

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.”

**31.** The ingredients to constitute an offence under Section 420 are as follows:-

“(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to;

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC.”

**32.** Now it has to be considered by the averments in the FIR even assuming to be true make out the ingredients of the offence punishable either under Section 467 or 468 of IPC.

“464. Making a false document.-A person is said to make a false document or false electronic record First Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any 342 [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the 342 [electronic signature],

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

made, signed, sealed, executed or affixed; or Secondly - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other 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 or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.”

**33.** An analysis of section 464 of Indian Penal Code shows that it divides false documents into three categories:

“(1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

(2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

(3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or



the nature of the alteration.

In short, 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.”

**34.** Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

**35.** Section 468 IPC, as defined in the Code reads as, “Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

**36.** The condition precedent for an offence under sections 467 and 468 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. It is a case where so called forged document is not in existence as neither original has been seized nor none of its copy is on record. In such situation petitioner cannot be said to have made and executed false document in collusion with the other accused.

**37.** Hon'ble Apex Court in the case of **Mohammad Ibrahim and others vs. State of Bihar and another (2009) 8 SCC 751** in para 8 observed as under:-

“8. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.”

**38.** In the instant case, FIR lodged against the petitioners herein is one which involves commission of offences of Criminal Breach of Trust, cheating and forging a document which purports to be a valuable security or commits forgery intending that (document or electronic record) shall be used for the purpose of cheating. While a criminal breach of trust is postulated under Section 405 of the Indian Penal Code, entails misappropriation or conversion of another's property for one's own use, with a dishonest intention, cheating too on the other hand is an offence defined under Section 415 of the Indian Penal Code, involves an ingredient of having a dishonest or fraudulent intention which is aimed at inducing the other party to deliver any property to a specific person. Both the sections clearly

prescribed 'dishonest intention', as a pre-condition for even *prima facie* establishing the commission of said offences. Thus, in order to assess the relevant contentions made by the parties herein, the question whether actions of the applicants were committed in furtherance of a dishonest or fraudulent scheme is one which requires scrutiny.

**39.** Coming to the facts of the case in hand, the contention of respondent No.2 is that the complainant/respondent No.2 gave Rs.80,00,000/- (Rupees: eighty lakhs) to the petitioner for becoming 50% shareholder in the Mines business at Gosalpur run by the applicant and both parties executed a Joint Venture Agreement Annexure-A/3. On a perusal of the Annexures-A/1 & A/2 which are notarized documents, it is apparent that a loan was taken by the applicant from respondent No.2 first on 28.05.2016 (Annexure-A/1) and Agreement of loan document Annexure-A/1 was entered into between the parties and signed by them and same was notarized. Thereafter a sum of Rs.30,00,000/- (Rupees: thirty lakhs) was loaned to the applicant by respondent No.2 for a period of five months and applicant had to pay Rs.3,00,000/- (Rupees: three lakhs) per month as interest. Subsequent to entering into the Loan Agreement (Annexure-A/1) respondent No.2 transferred a sum of Rs.21,00,000/- (Rupees: twenty one lakhs) into the account of the applicant and paid him a sum of Rs.9,00,000/- (Rupees: nine lakh) in cash. Thereafter, on 29.09.2016, again they entered into a Loan Agreement for

Rs.30,00,000/- (Rupees: thirty lakhs) on which interest of Rs.20,00,000/- (Rupees: twenty lakhs) had to be paid for a period of one month and the final repayment of loan was to be made on 30.10.2016. Both loan document finds place in the Notary Register though respondent No.2 has denied from the execution of such loan agreement but in course of investigation, the copy of the Notary Register has been seized and both loan documents find mention in the Register. As Agreements of loan were executed between the parties and two postdated cheques were handed over to respondent No.2 for security purposes, in case of non-payment of loan by the applicant, the respondent No.2 had either to file civil suit for recovery of loan amount or to present the postdated cheques to the bank and in case of dishonour of cheques, he had to file a complaint under Section 138 of the Negotiable Instruments Act by issuing statutory notice.

**40.** It is worth mentioning that in Agreement of Loan (Annexure-A/1) dated 29.09.2016 at the end of page No.17, it is agreed between the parties that lender shall also be eligible for the share of 50% in the aforesaid mines of the borrower, in case of non-payment of advanced amount by the borrower beyond the agreed date. On a perusal of the recitals and terms of Agreements of loan dated 28.05.2016 and 29.09.2016, it is apparent that applicant No.1 had borrowed money from the respondent No.2 and loan agreement mentioning the terms and conditions were executed between them.

