

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 353 of 2021

1. Ganga Sagar Pathak
2. Manorma Pathak @ Manorma Devi @ Manoram Pathak @ Yanorama Pathak
..... Petitioners

Versus

1. The State of Jharkhand
2. Surendra Bihari Ojha
..... Opp. Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners	: Mr. Manish Kumar, Advocate
For the State	: Mr. Manoj Kumar No. 3, Advocate
For the O.P. No. 2	: Mr. Rakesh Kumar No. 2, Advocate
	: Mr. Soumitra Baroi, Advocate

10/Dated: 08/09/2021

Heard Mr. Manish Kumar, learned counsel for the petitioners, Mr. Manoj Kumar No. 3, learned counsel for the State and Mr. Rakesh Kumar No. 2 assisted by Mr. Soumitra Baroi, learned counsel for the O.P. No. 2.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent these matters have been heard.

3. The present petition has been filed for quashing of entire criminal proceeding in connection with Sonari P.S. Case No. 41 of 2018, corresponding to G.R. No. 707 of 2018 arising out of C/1 Case No. 3510 of 2017 registered for the offence under sections 420/467/468/471/120B/504/34 of the Indian Penal code including order taking cognizance dated 30.11.2018 passed by the learned Judicial Magistrate, Ist Class, Jamshedpur.

4. A written complaint has been filed by the complainant-Surerndra Bihari Ojha stating therein that he is absolute owner of land measuring 2 katha comprised in Holding No. E-456 with house standing thereon in portion of R.S. Plot No. 753 under Khata No. 97 situated at Mouza-Uliyan, P.S. Kadma, Thana No. 153, District-East Singhbhum by virtue of having acquired right, title

and interest vide agreement dated 03.05.1958 and his possession was confirmed in proceeding under section 144 Cr.P.C. in Misc. Case No. 192/77.

It is further case of the complainant that he entered into an development agreement between his maternal uncle B.N. Tiwary on 12.10.2015 and there was verbal agreement that both complainant and B.N. Tiwary will construct G+2 house and both parties will get 50% share. Pursuant thereto, the said B.N. Tiwary constructed G+2 house over the said land.

It is alleged that according to agreement, all the papers relating to property were in possession of B.N. Tiwary but the said B.N. Tiwary died in the month of November, 2015, thereafter the complainant went to take stock of his 50% share where he found that the accused persons were residing there who are brother-in-law of B.N. Tiwary and wife of brother in-law and they requested him to give six months time and agreed to vacate the house but they did not do so. Thereafter, the complainant sent a legal notice which was replied by the accused persons by stating that the property was sold by the complainant in favour of B.N. Tiwary on 13.06.2003 for a consideration amount of Rs. 1,25,000/- and they purchased the same vide agreement for sale dated 08.08.2003 executed by B.N. Tiwary for a consideration amount of Rs. 1,35,000/- and since they are in possession of the same.

It is further alleged that the documents are fake and forged for grabbing his property in view of the fact that the development agreement was executed on 12.10.2015 and his signature is in English whereas he signs in Hindi.

It is further alleged that the accused persons prepared a forged document to grab the property and on 05.11.2017 when the complainant went to see his house, the accused persons abused him in filthy language and tried to assault him and thereafter the complainant lodged the C/1 Case No. 3510 of 2017 before the learned Chief Judicial Magistrate, Jamshedpur which was sent

to the concerned police station under section 156(3) Cr.P.C. for institution of F.I.R. and accordingly, Sonari P.S. Case No. 41/18 has been registered.

5. Mr. Manish Kumar, learned counsel for the petitioners assailed the cognizance order and the F.I.R. on the ground that the entire dispute is civil in nature and no case under section 420 I.P.C. is made out against the petitioners but the cognizance has been taken in the said section. He submits that the complaint was referred to the concerned police station under section 156(3) Cr.P.C. for needful and pursuant thereto F.I.R. has been instituted and after investigation police submitted final form stating therein that nature of the case is civil. He submits that inspite of that the learned Magistrate has taken cognizance under section 420 I.P.C. without assigning any reason of differing with the opinion of the police. He further submits that on perusal of entire complaint, no case under section 420 I.P.C. is made out. He refers to agreement for sale and legal notice issued to the petitioners which are annexed as Annexure-3 and 4 of the petition respectively. Learned counsel for the petitioners submits that there is no agreement between the petitioners and the O.P. No. 2.

6. On the point of ingredient of section 420 I.P.C., learned counsel for the petitioners relied upon judgment in the case of **"Prof. R.K. Vijaysarathy & Anr. V. Sudha Seetharam & Anr "** reported in **2019 0 Supreme (SC) 168** wherein para 18, 19 and 20 the Hon'ble Supreme Court has held as under:-

" 18. The condition necessary for an act to constitute an offence under Section 415 of the Penal Code is that there was dishonest inducement by the accused. The first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17 February 2010. She alleges that she transferred the money belonging to the son of the appellants at his behest. No act on part of the appellants has been alleged that discloses an intention to induce the delivery of any property to the appellants by the first respondent. There is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under Section 420

of the Penal Code. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under Section 420 is made out.

