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Reserved on : 20.06.2025
Pronounced on : 25.06.2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5790 OF 2025

BETWEEN:

1 . SRI ARJUN ANJANEYA REDDY
AGED ABOUT 34 YEARS
S/O SRI P.ANJANEYAREDDY
RESIDING AT:
NO.83, 1ST MAIN ROAD,
VERSOVA LAYOUT,
C.V.RAMAN NAGAR,
BENGALURU – 560 093.

2. SRI HARSHA VARDHAN ANJANEYA REDDY
AGED ABOUT 37 YEARS
S/O SRI P.ANJANEYAREDDY
RESIDING AT:
NO.83, 1ST MAIN ROAD,
VERSOVA LAYOUT, C.V.RAMAN NAGAR
BENGALURU – 560 093.

3. SRI PAPAIAH SRINIVASA REDDY
AGED ABOUT 69 YEARS
S/O LATE PAPAIAH
RESIDING AT:
NO.37-5/3
KEMPAPURA YAMALURU POST

VERDICTUM.IN

BENGALURU – 560 037.

4. SRI SUNDAR MURTHY
AGED ABOUT 57 YEARS
S/O LATE MUNISWAMY
RESIDING AT:
NO.2, 1ST CROSS
MUDALIAR COMPOUND RESIDENTS'
ASSOCIATION ROAD
EJIPURA
BENGALURU – 560 047.

5. SRI V.MUNIRAJU
AGED ABOUT 66 YEARS
S/O SRI S.VENKATAPPA
RESIDING AT:
NO.4444, APPA AMMA NILAYA
MES COLONY, KONENA AGRAHARA
H.A.L.POST,
BENGALURU – 560 017.

6. SRI POOVAYYA T.M.
AGED ABOUT 62 YEARS
S/O LATE T.P.MANICHA
RESIDING AT:
NO.39A, JAL VAYU VIHAR
KAMMANAHALLI MAIN ROAD
BENGALURU – 560 043.

... PETITIONERS

(BY SRI C.V.NAGESH, SR.ADVOCATE A/W
SRI VARUN S., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
THROUGH THE ANEKAL POLICE STATION,

VERDICTUM.IN

REPRESENTED BY
THE STATION HOUSE OFFICER,
REPRESENTED BY
THE LD. PUBLIC PROSECUTOR.

2. MR.ANKAMMA RAO
AGED ABOUT 50 YEARS
S/O B.VEERAIAH
NO.1/727, 9TH LINE
PANDARIPURAM,
CHILAKALURIPETA
GUNTURU DISTRICT
ANDHRA PRADESH.

AMENDMENT CARRIED OUT AS PER
ORDER DATED 26/4/2025.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;
SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI AKASH R.RAO, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., READ WITH SECTION 528 OF BNSS, 2023 PRAYING TO A. QUASH THE COMPLAINT DATED 2ND JANUARY 2023 FILED BY THE COMPLAINANT WITH THE RESPONDENT (ANNEXURE D) AND THE F.I.R. DATED 3RD JANUARY 2023 REGISTERED BY THE RESPONDENT ANEKAL POLICE STATION, IN CRIME NO.3 OF 2023 ON THE FILE OF THE LD. PRINCIPAL CIVIL JUDGE AND JMFC, ANEKAL UNDER SECTIONS 417, 418, 420, 464, 465 AND 34 OF THE INDIAN PENAL CODE OF 1860 (ANNEXURE E) WITH RESPECT TO THE PETITIONERS AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.06.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

VERDICTUM.IN

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners are at the doors of this Court yet again for the third time seeking interference of this Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973.

2. Facts adumbrated are as follows:

(a) The petitioners were before this Court in Criminal Petition No.1372/2023. The entire facts are narrated while disposing the said petition in terms of the order dated 16.06.2023. I therefore, deem it appropriate to paraphrase the facts as narrated therein.

> "The 2nd respondent is the complainant and petitioners are accused Nos. 1, 3 to 8. A complaint comes to be registered against the petitioners and another by the 2nd respondent on 02-01-2023 alleging that the petitioners have all connived, forged the signatures of the complainant and got several sale deeds registered. A brief history to the complaint as narrated is that on 04-12-2014 a Joint Development Agreement ('JDA' for short) comes to be executed between the 2nd respondent/Ankamma Rao with M/s Mahidhara Projects Private Limited ('the Company' for short), a Company registered under the Companies Act. The Company later, on the strength of JDA develops a layout in the name and style of 'Mahidhara Fortune City' after obtaining all necessary

VERDICTUM.IN

permissions from Anekal Development Authority. The complainant further narrates that he along with other owners of properties subsequently entered into a partition to partition the remaining sites after the disposal, which fell to the individual shares under the deed of partition dated 2-03-2021.

3. Thirteen properties are identified to be the subject matter of the complaint, as in terms of the JDA and the sharing agreement as well as the partition deed, the properties ought to have been in the share of the owner/complainant. The owner in order to secure loan from SBICAP, by way of depositing of title deeds, has mortgaged those 13 sites in favour of SBICAP and has secured finance. After the said act, the complainant comes to know that sale deeds are executed of those 13 properties which are the subject matter of loan that was secured from SBICAP on depositing of title deeds. The properties were sold by the Special Power of Attorney Holder one Chikka Kondappa, an employee of the 1st petitioner without consent, knowledge, authorization and by forging the signatures of the owner of the properties and without even mentioning the mode of payment. It is, therefore, alleged that the 1st petitioner who is one of the Directors of Bhoomika Infrabuild Private Limited along with his children and other accused have all connived and conspired to cheat the complainant. Therefore, the complainant seeks to register the complaint on 02-01-2023. The complaint becomes a crime in Crime No.3 of 2023 for the offences aforementioned. Soon after registration of crime, the petitioners knocked at the doors of this Court with the present petition and a co-ordinate Bench of this Court in terms of its order dated 17-02-2023 stayed further investigation into the matter. The interim order is subsisting even as on date."

(Emphasis supplied)

VERDICTUM.IN

(b) Based on the said facts, complaint had been registered against the petitioners for the offences punishable under Sections 417, 418, 420, 464, 465, 34 of IPC 1860 in Crime No.3/2023 of Anekal Police Station, pending on the file of the Court of Principal Civil Judge (Jr.Dn.) and JMFC, Anekal, Bengaluru Rural District. This Court in terms of its order dated 16.06.2023 dismissed the petition holding that the investigation in the least on the score of the offences being *prima facie* met, the reasons so rendered while rejecting the petition are as follows:

> "8. The afore-narrated facts are not in dispute. The matter is still at the stage of investigation, as registration of crime has happened on 03-01-2023 and an interim order is granted by this Court on 17-02-2023. Therefore, the investigation has not proceeded any further. The relationship between the complainant and the petitioners is that the 1st petitioner is one of the Directors and other petitioners are Directors of one Bhoomika Infrabuild Private Limited. In the light of his association with Bhoomika Infrabuild Private Limited, the complainant executes a Special Power of Attorney in favour of Chikka Kondappa, accused No.2 who is not before Court. Sri. Chikka Kondappa, on the strength of Special Power of Attorney has executed several sale deeds in favour of the 1st petitioner, one of the Directors of Bhoomika Infrabuild Private Limited. In turn, accused No.1 has executed several sale deeds in favour of petitioners 2 and 3/ Accused No.3 and 4 who are the children of petitioner No.1.
>
> 9. The history to the said transaction is execution of a JDA between the complainant with M/s Mahidhara Projects Private Limited to jointly develop the lands and share the developed sites. In terms of the agreement, the complainant

VERDICTUM.IN

and a few neighbouring land owners enter into a sharing agreement on 04-12-2014. The Company developed the land and formed layout with sites of various dimensions. Later the complainant along with other land owners entered into a partition deed to partition the remaining sites which had fallen to the exclusive share of the complainant. The partition deed was entered into on 02-03-2021. After the JDA executed on 04-12-2014 and in furtherance of any further transaction since the complainant was a resident of Andhra Pradesh, the complainant had executed a Special Power Attorney on 06-05-2015 in favour of accused No.2/Sri. C.Kondappa who is not before the Court. The entire submission of the learned counsel for the petitioners hinges upon a clause in the Special Power of attorney and it reads as follows:

> *"Accordingly the sale agreements, sale deeds, so also Deeds of Rectification, Supplemental Deeds, Declaratory Deeds etc. are being drafted as per my instructions and I am executing the same at all relevant times in the presence of the purchasers, attesting witnesses and my Power of Attorney Holder.*
>
> *Whereas I am pre-occupied with several commitments and I am unable to present personally at all relevant times before the Sub-Registrar, Attibele/Basavanagudi/ Banashankari, Bangalore to admit execution of the sale deeds and perform such other act/s or deed/s, document/s for completion of the conveyance in favour of the intending purchasers, which includes execution of any other deeds of conveyance of sale, so also Deeds, Agreements granting easementary rights and also deeds of sale conveying the plots in the lay-out to be formed. However, I am intend to personally execute the document and further I deem it fit and necessary for to authorize my Special Power of Attorney to represent me before the Sub-Registrar for the purpose of completion of registration in the afore-mentioned mattes and perform all such act/s may be required for*

VERDICTUM.IN

fulfillment of the aforementioned object and intent of this POWER OF ATTORNEY."

The afore-quoted clause in the Special Power of Attorney indicates that the complainant cannot be personally present to execute any document and, therefore, for the completion of conveyance in favour of intending purchasers the power of attorney holder was permitted to execute documents i.e., register the same before the concerned Registering Authority. It is alleged that on the strength of special power attorney, several transactions have taken place.

10. The 1st petitioner has sold sites that had fallen to the share of the complainant to petitioners 2 and 3/accused 3 and 4. The sites that are sold, by accused No.1 are already mortgaged to the Bank/SBICAP for the purpose of raising of finance by the complainant. Therefore, the title deeds are all deposited before the Bank. The complainant comes to know that despite the properties being mortgaged to the Bank, those very properties are sold by way of several registered sale deeds and the purchasers are the children of the 1st petitioner/accused No.1. It is then the complaint comes to be registered by the complainant. The complaint insofar as it is necessary to be noticed reads as follows:

"I state that I had executed SPA dated 06th may 2015 to Mr.Chikka Kondappa, registered in the office of Sub Registrar of Basavangudi (Banashankari), Vide Document No. BNG(U)BSK 30/ 2015-16, only to present the documents executed/signed by me before the concerned authority for registration and granted other limited powers. The same Special Power of Attorney now stands cancelled.
By way of Deed of Revocation of SPA dated 28th December 2022 at Bangalore and registered in the office of Sub Registrar of Basavangudi (Banashankari), Vide Document NO.BNG(U)BSK514/2022-23.

I have mortgaged the plots falling to my share which includes the above-mentioned properties by way of Depositing the title

VERDICTUM.IN

Deeds on 07th October 2021 (attached) with SBICAP Trustee Company Limited, registered as "Memorandum of Entry – By Deposit of Title Deed with The Security Trustee" Vide Document No.4649 of 21-22 of Book I in the office of the Sub Registrar, Anekal, Bengaluru, to which Papaiah Anjaneya Reddy was a witness. As part of SBICAP Trustee Company Limited requirement to check EC annually, I have checked the same and to my utter shock and dismay the above-mentioned properties were sold vide various sale deeds by the SPA holder Chikka Kondappa (an employee of Papaiah Anjaneya Reddy) without my consent, knowledge, authorization and have used forged documents (Forged my signatures) to dupe the concerned authorities. I further looked at the forged sale deeds and even the payment mode is not mentioned, no particulars of how the payment was made to acquire such sale is not mentioned and was clearly scripted by simply paying challan amounts without any sale considerations, to create a dispute and legal hassle.

I, B.Ankamma Rao, and Papaiah Anjaneya Reddy are the Directors of Bhoomika Infrabuild Private Limited. Articles of Association attached. Due to my association in Bhoomika Infrabuild Private Limited, I have entrusted Chikka Kondappa with SPA with him being the employee of my partner Papaiah Anjaneya Reddy, He and the following persons have conspired to dispute my personal properties situated in Bengaluru. The following persons are the conspirators in the crime.

Papaiah Anjaneya Reddy, *son of Papaiah Reddy, aged 49 years residing at No.C1, 225,*

VERDICTUM.IN

2nd floor, BDA Flats, Domlur, Bangalore 560 071 is another Director of Bhoomika Infrabuild Private Limited.

***Chikka Kondappa**, son of Chikka Kondappa, residing at Venkatapura Village, Chikkamaluru Post, Madugiri Taluk, Tumkur 572 123, an employee of Papaiah Anjaneya Reddy.*

***Arjun Anjaneya Reddy** is the son of Papaiah Anjaneya Reddy, residing No.83, 1st Main Road, Versova Layout, CV Raman Nagar, Bangalore 560 093.*

***Harsha Vardhan Anjaneya** Reddy is the son of Papaiah Anjaneya Reddy, residing at NO.83, 1st main road, Versova Layout, CV Raman Nagar, Bangalore 560 093.*

***Papaiah Srinivasa Reddy** is the brother of the Papaiah Anjaneya Reddy residing at No.37-5/3, Kempapura, Yamalur Post, Bangalore 560 037.*

***M. Sundara Murthy,** residing at NO.2, 1st Cross Road, Mudaliar Compound Residents Association, Ejipura, Bangalore 560 047, **Mr.Muniraju V,** residing at No.4444, Appa amma Nilaya, MES Colony, Konena Agrhara HAL Post, Bangalore 560 017, and T.M Poovayya, residing at NO.39A, Jal Vayu Vihar, Kammanahalli Main Road, Bangalore 560 043, are the employees of the Papaiah Anjaneya Reddy.*

I state that Papaiah Anjaneya Reddy, one of the Director of Bhoomika Infra build Private Limited, along with his children Arjun Anjaneya Reddy and Harsha Vardhan Anjaneya Reddy, and his brother Papaiah Srinivasa Reddy, and his employees Chikka Kondappa, M.Sundara Murthy, Mr. Muniraju V, and T.M Poovayya, have all conspired to criminally cheat me and forged my signatures and have registered the above

VERDICTUM.IN

said Sale Deeds (Properties Personally belonging to me) in their names, when I have not signed any of the above mentioned sale deeds registered by Sub Registrar, Anekal (Sale Deeds attached), to which Papaiah Anjaneya Reddy acted as a witness.

I state that Papaiah Anjaneya Reddy also being the witness of depositing the title Deeds by me on 07th October 2021 (attached) of the above said properties with SBICAP Trustee Company Limited, has intentionally and willfully conspired with all the above mentioned conspirators, to cheat me in illegally registering the above-mentioned sale deeds of the properties belonging to me in their favour without my consent or knowledge. When I along with my cousin Mr. Siva Sankar Prathipati enquired and asked about the same with Mr.Chikka Kondappa, Papaiah Anjaneya Reddy, Arjun Anjaneya Reddy, Harsha Vardhan Anjaneya Reddy, Papaiah Srinivasa Reddy, M.Sundara Murthy, Mr. Muniraju V, and T.M.Poovayya, they have threatened me and my cousin of dire physical consequences claiming to be influential people and further threatened me saying "we are local here and be careful" if I intend to initiate any legal actions against them.

Therefore, I pray your esteemed authority to register case and take immediate action as per law against Mr. Chikka Kondappa, Papaiah Anjaneya Reddy, Arjun Anjaneya Reddy, Harsha Vardhan Anjaneya Reddy, Papaiah Srinivasa Reddy, M.Sundara Murthy, Mr.Muniraju V and T.M Poovayya on their acts of forgery, willful misrepresentation, cheating, Criminal Intimidation, and Physical threats. And I also request your goodselves to give necessary protection to me in the interest of justice and equity."