As agreement were executed and even postdated cheques were issued. therefore, it cannot be said that petitioner/applicant in any way committed any breach of trust or committed cheating with the respondent No.2. Agreement of Loans Annexure-A/1 have been signed by witnesses Minal Jain Wife of respondent No.2 Pratik and Deepak Jaiswal of Gorakhpur, Jabalpur. As both the witnesses are close to respondent No.2 and document relating loan had been duly executed. Therefore, it cannot be said that any breach of trust or cheating had been committed by the petitioner. On a perusal of other documents Annexure-1A and Annexure-A/2, it is apparent that some dispute arose between the applicant and respondent No.2 and respondent No.2 started to pressurize or coerce the petitioner for making him partner in the mine business and for this respondent No.2 took help of the police also. It is worth mentioning that Annexure-A/1A complaint was made by the petitioner to DGP, SP and IG Jabalpur on 10.02.2017 alleging that on 03.02.2017 on the basis of a complaint made by respondent No.2 he was called in the police station where police personnel pressurized him to put signature on the blank papers.

**41.** On the basis of complaint made by petitioner Neeraj Shrivastava, higher authorities of police directed for initiation of inquiry. The inquiry was conducted by CSP, Gorakhpur and in his inquiry report Annexure-A/5 dated 22.08.2017 in para 4, it is mentioned that Pratik Jain has produced the photocopy of the Joint

Venture Agreement but did not produce the original before him. It is mentioned that Neeraj Shrivastava has denied his signature on the document and has refused from executing any Joint Venture document. In inquiry report, CSP has clearly reported that there is dispute of some loan transaction of Rs.80,00,000/-(Rupees: eighty lakhs) between Neeraj Shrivastava and Pratik Jain and for that they have executed loan agreement on 28.05.2016 and 29.09.2016. As per inquiry report, the activities of Pratik Jain are suspicious and entire controversy between Neeraj Shrivastava and Pratik Jain are of civil nature and they have been advised to go before the Civil Court for redressal of the dispute.

**42.** After this inquiry report Annexure-A/5 dated 22.08.2017, on 20.04.2018 almost after more than eight months of the dispute between the parties, Pratik Jain filed a complaint in writing before the police and police registered FIR and has filed charge sheet. In investigation, no document alleged to be so-called NOC issued by the Mines Department has been seized neither any photocopy nor certified copy of such document is on record. Section 467 of IPC provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 468 of IPC provides that whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**43.** In the case on hand, document alleged to be forged is not in existence while the condition precedent for an offence under Sections 467 & 468 of IPC is forgery and intending to forged document for the purpose of cheating. In this case, no forged document has been seized therefore, the question of forging a document and using the same for forgery does not arise.

**44.** In this case, there is no *prima facie* proof that any false or forged document has been made. Therefore, it is apparent that in absence of any such document, the petitioner in no way be connected with the forging of such document and it cannot be said that he forged any document. When document itself is not in existence, there is no forgery. If there is no forgery, then neither Section 467 nor Section 468 of IPC are attracted.

**45.** In **Sheila Sebastian vs R. Jawaharaj and another; AIR 2018 SC 2434**, Hon'ble Supreme Court observed as under:

“25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the

maker of the same, otherwise the accused person is not liable for the offence of forgery.”

“26. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that ‘false document’. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.”

**46.** In the case at hand, it is undisputed that so called forged document is not in existence and has not been seized during investigation. Thus, this case on hand is a classic example of shabby and shoddy investigation. The Investigation Officer is expected to be vigilant while discharging his duties. He has to be fair, transparent and his only endeavour be to find out the truth. The Investigation Officer has not even taken minimum care to recover the so called forged document alleged to have been shown to respondent No.2. There is nothing on record on the basis of which it can be said that respondent No.2 ever applied to the Mining Department for issuing copy of such document alleged to have been issued in favour of



petitioner. Therefore, in want of any such document, filing of charge sheet for commission of offence under Section 467 and 468 of IPC is a clear cut abuse of process of Court because Section 464 of IPC makes it clear that only the one who makes a false document can be held liable under the aforesaid provisions. When document itself is not available or is not in existence no offence under Sections 467 or 468 of IPC is made out.