19. In Binod Kumar v State of Bihar, (2014) 10 SCC 663 certain amounts were due and payable to a contract worker. When the amount due was not paid due to a termination of the contract, the worker filed a criminal case against the appellant for criminal breach of trust. The appellants' petition under Section 482 of the Code of Criminal Procedure for quashing was dismissed by the High Court. A two judge Bench of this Court examined the ingredients of the offence and whether the complaint on its face disclosed the commission of any offence. This Court quashed the criminal proceedings holding thus:

"14. At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not.

18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 I PC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property...

19. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. Criminal proceedings are not a shortcut for other remedies. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of Sections 405/420 I PC are missing, the prosecution of the appellants under Sections 406/120-B IPC, is liable to be quashed."

20. The suit for recovery of money was instituted by the son of the appellants against the first respondent in 2013. The complaint alleging offences under the Penal Code was filed by the first respondent belatedly in 2016. It is clear from the face of the complaint, that no amount was entrusted by the first respondent to either of the appellants and there was no dishonest inducement of the first respondent by the appellants to deliver any property. As stated by the first respondent in the complaint, the money belonged to the son of the appellants. It was transferred by the appellants' son to her on his own volition. The money was alleged to have been returned to the appellants on the instructions of their son. A plain reading of the complaint thus shows that the ingredients necessary for constituting offences under Sections 405, 415 and 420 of the Penal Code are not made out."

7. On the point of jurisdiction of section 482 of the Cr.P.C., learned counsel for the petitioners relied upon judgment in the case of **"State of Karnataka V. L. Munishwamy & Ors."** reported in **1977 0 Supreme (SC)**

123 wherein para 7, the Hon'ble Supreme Court has held as under:-

" 7. The second limb of Mr. Mookerjees argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure, 2 of 1974, provides that:-

"If, upon consideration of the record of the case, and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

This Section is contained in Chap. XVIII called "Trial before a Court of Sessions." It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceedings against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the new Code, which corresponds to S. 561-A of the Code of 1898, provides that:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceedings ought to be quashed. The saving of the High Courts inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has not to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and

purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

8. On the point of section 420 I.P.C. for intention of cheating from the very beginning, learned counsel for the petitioners relied upon judgment in the case of **"Sushil Sethi and Anr. V. The State of Arunchal Pradesh and Others"** reported in **2020 0 Supreme (SC) 100** wherein para 5 to 8.1 the Hon'ble Supreme Court has held as under:-

"5. We have heard the learned counsel for the respective parties at length. We have also gone through and considered the averments and allegations in the FIR as well as the charge sheet filed by the investigating agency.

5.1 At the outset, it is required to be noted that the charge sheet has been filed against the appellants for the offences under Section 420 read with Section 120B of the IPC. By the impugned judgment and order, the High Court has refused to quash the FIR and the charge sheet against the appellants in exercise of powers under Section 482 Cr.P.C.. Therefore, the short question which is posed for the consideration of this Court is, whether a case has been made out to quash the FIR and the charge sheet against the appellants for the offences under Section 420 read with Section 120B of the IPC, in exercise of powers under Section 482 Cr.P.C?

6. Considering the averments and the allegations in the FIR and even the charge sheet the main allegations are that the company, namely, M/s SPML Infra Limited supplied substandard materials - runner bucket turbines and the supplied runner bucket turbines were not as per the technical specifications. It is also required to be noted that there is no FIR/complaint/charge sheet against the company - M/s SPML Infra Limited and the appellants are arrayed as an accused as Managing Director and Director of M/s SPML Infra Limited respectively. From a bare reading of the FIR and even the charge sheet, there are no allegations that there was a fraudulent and dishonest intention to cheat the government from the very beginning of the transaction. Even there are no specific allegations and averments in the FIR/charge sheet that the appellants were in-charge of administration and management of the company and thereby vicariously liable. In light of the aforesaid, the prayer of the appellants to quash the criminal proceedings against the appellants for the offence under Section 420 IPC is required to be considered.

7. While considering the prayer of the appellants to quash the impugned criminal proceedings against the appellants for the offence under Section 420 IPC, few decisions of this Court on exercise of powers under Section 482 Cr.P.C. are required to be referred to.

7.1 In the case of Bhajan Lal (supra), in paragraph 102, this Court has categorised the cases by way of illustration wherein the powers under Article 226 or the inherent powers under Section 482 Cr.P.C. could be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In paragraph

102, it is observed and held as under:

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

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

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

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The aforesaid decision of this Court has been followed subsequently by this Court in catena of decisions.