(Emphasis added)

VERDICTUM.IN

It is upon the said complaint, the crime in crime No.3 of 2023 comes to be registered for the afore-quoted offences. The offences are the ones punishable for cheating and forgery *inter alia*.

11. The contention of the petitioners is that the issue is purely civil in nature and therefore, investigation should not be permitted to be continued. The allegation of the complainant is that signatures of the complainant have been forged which is demonstrable on the very look of the documents, as also the contents of the sale deeds. As an illustration, the sale deed alleged to have been executed on 18-03-2022 in favour of the 4th petitioner/accused No.5 requires to be noticed. It reads as follows:

> ***"NOW THIS DEED OF ABSOLUTE SALE WITHNESSETH AS FOLLOWS:***
>
> *1. The total sale consideration of Rs.24,20,000/- (Rupees Twenty-Four Lakhs Twenty Thousand Only) is paid by the Purchaser/s to the Vendor/s which payment the Vendor/s hereby jointly admit and acknowledge as proper and sufficient consideration, the Vendor/s hereby grant, convey, transfer, assign and assure unto the use of the Purchaser/s herein, the* ***"Schedule"B"Property"*** *together with all easements and appurtenances thereto, to the Purchaser/s herein, to have and hold the same forever."*

The total sale consideration of the property mentioned is ₹24,20,000/-. It reads that it is paid by the purchaser to the vendor who is the complainant. The mode of payment and date of payment are not even mentioned in the sale deed which are necessary concomitants to be present in a sale deed to be executed between the parties. Another sale deed is also appended to the petition which has the same amount and the same narration. This is executed in favour of petitioner No.6/accused No.7. Likewise all the sale deeds contain same contents. There is not an iota of difference in the disputed sale deeds. This Court in order to consider the submission of the 2nd respondent/complainant that the sale deed did not contain any amount, summoned other sale deeds executed by the complainant which have been

VERDICTUM.IN

produced for perusal by this Court. One of the sale deed executed by the complainant in favour of the Company reads as follows:

> *"**NOW THIS DEED OF ABSOLUTE SALE WITNESSETH AS FOLLOWS:***
>
> 1. ***The total sale consideration of Rs.12,00,000/- (Rupees Twelve Lakhs Only) is paid by the Purchaser/s to the Vendor/s as under,***
>
> i. ***An amount of Rs.2,00,000/- (Rupees Two Lakhs only), by way of Cheque bearing No.988829, Drawn on State Bank of India, Yelahanka Branch, Bengaluru, in favour of the confirming party as instructed by the Vendor,***
>
> ii. ***An amount of Rs.4,97,200/- (Rupees Four Lakhs Ninty Seven Thousands and Two Hundred Only), by way of Cheque bearing No.988841, Drawn on State Bank of India, Yelahanka Branch, Bengaluru, in favour of the Vendor.***
>
> iii. ***The balance amount being the loan amount sanctioned by AXIS BANK to the Purchaser/s vide Cheque/DD No.156570, Dated 01.07.2015, Drawn on AXIS BANK Bank, Branch, at the request and authorization of the Purchaser/s and paid this day to the vendor/s at the time of registration of this Absolute Sale Deed."***
>
> *(Emphasis added)*

If the sale deeds that are the subject matter of the complaint is juxtaposed with what are produced by the learned senior counsel for the 2nd respondent, what would unmistakably emerge is a serious dispute with regard to execution of sale deeds.

12. The other circumstance that would require a detailed investigation is that these very properties are said to be subject matter of mortgage before the Bank and all the necessary title deeds are deposited before the Bank. This is a fact, that is not in dispute. If all the title deeds of the disputed property were deposited before the Bank, on what strength the sale deed is executed is yet another factor that requires to be

VERDICTUM.IN

thrashed out. These are all in the realm of seriously disputed questions of fact. If the complainant had deposited title deeds with SBICAP, he could not have sold the properties in favour of several accused after executing a Special Power of Attorney in favour of accused No.2. Therefore, these seriously disputed questions of fact, it is for the petitioners to come out clean in a full blown proceeding.

13. The submission of the learned counsel appearing for the petitioners that it is purely a matter which is civil in nature and, therefore, this Court should not interfere in the light of plethora of judgments of the Apex Court, holding that civil proceedings which are given a colour of crime, should be interfered and the proceedings should be nipped in the bud, is unacceptable, as those judgments are inapplicable to the facts of the case. In the light of what is narrated hereinabove, it is germane to notice the judgment of the Apex Court in the case of ***KAMAL SHIVAJI POKARNEKAR v. STATE OF MAHARASHTRA AND OTHERS, (2019) 14 SCC 350*** wherein the Apex Court has held as follows:

> "***5.*** *Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] .*
>
> ***6.*** *Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not*

VERDICTUM.IN

[Indian Oil Corpn. v. NEPC (India) Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] .

7. *Relying upon the aforementioned judgments of this Court, Mr M.N. Rao, learned Senior Counsel appearing for the appellant submitted that the High Court acted in excess of its jurisdiction in setting aside the order of the trial court by which process for summoning the accused was issued. He further submitted that the evaluation of the merits of the allegations made on either side cannot be resorted to at this stage.*

8. Mr R. Basant, learned Senior Counsel appearing for Respondents 2 to 6 and 8 to 11 submitted that a proper evaluation of the material on record would disclose that the complaint is frivolous. He submitted that the dispute is essentially of a civil nature and the ingredients of the offences that are alleged against the respondent are not made out. By making the above statement, Mr Basant commended to this Court that there is no warrant for interference with the judgment of the High Court.

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the trial court issuing summons to the respondents. A perusal of the complaint discloses prima facie, offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process it is not open to the courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

(Emphasis supplied)

VERDICTUM.IN

The Apex Court holds that if *prima facie* allegations are made, the Court exercising its jurisdiction under Section 482 of the Cr.P.C., should not interfere merely because what is projected is that it is a matter which is purely civil in nature. The said judgment would become applicable to the facts of the case on all fours, as the complaint registered by the 2nd respondent gives minute details of the alleged acts of the accused and those minutes details are supported by documents produced by the 2nd respondent. Therefore, in the teeth of the facts being in the realm of seriously disputed questions of fact, reference being made to the judgment of the Apex Court in the case of ***KAPTAN SINGH v. STATE OF UTTAR PRADESH (2021) 9 SCC 35*** becomes apposite, wherein the Apex Court holds as follows:

> ***"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C.,, has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C.,, quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance.*** *From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded.* ***If the petition under Section 482 Cr.P.C.,, was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected***

VERDICTUM.IN

and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. *Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof.* ***At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.***

9.2. In Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this Court that exercise of powers under Section 482 Cr.P.C.,, to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C.,, though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482

VERDICTUM.IN

Cr.P.C., Similar view has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.,

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered

VERDICTUM.IN

at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.,

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid

VERDICTUM.IN

> *observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.*
>
> *14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C., is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 Cr.P.C., only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."*
>
> *(Emphasis supplied)*

In the light of the aforesaid judgment, interfering with further investigation or proceedings would become contrary to law. There may be scores and scores of criminal cases being set into motion on issues which are purely civil in nature, breach of agreements or recovery of money and there may be scores and scores of cases where the allegation made is *prima facie* met in the complaints. Therefore, interference under Section 482 of the Cr.P.C., would be, on a case to case basis as the facts obtaining in each case would be different, for such interference. The facts obtaining in the case at hand would clearly indicate that it would require a full blown trial and the investigation in the matter is yet to complete.

VERDICTUM.IN

14. Insofar as the judgments relied on by the learned counsel for the petitioners, there can be no qualm about the principles so laid down by the Apex Court in the case of ***VIJAY KUMAR GHAI*** and even in plethora of cases, but those are distinguishable on facts obtaining in the case at hand without much *ado*. It is not a case where an issue which is purely civil in nature is given a colour of crime. The case at hand is an issue which is *prima facie* criminal in nature dressed with the same colour of crime. It would require further proceedings.

15. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petition is dismissed.