**47.** In this case, as already held that offence of breach of trust is also not made out as to constitute an offence of Criminal Breach of Trust, it is essential that the prosecution must prove first of all that accused was entrusted with some property or with any dominion or power over it. It has to be established further that in respect of the property so entrusted there was dishonest, misappropriation, conversion or dishonest use or disposal in violation or direction of law or legal contract by the accused himself or someone else which he willingly suffered to do. It follows almost axiomatically from this definition that the ownership or beneficial interest in the property in respect of which Criminal Breach of Trust is alleged to have been committed must be in some person other than the accused and the later must hold it on account of some person or in some way for his benefit.

**48.** For an offence under Section 420 of IPC, it is imperative on the part of prosecution/complainant to *prima facie* establish that there was intention on the part of accused and for others to cheat and/or to

defraud the complainant right from the inception. Furthermore, it has to be *prima facie* establish that due to such an act of cheating complainant/respondent No.2 herein had suffered a wrongful loss and same had resulted in wrongful gain for accused. In absence of aforesaid legal position, no proceeding is permissible in the eye of the law with regard to the commission of offence punishable under Sections 406 and 420 of the IPC.

**49.** In the case on hand, as already been discussed, it is a matter of loan transaction and respondent No.2/complainant herein instead of filing Civil Suit for recovery of the money or instituting a complaint for commission of offence under Section 138 of Negotiable Instruments Act in case of bounce of cheque or to file some other Civil Suit has in collision with the police got prepared a false case.

**50.** On the basis of aforesaid discussion, it can be said that there is perhaps not even an iota of doubt that a singular factual premise can give rise to a dispute which is both, of a civil as well as criminal nature, each of which could be pursued regardless of the other. In the instant case, the actual question which requires consideration is not whether a criminal case be allowed to be continued or whether the relevant ingredients for a criminal case are even *prima facie* made out or not. Relying on the facts as discussed in preceding paragraphs, clearly no cogent case regarding a criminal breach of trust, cheating or making forged document is made out. Mere violation of any terms of the loan agreement by the parties cannot give rise to criminal

prosecution for cheating, breach of trust unless fraudulent or dishonest intention or misappropriation of property entrusted is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating making a false document it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise or had made forged document. Thus, I am of the view that in this case, three ingredients of having a dishonest or fraudulent intend and making false documents under Sections 405, 406, 419, 420, 467 and 468 of IPC are not made out.

**Issue No.3**

“(iii) Now whether the dispute is one of entirely civil nature and therefore liable to be quashed.”

**51.** In this case, the entire prosecution case hinges on Joint Venture Agreement dated 29.09.2016 and as far this document is concerned, this document itself appears suspicious as it had been executed before the Notary and only allegation against the petitioner is that it bears his signature. On a perusal of the complaint made by respondent No.2, it is apparent that he entered into Joint Venture Agreement with Neeraj Shrivastava because he was told by his cousin Bantu Jain to enter into agreement but it is surprising that Bantu Jain has not been made the witness of this document but he has been enroped as accused only because as per allegation he had

asked to do so. The witnesses of Joint Venture Agreement (Annexure-A/3) are Minal Jain W/o complainant/ respondent No.2 and one Deepak Jaiswal, close to him.

**52.** It is worth while to mention here that Joint Venture Agreement is required to be registered from the Registrar but this Joint Venture Agreement Annexure-A/3 has not been got registered. Any agreement for Joint Venture in immovable property of value exceeding Rs.100/- can be made through a registered agreement after payment of prescribed stamp duty and registration fee. The respondent No.2 entered into Joint Venture Agreement but has evaded payment of stamp duty and registration fee payable in respect of Joint Venture in immovable property and has committed an offence of evasion of stamp duty payable to public exchequer, thereby legally depriving the public at large of the benefits of that amount. Although an amount of rupees of stamp duty and registration fee payable in respect of Joint Venture Agreement may be small, but the Court cannot restrain itself from observing that nowadays trend is developing very fast that persons acquiring interest in immovable property evade payment of stamp duty and registration fee and the cumulative effect thereof causes a significant loss to the public Exchequer. Thereafter when some disputes occur the purchasers initiate criminal prosecution for putting pressure on other party because they cannot invoke the civil remedy for the reason that the unregistered Joint Venture Agreement is inadmissible in evidence and

no rights can be claimed. In respect thereof instead of initiating civil proceeding, the tendency of entangling opponents in criminal cases to indirectly pressurize him to enter into a settlement for redressal of their grievance of infringement of civil rights is ever growing. The tendency of misusing the criminal proceedings for claiming enforcement of civil rights by the indirect method and evading payment of stamp duty, registration fees and Court fees cannot be appreciated by the Courts and it should not be incorrect. It is nothing but cheating committed against the public exchequer and the persons who would stand benefited thereby.