7.2 In the case of *Vesa Holdings Private Limited (supra)*, it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that

even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

7.3 In the case of Hira Lal Hari Lal Bhagwati (supra), in paragraph 40, this Court has observed and held as under:

"40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning that is at the time when the promise was made cannot be presumed. It is seen from the records that the exemption certificate contained necessary conditions which were required to be complied with after importation of the machine. Since the GCS could not comply with it, therefore, it rightly paid the necessary duties without taking advantage of the exemption certificate. The conduct of the GCS clearly indicates that there was no fraudulent or dishonest intention of either the GCS or the appellants in their capacities as office-bearers right at the time of making application for exemption. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 of the Penal Code, 1860 does not arise. We have read the charge-sheet as a whole. There is no allegation in the first information report or the charge-sheet indicating expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellants right from the time of making the promise or misrepresentation. Nothing has been said on what those misrepresentations were and how the Ministry of Health was duped and what were the roles played by the appellants in the alleged offence. The appellants, in our view, could not be attributed any mens rea of evasion of customs duty or cheating the Government of India as the Cancer Society is a non-profit organisation and, therefore, the allegations against the appellants levelled by the prosecution are unsustainable. The Kar Vivad Samadhan Scheme certificate along with Duncan [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] and Sushila Rani [(2002) 2 SCC 697 : (2002) 2 Apex Decisions] judgments clearly absolve the appellants herein from all charges and allegations under any other law once the duty so demanded has been paid and the alleged offence has been compounded. It is also settled law that once a civil case has been compromised and the alleged offence has been compounded, to continue the criminal proceedings thereafter would be an abuse of the judicial process."

It is further observed and held by this Court in the aforesaid decision that to bring home the charge of conspiracy within the ambit of Section 120B of the IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is further observed and held that it is difficult to establish conspiracy by direct evidence.

7.4 In the case of V.Y Jose (supra), it is observed and held by this Court that one of the ingredients of cheating is the existence of fraudulent or dishonest intention of making initial promise or

existence thereof, from the very beginning of formation of contract. It is further observed and held that it is one thing to say that a case has been made out for trial and as such criminal proceedings should not be quashed, but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all.

7.5 In the case of Sharad Kumar Sanghi (supra), this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.

7.6 In the case of Joseph Salvaraja A vs. State of Gujarat, (2011) 7 SCC 59, it is observed and held by this Court that when dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

7.7 In the case of Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1, it is observed and held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It is further observed and held by this Court that it is neither possible nor desirable to law down an inflexible rule that would govern the exercise of inherent jurisdiction. It is further observed and held that inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself.

8. 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 this is a fit case to exercise powers under Section 482 Cr.P.C. and to quash the impugned criminal proceedings.

8.1. As observed hereinabove, the charge sheet has been filed against the appellants for the offences under Section 420 read with Section 120B of the IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR and/or even in the charge sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January, 1998. In the year 2000, there was some

defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning - 1996 onwards. If the intention of the company/appellants was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out."

9. Relying on the aforesaid judgments, learned counsel for the petitioners submits that there is no intention of the petitioner of cheating from the very beginning. He submits that no case under section 420 I.P.C. is made out against the petitioners. He submits that legal notice was issued for vacating the house in question. According to him, if the complainant wants any eviction, he was required to move under the relevant acts for eviction but the complainant moved before the criminal court. He submits that the trial court has taken cognizance under section 420 I.P.C. which is not sustainable in the eye of law.

10. Mr. Manoj Kumar, No. 3, learned counsel appearing for the State submits that the complainant was filed in the year, 2017 which was referred to the police under section 156(3) Cr.P.C. and final form was submitted on 03.10.2018 stating therein that the case is civil in nature and thereafter cognizance was taken on 30.11.2018 by the concerned court.

11. Learned counsel for the State relied upon judgment rendered by this Court in the case of "**Ramesh Murmu V. The State of Jharkhand**" reported in **(2017) 2 JBCJ, 473** wherein para 8 it has been held as under:-

"It is well within the jurisdiction of the Magistrate to differ from the police report and take cognizance of an offence. The Magistrate is not bound by the police report. Independently, the Magistrate has to apply his mind to arrive to a conclusion, whether cognizance should be taken or not, after receipt of the police report. Even after police submits final form showing mistake of fact or the case to be untrue, the Court can take cognizance of offence. In doing so the Magistrate is not bound by the opinion of the Investigating Officer and he is competent to exercise his discretion in this respect inspite of the view expressed by the police in its report and may prima

facie from the records, find out whether any offence has been made out or not. If from the record an offence is made out, cognizance has to be taken by the Magistrate"

12. Relying upon the said judgment, learned counsel for the State submits that in such situation what action is required by the Magistrate has been considered by this Court in the said judgment. According to him when final form was there at this stage, learned Magistrate was required to pass order giving reasons for rejecting the final form which has not been done. According to him, this case is fit to be remanded back to the concerned Court.