(ii) However, it is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C., and the same shall not bind or influence the proceedings pending before the trial Court or any other *fora.* Consequently, I.A.No.2 of 2023 also stands disposed."

(Emphasis supplied)

The dismissal of the said petition has become final.

(c) The petitioners again knocked at the doors of this Court in Criminal Petition No.9078/2024, this time calling in question an order of the concerned Court by which the Court, takes cognizance of the afore-quoted offences against the petitioners. This occasion, the contention was that the order of taking of cognizance suffered

VERDICTUM.IN

from vice of application of mind. This Court accepts the plea, and passes an order allowing the petition in part. The reasons so rendered to allow the said petition in part are as follows:

> ""Here again, the Apex Court considers entire spectrum of law and all the judgments that the learned senior counsel for the 2nd respondent has placed reliance upon and would hold that application of judicial mind while taking cognizance and issuing summons is imperative. The Apex Court was interpreting both cognizance under Section 190(1)(b) and issuance of process under Section 204 of the Cr.P.C. The said provisions read as follows:
>
> "***190. Cognizance of offences by Magistrates***.— *(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—*
>
> *(a) upon receiving a complaint of facts which constitute such offence;*
>
> *(b) upon a police report of such facts;*
>
> *(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*
>
> *(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.*
>
> *… … ….*
>
> ***204. Issue of process***.*—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—*

VERDICTUM.IN

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of Section 87."

Section 190(1)(a) deals with cognizance being taken on a complaint, which would be a private complaint presented before the concerned Court. Section 190(1)(b) deals with cognizance taken on a police report, which would be a final report/charge sheet filed before the concerned Court. Therefore, cognizance can be taken only under Section 190 of the Cr.P.C. Section 204 deals with issue of process.

13. After the concerned Court takes cognizance under Section 190 of the Cr.P.C., process is issued under Section 204 Cr.P.C. Sub-section (1) thereof mandates that if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, it shall issue process. Therefore, the words *'there is sufficient ground'* assume importance. The necessity of recording reasons for

VERDICTUM.IN

existence of sufficient ground is thus imperative, and those reasons are discernible only if they are recorded in writing. It is only then such orders would reflect application of mind, on the part of the Court, taking cognizance and issuing summons. Therefore, the judgments relied on by the learned senior counsel for the petitioners are all overwhelming, to the judgments relied on by the learned senior counsel for the 2nd respondent, as all the judgments that are quoted hereinabove, fallen from the arsenal of the learned senior counsel for the petitioners, are all of 2024 and consider the very issue as against the judgments, which are little earlier cited by the learned senior counsel for the 2nd respondent and the law as laid down by the Apex Court is that order of taking cognizance and issuing summons, must bear application of mind.

14. With the law being thus, I now deem it appropriate to notice the order taking cognizance in the case at hand. It reads as follows:

> *"ORDER*
>
> *Perused the charge sheet and all the documents submitted along with the charge sheet by the investigating agency.*
>
> *On perusal of the same, this court is satisfied at this stage that prima facie offence has been committed by the accused as alleged.*
>
> *The charge sheet and its enclosed papers satisfies that there exists sufficient materials to proceed against the accused.*
>
> *Therefore, cognizance is taken under Section 190(1) of CrPC for the offence punishable under Section 418, 420, 464, 465, 120B r/w 34 IPC against the accused persons.*
>
> *Office to register the case as Criminal Cases in Register No.3 against the accused for the offence punishable under Section 418, 420, 464, 465, 120B r/w 34 IPC and put up.*
>
> *Issue summons to accused by 11-07-2024."*

VERDICTUM.IN

The Court observes *'perused the charge sheet and all the documents'*. On perusal of the same, the Court is satisfied that *prima facie* offence has been committed by the accused as alleged. Therefore, cognizance is taken under Section 190 (1)(b) and summons issued ostensibly under Section 204 of the Cr.P.C. The order of taking cognizance and issuing of process does not bear even a semblance of application of mind. It runs completely counter to the necessity under Section 190(1)(b) or Section 204 of the Cr.P.C. as elucidated by the Apex Court in the aforesaid judgments.

15. The learned senior counsel for the respondents submits that in 80% of cases, the Courts would take cognizance in the same manner, while that would not impress this Court to dismiss the petition and permit perpetration of irregularity or illegality by the concerned Court, just because it has become a habit to take cognizance and issue summons in this manner. Not for nothing is the elucidation by the Apex Court in regard to existence of sufficient grounds and application of judicial mind. The Court is expected to record reasons for taking of cognizance. Though the reasons need not be so elaborate like when it records framing of charges or conviction, nonetheless, it must bear application of mind to set further proceedings into motion, as taking of cognizance or issuance of process has some judicial sanctity. It cannot be a frolicsome act on the part of the learned Magistrate/concerned Court, which would take cognizance and issue summons.

16. Therefore, it is made clear that the learned Magistrates/concerned Court who take cognizance and issue process, shall henceforth follow the law laid down by the Apex Court as quoted hereinabove and pass orders that would bear application of mind, failing which, the learned Magistrates/concerned Court are contributing docket explosion in this Court, as every order of taking cognizance and issuance of process is brought before this Court on the score that it does not bear application of mind. Wherefore, the impugned order of taking cognizance is necessarily to

VERDICTUM.IN

be obliterated and the matter remitted back to the hands of the learned Magistrate to redo the exercise bearing in mind the observations made hereinabove.

17. For the aforesaid reasons, the following:

O R D E R

(i) Criminal petition is allowed-in-part.

(ii) The order taking cognizance dated 04-04-2024 passed in C.C.No.2600 of 2024 by the Principal Civil Judge and JMFC, Anekal stands quashed.

(iii) The matter is remitted back to the hands of the Principal Civil Judge and JMFC, Anekal to redo the exercise of passing an order of taking cognizance and issuing process, bearing in mind the observations made in the course of the order.

(iv) The aforesaid exercise shall be concluded within a period of four weeks' from the date of receipt of a copy of this order.

(v) All other contentions except the one considered in the course of the order shall remain open.

Pending applications, if any, also stand disposed."

(Emphasis supplied)

3. In terms of the afore-quoted order, the matter was remitted to the hands of the concerned Court to pass necessary orders bearing in mind the observations made in the course of the order. Pursuant to the order so passed by the Court, the concerned

VERDICTUM.IN

Court now takes cognizance of the offences. The order of taking of cognizance reads as follows:

> **"The defacto complainant/CW1 lodged complaint before the SHO of Sarjapura PS alleging that 13 sites as described in the complaint belongs to him. He mortgaged the said 13 properties with SBICAP on 07-10-2021. The accused No.1 was the witness of said mortgage deed.**
>
> **It is further alleged that accused No.3 & 4 are sons of accused No.1. Accused No.5 is the brother of accused No.1. Accused No.2, 6, 7 & 8 are employees of accused No.1.**
>
> **It is further alleged that the accused No.1 to 8 with criminal conspiracy and with an intention to cause wrongful loss to the defacto complainant/CW1 forged the signature of CW1/defacto complainant by creating SPA as his SPA holder is accused No.2 herein and the accused No.2 executed sale deeds in respect of said 13 sites in favour of accused No.3, 4, 5, 6, 7, 8 and to the said sale deeds the accused No.1, 5, 6, 7 were subscribed their signatures as witnesses.**
>
> After investigation, the investigating officer clearly stated in the charge-sheet as "ಈ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿ ಕಾಲಂ. ನಂ. 12ರಲ್ಲಿ ನಮೂದು ಮಾಡಿರುವ ಎ.1 ಆರೋಪಿ.ಪಿ.ಆಂಜನೇಯರೆಡ್ಡಿ ರವರಿಗೆ ಮಹಿದರಾ ಪಾರ್ಚೂನ್ ಸಿಟಿ ಪೇಸ್ 1 ರಲ್ಲಿ ಸಾಕ್ಷಿ 01 ರವರ ಬಾಗಕ್ಕೆ ಬಂದಿರುವ 45 ನಿವೇಶನಗಳನ್ನು ದಿನಾಂಕ 07-10-2021 ರಂದು ಸಾಕ್ಷಿ 01ರವರು ಎಸ್.ಬಿ.ಐ ಟ್ರಸ್ಟಿ ಕಂಪನಿಗೆ ಮಾಟಿಗೇಜ್ ಮಾಡಿ ಆನೇಕಲ್ ಸಬ್ ರಿಜಿಸ್ಟರ್ ಕಛೇರಿಯಲ್ಲಿ ರಿಜಿಸ್ಟರ್ ಮಾಡಿರುವ ಹಾಗೂ ಮಾಟಿಗೇಜ್ ರಿಜಿಸ್ಟರ್ ಪತ್ರಕ್ಕೆ ತಾನು ಸಾಕ್ಷಿಯಾಗಿ ಸಹಿ ಮಾಡಿರುವ ವಿಚಾರ ಗೊತ್ತಿದ್ದರು ಸಹ, ಎ.1 ಆರೋಪಿ ಪಿ.ಆಂಜನೇಯರೆಡ್ಡಿ, ಎ2. ಆರೋಪಿ ಸಿ.ಕೊಂಡಪ್ಪ, ಎ.3 ಆರೋಪಿ ಅರ್ಜನ್ ಆಂಜನೇಯರೆಡ್ಡಿ, ಎ.4 ಆರೋಪಿ ಹರ್ಷವರ್ದನ್ ಅಂಜನೇಯರೆಡ್ಡಿ, ಎ.5 ಆರೊಪಿ ಪಿ.ಶ್ರೀನಿವಾಸ ರೆಡ್ಡಿ, ಎ.6 ಆರೋಪಿ ಸುಂದರಮೂರ್ತಿ, ಎ.7 ಆರೋಪಿ ವಿ.ಮುನಿರಾಜು, ಎ.8 ಆರೋಪಿ ಪುವಯ್ಯ.ಟಿ.ಎಂ ರವರುಗಳು ಸೇರಿ ಒಳಸಂಚು ರೂಪಿಸಿ, ಸಾಕ್ಷಿ 01 ರವರಿಗೆ ವಂಚಿಸಿ ಮೋಸ ಮಾಡುವ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ಸಾಕ್ಷಿ 01 ರವರು ಎಸ್.ಬಿ.ಐ ಟ್ರಸ್ಟಿ ಕಂಪನಿಗೆ ಮಾಟಿಗೇಜ್ ಮಾಡಿ ನೊಂದಣಿ ಮಾಡಿ ಕೊಟ್ಟಿದ್ದ ನಿವೇಶನ ಸಂಖ್ಯೆ 214, 229, 230, 313, 331, 332, 348, 349, 350, 351, 410,

VERDICTUM.IN

418, 419 ನಂಬರಿನ ಒಟ್ಟು 13 ನಿವೇಶನಗಳನ್ನು ಸಾಕ್ಷಿ 01 ರವರು ಎ.3 ಅರ್ಜುನ್ ಆಂಜನೇಯರೆಡ್ಡಿ, ಎ.4 ಹರ್ಷವರ್ದನ್ ಆಂಜನೇಯರೆಡ್ಡಿ, ಎ.5 ಪಿ.ಶ್ರೀನಿವಾಸ ರೆಡ್ಡಿ, ಎ.6 ಆರೋಪಿ ಸುಂದರಮೂರ್ತಿ, ಎ.7 ವಿ.ಮುನಿರಾಜು, ಎ.8 ಪುವಯ್ಯ.ಟಿ.ಎಂ ರವರುಗಳಿಗೆ ಮಾರಾಟ ಮಾಡಿರುವ ಹಾಗೆ ಸೇಲ್ ಡೀಡ್ ದಾಖಲಾತಿಗಳನ್ನು ತಯಾರು ಮಾಡಿ ಕೊಂಡು ಸಾಕ್ಷಿ 01 ಬಿ.ಅಂಕಮ್ಮರಾವ್ ರವರ ಸಹಿಯನ್ನು ನಖಲು ಮಾಡಿ, ಎ.2 ಆರೋಪಿಯು ಸಾಕ್ಷಿ 01 ರವರ ಪರವಾಗಿ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಲು ಈ ಹಿಂದೆ 2015ನೇ ಸಾಲಿನಲ್ಲಿ ಸಾಕ್ಷಿ 01 ರವರು ಎ.2 ಆರೋಪಿಗೆ ನೀಡಿದ್ದ ಎಸ್.ಪಿ.ಎ ಅನ್ನು ದುರುಪಯೋಗ ಪಡಿಸಿ ಕೊಂಡು, ಎ.2 ಆರೋಪಿ ಸಿ.ಕೊಂಡಪ್ಪ ಸಾಕ್ಷಿ 01ರವರ ಪರವಾಗಿ ಆನೇಕಲ್ ಉಪ ನೊಂದಣಾದಿಕಾರಿಗಳ ಕಛೇರಿಯಲ್ಲಿ ಎ.3 ಆರೋಪಿ ಅರ್ಜುನ್ ಆಂಜನೇಯರೆಡ್ಡಿ ಹೆಸರಿಗೆ ಸಂಖ್ಯೆ 229, 348, 349ರ ಮೂರು ನಿವೇಶನಗಳನ್ನು, ಎ.4 ಆರೋಪಿ ಹರ್ಷವರ್ದನ್ ಆಂಜನೇಯರೆಡ್ಡಿ ಹೆಸರಿಗೆ ಸಂಖ್ಯೆ 350, 351, 410ರ ಮೂರು ನಿವೇಶನಗಳನ್ನು, ಎ.5 ಆರೋಪಿ ಪಿ.ಶ್ರೀನಿವಾಶರೆಡ್ಡಿ ಹೆಸರಿಗೆ ಸಂಖ್ಯೆ 331 ಮತ್ತು 332ರ ಎರಡು ನಿವೇಶನಗಳನ್ನು, ಎ.6 ಆರೋಪಿ ಸುಂದರ ಮೂರ್ತಿ ರವರ ಹೆಸರಿಗೆ 214, ಮತ್ತು 313ರ ಎರಡು ನಿವೇಶನಗಳನ್ನು, ಎ.7 ಆರೋಪಿ ಮುನಿರಾಜು ರವರ ಹೆಸರಿಗೆ ಸಂಖ್ಯೆ 418 ಮತ್ತು 419ರ ಎರಡು ನಿವೇಶನಗಳನ್ನು, ಎ.8 ಆರೋಪಿ ಟಿ.ಎಂ ಪೂವಯ್ಯ ರವರ ಹೆಸರಿಗೆ ಸಂಖ್ಯೆ 230ರ ಒಂದು ನಿವೇಶನವನ್ನು ನೊಂದಣಿ ಮಾಡಿ ಕೊಟ್ಟಿರುವುದಾಗಿ ಹಾಗೂ ಕ್ರಯ ಪತ್ರಗಳಿಗೆ ಎ.1 ಆರೋಪಿ ಪಿ.ಆಂಜನೇಯರೆಡ್ಡಿ ಎ.5 ಆರೊಪಿ ಶ್ರೀನಿವಾಸರೆಡ್ಡಿ, ಎ.6 ಆರೋಪಿ ಸುಂದರಮೂರ್ತಿ, ಎ.7 ಆರೋಪಿ ಮುನಿರಾಜು ರವರುಗಳೇ ಸಾಕ್ಷಿಯಾಗಿ ಸಹಿ ಮಾಡಿ **ನಿವೇಶನಗಳ ಅಸಲು ಮಾಲಿಕರಾದ ಸಾಕ್ಷಿ 01 ರವರಿಗೆ ವಂಚಿಸಿ ಮೋಸ ಮಾಡಿರುತ್ತಾರೆಂತ ಹಾಗೂ ಸಾಕ್ಷಿ 01 ರವರ ಸಹಿಯು ನಖಲಿ ಸಹಿಯಾಗಿರುವುದಾಗಿ ಲಭ್ಯವಿರುವ ಸಾಕ್ಷ್ಯದಾರಗಳಿಂದ ಎಫ್.ಎಸ್.ಎಲ್ ವರದಿಯಿಂದ ಹಾಗೂ ತನಿಖೆಯಿಂದ ಆರೋಪಿತರ ಮೇಲೆ ಆರೋಪಿಗಳು ದೃಡ ಪಟ್ಟಿರುತ್ತೆ**".