**53.** In the case on hand, the entire prosecution case is that petitioner has denied his signature on the Joint Venture Agreement Annexure-A/3 whereas as per the handwriting expert report, it bears his signature. Even if for the sake of argument it is assumed that Joint Venture Agreement was executed between the parties even then as per para 10 of Annexure-A/3 the parties have been made entitled to specific performance of the terms and obligations contained therein. Para 17 of the Joint Venture Agreement provides mode for dispute resolution between the parties. It reads as under :

**“17 SETTLEMENT**

That any dispute or difference arising under or in connection with or regarding the interpretation of this agreement, which cannot be settled by any mutual discussion shall be settled by a court of law having jurisdiction over the parties. The settlement proceedings shall be held at Jabalpur.

In case of any dispute arising between the parties related to any clause of this agreement or the loan advanced, same shall be referred to the Arbitrator, decided by the parties mutually.”

**54.** As per the above term of Joint Venture Agreement, in case of any dispute or difference arising under or in connection with or regarding the interpretation of the agreement, that can be settled by a Court of law or by referring the matter to the Arbitrator. In this case, instead of referring the matter to the Arbitrator or filing a Civil Suit, FIR has been lodged which itself is an abuse of the process of the law. When parties by contract agreed to arrange for settlement of their disputes by an Arbitrator of their choice by proclaiming of arbitration voluntarily agreed upon. In case of breach or violation of the agreement such matter ought to have been referred to Arbitration or a Civil Suit should have been filed instead of filing a complaint/FIR before the police.

**55.** In the criminal case, only available material against the present applicant is that as per the handwriting expert, the signature on Joint Venture Agreement is that of applicant. On a perusal of Annexure-A/3 Joint Venture Agreement, it is clear that in it there is no mention that petitioner herein showed any document to the complainant/respondent No.2 claiming to be no objection certificate issued by the Government/Mining Department. Further, in it, there is no mention that respondent No.2 M/s. Aashirwad Developers a proprietorship paid any amount of money to the petitioner/party

No.1. There is mention about profit sharing only that is 50%-50% but at all there is no mention about giving of any money to the petitioner and showing of any no objection certificate to respondent No.2 by petitioner. As per para 8 & 9 of the agreement Annexure-A/3 first party was required to send an intimation to the department of Mining and other concerned department regarding execution of the agreement. If no such intimation was sent to the department of mining and other concerned department by the petitioner than why respondent No.2 did not take any action against him and why did not send any notice to him for not sending such information. Such lapse on the part of respondent No.2 also raises a question about the genuineness of the so called Joint Venture document. Absence of mentioning of fact of showing no objection certificate by petitioner to the respondent No.2 in Joint Venture Agreement Annexure-A/3 itself makes the entire police story and respondent no.2 version baseless and afterthought.

**56.** This case is based only on handwriting expert report disclosing that there is signature of petitioner on Joint Venture Agreement Annexure-A/3. But as far the evidence of handwriting expert is concerned, that is very weak type of evidence. Where the issue as to the genuineness of the signature on the Joint Venture Agreement is concerned, FIR ought not to have been allowed to be registered. Undoubtedly the opinion of handwriting expert is a relevant piece of evidence but it is not a conclusive proof of evidence and it is after all

opinion evidence and it should be supported by reasons and the Court has to evaluate the same like any other evidence.

**57. In Rajeshbhai Muljibhai Patel and others vs. State of Gurjarat and another; (2020) 3 SCC 794, Hon'ble Apex Court held as under:-**

“21. It is also to be pointed out that in terms of Section 45 of the Indian Evidence Act, the opinion of handwriting expert is a relevant piece of evidence; but it is not a conclusive evidence. It is always open to the plaintiff-appellant No.3 to adduce appropriate evidence to disprove the opinion of the handwriting expert. That apart, Section 73 of the Indian Evidence Act empowers the Court to compare the admitted and disputed writings for the purpose of forming its own opinion. Based on the sole opinion of the handwriting expert, the FIR ought not to have been registered. Continuation of FIR No.I-194/2016, in our view, would amount to abuse of the process of Court and the petition filed by the appellants under Section 482 Cr.P.C. in Criminal Misc. Application No.2735/2017 to quash the FIR No.I-194/2016 is to be allowed.”

**58.** In the case on hand, there is no evidence against the applicant except the so called handwriting expert report showing that Joint Venture Agreement bears the signature of the applicant. Even if for the sake of argument it is assumed that it bears the signature of petitioner but that itself is not sufficient to prosecute him for offence lacking all the ingredients of the offence for which charge sheet has been filed.

**59.** In this case, it is also an admitted position that respondent No.2



has now filed a Civil Suit bearing RCS A/0000713/2023 (M/s.Aashirwad Promoters and Proprietorship Firm vs. M/s.S.S.Enterprises) for seeking compensation/damages of Rs.33 crores arising out of breach of contract plus recovery of Rs.80,00,000/- (Rs. eighty lakhs) or in the alternative specific performance of contract on 14.06.2023 almost after 6 years and 9 months of the execution of the so called Joint Venture Agreement. When Civil Suit is pending, it is clear that it is a case which involves determination of issues which are civil in nature. One can by no means stretch the dispute to an extent so as to impart it a criminal colour. In the case of **M/s. Indian Oil Corporation vs M/s NEPC Indian Ltd. and others - AIR 2006 SC 2780**, Hon'ble Supreme Court observed as under:-

“14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors....There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement.

Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

**60.** In the case of **G Sagar Suri and Anr. vs. State of U. P. and ors.** - AIR 2000 SC 754 Hon’ble Supreme Court observed as under:-

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

**61.** In the case of **Randheer Singh Vs. State of U.P. and Ors.** passed in **Criminal Appeal No.932 of 2021 on 02.09.2021** Hon’ble Supreme Court again reiterated that criminal proceedings must not be used as instruments of harassment and observed as under:-

“33. ....There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegations and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a

complaint disclosing civil transactions may also have a criminal texture. The High Court has however to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in *Paramjeet Batra* (AIR Online 2012 SC 724) (supra) extracted above.”

**62.** In the case of **Vesa Holdings Private Limited And Another v. State Of Kerala And Others - 2015 (8) SCC 293**, Hon’ble Supreme Court made the following observations:-

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be malafide or otherwise an abuse of the process of the court. The Superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and the High Court committed an error in refusing to exercise the power under Section 482 Criminal Procedure Code to quash the proceedings.”

**63.** In this case, FIR has been lodged almost after 21 months of the execution of the so called Joint Venture Agreement and Civil Suit has

been filed almost after more than 6 years and 8 months of the execution of the unregistered Joint Venture Agreement. Joint Venture agreement lacks showing of any NOC by the petitioner to the complainant/respondent No.2. The witnesses of the Joint Venture Agreement are also the wife of the respondent No.2 and one of his close friend. In course of investigation, police has not collected any material except the handwriting expert opinion that Joint Venture Agreement bears the signature of the petitioner.

**64.** Thus, having regard to the serious factual disputes which are purely of civil nature and for which Civil Suit is pending. Allowing the respondents to continue criminal proceedings against the petitioner would be nothing but abuse of the process of the law. Hon'ble Supreme Court in the case of **Mitesh Kumar J. Sha vs. State of Karnataka and others - 2022 CRI.L.J. 231**, observed as under:

“47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”

**65.** Thus, having gone through the FIR and even the charge sheet, it cannot be said that averments in the FIR and allegations in the charge sheet any offence under Sections 405/406/415/420/467 and 468 of IPC is made out against the petitioner. Technically they may show ingredients of offences but in fact they do not fulfill the

requirement of Sections as discussed above.

**66.** In view of the above presentation of facts and foregoing discussion, it is found that dispute between the parties is of purely civil nature and no offence under Sections 420, 406, 467, 468/34 of IPC is made out. The prosecution of the petitioner is malicious and ill-motivated. Consequently, FIR No.279/2018 dated 20.04.2018 under Sections 420, 406, 467, 468/34 of IPC and the entire proceedings initiated pursuant to charge sheet filed by police station Gorakhpur, Jabalpur, is hereby quashed.

**67.** In view of the above discussion, this petition is accordingly **allowed.**

**(DINESH KUMAR PALIWAL)**  
**JUDGE**

b