Further, the witnesses as described in the charge-sheet are also deposed in support of prosecution case in their statements recorded by the investigating officer U/s.161 of Cr.P.C. Further, the investigating officer procured the certified copies of sale deeds executed by accused No.2 in favour of accused No.3, 4, 5, 6, 7 & 8 by using alleged forged/created SPA in respect of aforesaid 13 sites and produced the same along with FSL report in support of prosecution case.

In the circumstance, this court of the firm view that at this stage there are sufficient grounds for proceeding against the accused for the aforesaid offences. Therefore, this court proceeds to pass the following:

VERDICTUM.IN

ORDER

Cognizance taken for the offence punishable U/s.418, 420, 464, 120(b) R/W 34 of IPC.

Office shall register the criminal case against the accused No.1 to 8 in Register No.III for the offence punishable U/s.418, 420, 464, 120(b) R/w 34 of IPC and issue summons to the accused No.1 to 8.

R/by 18-01-2025."

(Emphasis added)

4. The petitioners are again at the doors of the Court singing the same Swan song that formed the fulcrum of the earlier *lis* that the order of the learned Magistrate suffers from want of application of mind.

5. The learned Senior Counsel Sri.C.V.Nagesh would contend that the order of cognizance by the concerned Court does not bear even a semblance of application of mind, as what the concerned Court would do is copy and paste the summary of the charge sheet, so filed and then, on an erroneous presumption, takes cognizance of the offences. He would contend that if the order of cognizance suffers from the vice of non-application of mind, the only consequence would be obliteration of the said order including

VERDICTUM.IN

the crime so registered as the cognizance is taken upon the investigation report. Investigation report is filed upon a crime registered.

6. He would in-effect seek the quashment of the order by placing reliance upon two judgments of the Apex Court which are rendered after the order passed by this Court, the second one in line. He would seek to place reliance upon the judgment of the Apex Court in the case of **S.C. GARG vs. STATE OF UTTAR PRADESH, 2025 SCC OnLine SC 791** and **JM LABORATORIES vs. STATE OF ANDHRA PRADESH, 2025 SCC OnLine SC 208**.

7. *Per contra,* the learned Senior Counsel Sri.Sandesh J Chouta representing the respondent-complainant vehemently contend that the order of the learned Magistrate nowhere suffers from non-application of mind. Petitioners-accused are repeatedly approaching this Court on the same ground that is urged every time. This Court while dismissing the petition at the stage of crime had clearly observed with regard to the nature of offences. He would contend that the offence of forgery is writ large in the case at

VERDICTUM.IN

hand. The Forensic Science Laboratory report is clear that those documents were not signed by the complainant; who has signed, is a matter of trial. He would also seek to place reliance upon plethora of judgments rendered by the Apex Court which are as follows:

(i) **STATE OF GUJARAT vs. AFROZ MOHAMMED HASANFATTA, 2019 SCC OnLine SC 132.**

(ii) **PRADEEP S. WODEYAR vs. STATE OF KARNATAKA, 2021 SCC OnLine SC 1140**.

(iii) **PRAMILA DEVI AND OTHERS vs. STATE OF JHARKHAND AND ANOTHER, 2025 SCC OnLine SC 886.**

8. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the material on record.

9. The only issue that is projected before this Court, now lies in a narrow compass, as to **whether the order of cognizance quoted *supra* suffers from want of application of mind**.

10. Before considering the said issue, it is necessary to notice the judgments of the Apex Court which elucidated the

VERDICTUM.IN

principle of application of mind or otherwise in an order of taking cognizance based upon the police report and not on a complaint. The earlier judgments need not be reiterated as it would only result in the bulk of the present order. It would suffice if the later judgments bear consideration. The learned Senior Counsel for the petitioners has placed heavy reliance on two judgments noted supra. In the two judgments, the Apex Court has held as follows:

(i) **JM LABORATORIES vs. STATE OF ANDHRA PRADESH, 2025 SCC OnLine SC 208 - para 8**:

> "**8.** In the judgment and order of even date in criminal appeal arising out of SLP (Crl.) No. 2345 of 2024 titled "*INOX Air Products Limited Now Known as INOX Air Products Private Limited* v. *The State of Andhra Pradesh*", we have observed thus:
>
> > "**33.** It could be seen from the aforesaid order that except recording the submissions of the complainant, no reasons are recorded for issuing the process against the accused persons.
> >
> > 34. In this respect, it will be relevant to refer to the following observations of this Court in the case of *Pepsi Foods Ltd.* v. *Special Judicial Magistrate* (1998) 5 SCC 749 (supra):
> >
> > > "**28.** Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the

VERDICTUM.IN

> nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.

36. The said law would be consistently following by this Court in a catena of judgments including in the cases of *Sunil Bharti Mittal* v. *Central Bureau of Investigation* (2015) 4 SCC 609, *Mehmood Ul Rehman* v. *Khazir Mohammad Tunda* (2015) 12 SCC 420 and *Krishna Lal Chawla* v. *State of Uttar Pradesh* (2021) 5 SCC 435.

37. Recently, a Bench of this Court to which one of us (Gavai, J.) was a Member, in the case of *Lalankumar Singh* v. *State of Maharashtra* 2022 SCC OnLine SC 1383 (supra), has observed thus:

> **"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no**

VERDICTUM.IN

reasons are given therein while coming to the conclusion that there is a *prima facie case* against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of *Sunil Bharti Mittal* v. *Central Bureau of Investigation*[9], which reads thus:

> **"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.**
>
> **52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised.** A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.
>
> 53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in

VERDICTUM.IN

law if the reason given turns out to be ex facie incorrect."

39. A similar view has been taken by this Court in the case of *Ashoke Mal Bafna* (supra).

40. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal therefore deserves to be allowed."

(Emphasis supplied)

(ii) **S.C. GARG vs. STATE OF UTTAR PRADESH, 2025 SCC OnLine SC 791 – paras 17, 18 and 19**:

"17. We shall now have a look at the subsequent matters *Devendra* (supra) and *Muskan Enterprises* (Supra) wherein it is held that principle of *res judicata* is not applicable in criminal proceedings. In *Devendra* (supra) was a case where after dismissal of first petition under Section 482 Cr. P.C. seeking quashing of the FIR, the appellants therein preferred another application under Section 482 Cr. P.C., after the Magistrate took cognizance of the matter, which was dismissed by the High Court. In this Court, it was argued by the opposite party that the first order of the High Court dismissing the petition under Section 482 Cr. P.C. would operate as *res judicata.* Negating the said argument, a two Judge Bench of this Court held in para 25 as under:

"25. Mr. Das, furthermore, would contend that the order of the High Court dated 17-10-2005 would operate as res judicata. With respect, we cannot subscribe to the said view. The principle of res judicata has no application in a criminal proceeding. The principles of res judicata as adumbrated in Section 11 of the Code of Civil Procedure or the general

VERDICTUM.IN

principles thereof will have no application in a case of this nature."

18. In *Muskan Enterprises* (supra), similar was the position. The first petition under Section 482 Cr. P.C. was dismissed as withdrawn without liberty obtained to apply afresh, the High Court dismissed the second petition under Section 482 Cr. P.C. as not maintainable. Referring to *Devendra* (supra), a two Judge Bench of this Court of which one of us was a member (Prashant Kumar Mishra, J.) observed thus in para 17:

"**17.** That the principle of *res judicata* has no application in a criminal proceeding was reiterated by this Court in *Devendra* v. *State of U.P.*"

19. Reading three earlier decisions vis-à-vis the two later decisions parallelly, we do not think that considering the context and the stage of the proceedings in which the matters stood and agitated before this Court, there is any diversion in the applicability of the principle of *res judicata.* While three earlier decisions in *Pritam Singh* (Supra), *Bhagat Ram* (supra) and *Tarachand Jain* (supra) were decided basis acquittal in previous trial, the subsequent decision in *Devendra* (supra) and *Muskan Enterprises* (supra) have been decided at the stage of quashing petition under Section 482 Cr. P.C., thus, in both the matters, there was no final adjudication of merits. While in *Devendra* (supra), the first petition was for quashing of the FIR and the second petition was preferred after the Magistrate took cognizance of the matter; in *Muskan* (supra), the first petition was dismissed as withdrawn whereas the second petition was held not maintainable due to earlier withdrawal without any liberty. Thus, these two cases are totally distinguishable.

In addition, it is important to bear that *Sambasivam* (supra) was decided by Five Judges of the Judicial Committee and *Pritam Singh* (supra) was decided by a three Judge Bench, whereas all subsequent decisions have been rendered by the two Judges Bench. Therefore, *Pritam Singh* (supra) is binding insofar as the issue concerning the applicability of principle of *res judicata* in a criminal proceeding is concerned.**"**

VERDICTUM.IN

In **JM LABORATORIES v. STATE OF ANDHRA PRADESH** *supra*, the Apex Court was considering a private complaint being registered and was taking cognizance of a complaint. The issue sprung from the violation of the Drugs and Cosmetics Act, 1940. In **S.C. GARG vs. STATE OF UTTAR PRADESH** *supra*, the Apex Court was considering whether the company should be made a party in the criminal proceedings and whether the subsequent writ petition would be maintainable or the second petition would be maintainable, not the same cause of action. Both the judgments would not in any way assist the learned Senior Counsel for the petitioners. The issue in the *lis* is the Court taking cognizance on a police report. On a police report, what the concerned Court has done now, is not suffering from non-application of mind but has abundant application of mind.

11. The order of taking of cognizance should undoubtedly bear application of mind, but should not result in the concerned Court undertaking a roving enquiry at the stage of taking of cognizance. If the contention of the learned Senior Counsel Sri.C.V.Nagesh is accepted, it would be virtually directing the

VERDICTUM.IN

concerned Court to conduct a roving enquiry, of the merit of the charges, so laid against the accused. The order nowhere suffers from non-application of mind. It therefore becomes apposite to notice the judgments relied by the learned Senior Counsel for the respondent-Complainant. The Apex Court in **STATE OF GUJARAT vs. AFROZ MOHAMMED HASANFATTA, 2019 SCC OnLine SC 132**, has held as follows:

> "**14.** The charge-sheet was filed in Criminal Case No. 47715 of 2014 on 18-8-2014 against the accused persons, namely, Sunil Agrawal and Ratan Agrawal. In the first charge-sheet, the respondent Afroz Mohammad Hasanfatta (Afroz Hasanfatta) was referred to as a suspect. In the second supplementary charge-sheet filed on 15-11-2014 in Criminal Case No. 62851 of 2014, the respondent Afroz is arraigned as Accused 1 and Amit alias Bilal Haroon Gilani as Accused 2. In the second supplementary charge-sheet, prosecution relies upon the statement of witnesses as well as on certain bank transactions as to flow of money into the account of the respondent Afroz Hasanfatta and his Company Nile Trading Corporation. The order of taking cognizance of the second supplementary charge-sheet and issuance of summons to the respondent Afroz Hasanfatta reads as under:
>
> "I take in consideration charge-sheet/complaint for the offence of Sections 420, 465, 467, 468 IPC, etc. Summons to be issued against the accused."
>
> **16. It is well settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well settled**

VERDICTUM.IN

that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. Reliance was placed upon *Bhushan Kumar* v. *State (NCT of Delhi)* [*Bhushan Kumar* v. *State (NCT of Delhi)*, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] wherein it was held as under : (SCC pp. 428-29, paras 11-13)

"*11*. In *Chief Enforcement Officer* v. *Videocon International Ltd.* [*Chief Enforcement Officer* v. *Videocon International Ltd.*, (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.' It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A "summons" is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be

VERDICTUM.IN

punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."

22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is "*there is sufficient ground for proceeding*..."; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "*there is ground for presuming that the accused has committed an offence*...". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC.

23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of

VERDICTUM.IN

> the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(*b*) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."
>
> (Emphasis supplied)

The Apex Court later in **PRADEEP S. WODEYAR vs. STATE OF KARNATAKA, 2021 SCC OnLine SC 1140**, has held as follows:

> **"76. The counsel for the appellant has contended that the order of the Special Judge taking cognizance has not sufficiently demonstrated application of mind to the material placed before him. To substantiate this contention, the appellant relied on the decisions** in *Pepsi Foods Ltd.* v. *Special Judicial Magistrate* [*Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , *Fakhruddin Ahmad* v. *State of*

VERDICTUM.IN

Uttaranchal [*Fakhruddin Ahmad* v. *State of Uttaranchal*, (2008) 17 SCC 157 : (2010) 4 SCC (Cri) 478] , *Mehmood Ul Rehman* v. *Khazir Mohammad Tunda* [*Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , *Sunil Bharti Mittal* v. *CBI* [*Sunil Bharti Mittal* v. *CBI*, (2015) 4 SCC 609 : (2015) 2 SCC (Cri) 687] and *Ravindranatha Bajpe* v. *Mangalore Special Economic Zone Ltd.* [*Ravindranatha Bajpe* v. *Mangalore Special Economic Zone Ltd.*, (2022) 15 SCC 430 : 2021 SCC OnLine SC 806] **The respondent argued that this Court has made a distinction on application of mind by the Judge for the purpose of taking cognizance based on a police report on the one hand and a private complaint under Section 200CrPC on the other, and that the requirement of a demonstrable application of mind in the latter case is higher.** For this purpose, the counsel relied on this Court's decisions in *Bhushan Kumar* v. *State (NCT of Delhi)* [*Bhushan Kumar* v. *State (NCT of Delhi)*, (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] and *State of Gujarat* v. *Afroz Mohammed Hasanfatta* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] .

91. While distinguishing the decision in *Pepsi Foods Ltd.* [*Pepsi Foods Ltd.* v. *Special Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] on the ground that it related to taking of cognizance in a complaint case, the Court in *Afroz Mohammed Hasanfatta case* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] **held since in a case of cognizance based on a police report, the Magistrate has the advantage of perusing the materials, he is not required to record reasons** : (*Afroz Mohammed Hasanfatta case* [*State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539 : (2020) 3 SCC (Cri) 876] , SCC p. 552, para 23)

"*23*. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of

VERDICTUM.IN

the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. *Under Section 190(1)(b)CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused*. Such an order of issuing summons to the accused is based upon satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."

(emphasis supplied)"

108. In view of the discussion above, we summarise our findings below:

108.1. The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209CrPC. The order of the Special Judge dated 30-12-2015 taking cognizance is therefore irregular.

108.2. The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465CrPC is applicable to interlocutory orders such as an

VERDICTUM.IN

order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465CrPC.

108.3. The decision in *Gangula Ashok* [*Gangula Ashok* v. *State of A.P.*, (2000) 2 SCC 504 : 2000 SCC (Cri) 488] was distinguished in *Rattiram* [*Rattiram* v. *State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481] based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2)CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that guides Section 465(2)CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others.

108.4. In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated.

108.5. It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no "failure of justice" under Section 465CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465CrPC.

108.6. The Special Court has the power to take cognizance of offences under the MMDR Act and conduct a joint trial with other offences if permissible under Section

VERDICTUM.IN

220CrPC. There is no express provision in the MMDR Act which indicates that Section 220CrPC does not apply to proceedings under the MMDR Act.

108.7. Section 30-B of the MMDR Act does not impliedly repeal Section 220CrPC. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings.

108.8. Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material.

108.9. A combined reading of the Notifications dated 29-5-2014 and 21-1-2014 indicate that the Sub-Inspector of Lokayukta is an authorised person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22CrPC.

108.10. The question of whether A-1 was in charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a *prima facie* case against A-1, which is sufficient to arraign him as an accused at this stage."

(Emphasis supplied)

The Apex Court holds the following judgments of **STATE OF GUJARAT vs. AFROZ MOHAMMED HASANFATTA, 2019 SCC OnLine SC 132** *supra* that on a police report, if the order of cognizance bears application of mind, that would suffice. The Apex

VERDICTUM.IN

Court in its latest judgments in the case of **PRAMILA DEVI AND OTHERS vs. STATE OF JHARKHAND AND ANOTHER, 2025 SCC OnLine SC 886**, has held as follows:

> "**ANALYSIS, REASONING AND CONCLUSION:**
>
> **13.** We have considered the matter in its entirety. Two basic issues arise for consideration.
>
> **14. *Firstly*, whether the Additional Judicial Commissioner while taking cognizance has to record detailed reasons for taking cognizance? *Secondly*, whether the FIR itself was instituted with *mala fide* intention and was liable to be quashed?**
>
> **15. Coming to the first issue, we have no hesitation to record that the approach of the High Court was totally erroneous.** Perusal of the Order taking cognizance dated 13.06.2019 discloses that the Additional Judicial Commissioner has stated that the '*case diary and case record*' have been perused, which disclosed a *prima facie* case made out under Sections 498(A), 406 and 420 of the IPC and Section 3 (1)(g) of the SC/ST Act against the accused including appellants. **Further, we find the approach of the Additional Judicial Commissioner correct inasmuch as while taking cognizance, it firstly applied its mind to the materials before it to form an opinion as to whether any offence has been committed and thereafter went into the aspect of identifying the persons who appeared to have committed the offence. Accordingly, the process moves to the next stage; of issuance of summons or warrant, as the case may be, against such persons.**
>
> **16. In the present case, we find that the Additional Judicial Commissioner has taken cognizance while recording a finding that - from a perusal of the case diary and case record, a *prima facie* case was made out against the accused, including the Appellants. In *Bhushan Kumar* v. *State (NCT of Delhi)*, (2012) 5**

VERDICTUM.IN

SCC 424, this Court held that an order of the Magistrate taking cognizance cannot be faulted only because it was not a reasoned order; relevant paragraphs being as under:

> `***14.*** *Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.*
>
> ***15.*** *In* Kanti Bhadra Shah *v.* State of W.B. *[(2000) 1 SCC 722 : 2000 SCC (Cri) 303] the following passage will be apposite in this context : (SCC p. 726, para 12)*
>
> *"12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial."*
>
> *(emphasis supplied)*

16. In* Nagawwa *v.* Veeranna Shivalingappa Konjalgi *[(1976) 3 SCC 736 : 1976 SCC (Cri) 507] this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the

VERDICTUM.IN

Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. *It was further held that : (SCC p. 741, para 5)*

> *"5. … Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused."*

17. *In* Chief Controller of Imports & Exports *v.* Roshanlal Agarwal *[(2003) 4 SCC 139 : 2003 SCC (Cri) 788] this Court, in para 9, held as under : (SCC pp. 145-46)*

> *"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in* U.P. Pollution Control Board *v.* Mohan Meakins Ltd. *[(2000) 3 SCC 745] and after noticing the law laid down in* Kanti Bhadra Shah *v.* State of W.B. *[(2000) 1 SCC 722 : 2000 SCC (Cri) 303] it was held as follows:* (U.P. Pollution case *[(2000) 3 SCC 745], SCC p. 749, para 6)*
>
> *'6. The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.'"*

VERDICTUM.IN

18. *In* U.P. Pollution Control Board *v.* Bhupendra Kumar Modi *[(2009) 2 SCC 147 : (2009) 1 SCC (Cri) 679] this Court, in para 23, held as under : (SCC p. 154)*

> *"23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused."*
>
> ***19.*** *This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order.'*

(emphasis supplied)

17. The view in *Bhushan Kumar* (supra) was reiterated in *Mehmood Ul Rehman* v. *Khazir Mohammad Tunda*, (2015) 12 SCC 420 and *State of Gujarat* v. *Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539. This Court in *Rakhi Mishra* v. *State of Bihar*, (2017) 16 SCC 772 restated the settled proposition of law enunciated in *Sonu Gupta* v. *Deepak Gupta*, (2015) 3 SCC 424, as under:

> *'**4.** We have heard the learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondents 2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the appellant alleged cruelty against Respondents 2, 4, 5, 6, 7, 8, 9 and 10. This Court in* Sonu Gupta *v.* Deepak Gupta [Sonu Gupta *v.* Deepak Gupta, *(2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] held as follows : (SCC p. 429, para 8)*
>
> > *"8. … At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence … to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate*

VERDICTUM.IN

must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not."

5. *The order passed by the trial court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under Section 482 CrPC is exercised by the High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.'*

(emphasis supplied)

18. Coming to the second point which the Appellants canvassed before this Court *viz*. the background of lodging of the FIR to impress that the same is *mala fide*, an afterthought and at best, a civil dispute being tried to be settled through criminal proceedings by way of arm-twisting. On this point, need for a detailed discussion is obviated in view of our answer on the first point *supra* and the paragraphs *infra*.

19. Perusal of the entire gamut of the pleadings of the Appellants does not disclose any categorical statement to the effect that during investigation by the police, no evidence has emerged to warrant taking of cognizance, much less against the Appellants. The only averment which has been made is that the Trial Court had not recorded the *prima facie* material against the Appellants because it does not exist. This is too simplistic an argument and does not shift the burden from the Appellants of taking a categorical stand that no material whatsoever for taking cognizance is available in the police papers/case diary against the Appellants. Be it noted, the State has argued that sufficient material warranting cognizance has been unearthed during the course of investigation.

20. Here, the Court would pause to delve on what is the scope of the exercise of application of mind on the police papers/case diary for deciding as to whether to take cognizance or not - it has only to be seen whether

VERDICTUM.IN

there is material forthcoming to indicate commission of the offence(s) alleged. The concerned Court is not empowered to go into the veracity of the material at that time. That is why, the law provides for a trial where it is open to both the parties i.e., the prosecution as well as the defence to lead evidence(s) either to prove the materials which have come against the accused or to disprove such findings. This Court *vide* Order dated 13.09.2024 directed the Appellants to file a translated copy of the chargesheet, as the State filed the chargesheet in Hindi along with an application seeking exemption from filing official translation (I.A. No. 198073/2024). As this Court [Coram : Sudhanshu Dhulia and Ahsanuddin Amanullah, JJ.] is well-conversant with Hindi, the language in which the chargesheet is and which has been brought on record, we have examined the same. However, the Appellants failed to comply with the specific direction issued on 13.09.2024. Be that as it may, we find that chargesheet mentions that on the basis of investigation, site inspection and statements of the complainant, the police has found the allegations true against all the accused including appellants.

21. For reasons aforesaid and on an overall circumspection of the facts and circumstances of the case and submissions of learned counsel for the parties, we find that the Order taking cognizance dated 13.06.2019, being in accordance with law, was not required to be interfered with by the High Court.

22. Though no cross-appeal against the Impugned Judgment has been filed by Respondent No. 2, yet to render complete justice as also set right the error committed by the High Court, on the legal issue of requirement of recording detailed grounds/reasons for taking cognizance, the Impugned Judgment is set aside *in toto*."

(Emphasis supplied)

VERDICTUM.IN

If the order of taking of cognizance, as quoted supra, is considered on the bedrock of the principles elucidated by the Apex Court in the cases of **AFROZ**, **PRADEEP WODEYAR** and **PRAMILA DEVI** *supra,* unmistakable inference, is that the order impugned does not suffer from the vice of non-application of mind, but has application of mind in its abundance, to the stage before it.

Finding no merit in the petition, the petition stands **rejected**.

Sd/-
(M.NAGAPRASANNA)
JUDGE

cbc
CT:MJ