13. Mr. Rakesh Kumar No. 2, learned counsel for the O.P. No. 2 draws the attention of the Court to the counter-affidavit and submits that Annexure-A of the counter-affidavit is agreement between late B.N. Tiwary and the complainant. He refers to Annexure-B of the counter-affidavit which is order of proceeding under section 145 Cr.P.C. By way of referring this document, he submits that the O.P. No. 2 was found in possession of the property in question. He refers to agreement for sale dated 13.06.2003 annexed as Annexure-C to the counter-affidavit and submits that agreement for sale was between Surendra Bihari OJha (complainant) and B. N. Tiwari. He refers to the final form and submits that the final form was submitted on the direction of superior officer stating the case civil in nature. He submits that there is no illegality in the impugned order and at this stage the court may not examine the documents to come to the conclusion whether the case is made out or not. He relied upon judgment in the case of **"Bhagwant Singh Vs. Commissioner of Police & Another"** reported in **1985(2) SCC 537**. He further relied upon judgment in the case of **"Sonu Gupta V. Deepak Gupta & Others"** reported in **2015 3 SCC 424** wherein para 7 the Hon'ble Supreme Court has held as under:-

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the

learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. 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, or, in other words, to find out whether 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 must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not."

14. On the point of material enquiry under section 202 Cr.P.C., learned counsel for the O.P. No. 2 relied upon judgment in the case of "**Swaraj Thackeray V. State of Jharkhand & Ors.**" reported in **(2008) CriLJ 3780** wherein para 7 it has been held as under:-

"7. From the impugned order, I find that the learned Magistrate after considering the allegations made in the complaint petition and the materials adduced during enquiry under Section 202, Cr PC found prima-facie case made out for commission of the offence under Sections 153-A, 153-B and 504 of the Indian Penal Code against the petitioner Swaraj Thackeray @ Raj Thackeray and, thereafter, directed the complainant to file requisite for issuance of process. At the stage of taking cognizance a detailed order discussing the evidence in detail is not required to be passed by the Magistrate. The order taking cognizance but should show that the Magistrate has applied his mind before taking cognizance and from the impugned order it appears that the Magistrate after applying his mind has taken cognizance and, therefore, it cannot be said that the impugned order suffers from non-application of mind."

15. Learned counsel for the O.P. No. 2 relied upon judgment in the case of "**Dy. Chief Controller of Imports & Exports V. Roshanlal Agarwal & Others**" reported in **2003(4)SCC 139** wherein para 9 the Hon'ble Supreme Court has held as under:-

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.* and after noticing the law laid down in *Kanti Bhadra Shah v. State of W.B.* it was held as follows:

"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 accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

16. Relying on the aforesaid judgements, learned counsel for the O.P. No. 2 submits that the Magistrate is required only to satisfy as to whether there is sufficient ground for proceeding or not. He submits that the learned Magistrate has rightly taken cognizance.

17. In the light of above discussions and the judgments relied by the learned counsel for the parties, the Court has perused the complaint petition. From perusal of complaint petition, it transpires that there is no allegation of cheating from the very beginning which is required to prove the case of cheating. There are documents brought on record by the petitioner as well as O.P. No. 2 and this Court is not inclined to examine those documents sitting under section 482 of the Cr.P.C. as it is domain of the Trial Court. Since there are disputed documents on record as on the one hand it has been submitted on behalf of the petitioner that petitioner has nothing to do with the O.P. No. 2 and on the other hand learned counsel for the O.P. No. 2 by way of referring Annexure-3 of the counter-affidavit submits that there were agreement and legal notice. The judgement relied by the learned counsel for the O.P. No. 2 in the case of ***Bhagwant Singh(supra)*** with regard to option of the Magistrate are not in dispute. Those are options before the Magistrate. Once final form is submitted in the Court it is well within the Magistrate to differ with the police report in taking cognizance. It is well-settled that the Magistrate is not bound to accept police report but for that Magistrate has to apply his independent mind. It is well-settled that even the final form is submitted that no case is made out, the Magistrate can differ with the police report and take cognizance. The Magistrate is not bound to accept the opinion of the Investigating Officer. The

issue of taking cognizance by the Magistrate has been laid down by the Hon'ble Supreme Court in the case of "***Nupur Talwar Vs. Central Bureau of Investigation and Another***" reported in ***(2012) 11 SCC 465 188*** wherein the learned Magistrate has differed with the final form and took cognizance assigning reason and the Hon'ble Supreme Court accepted that coming to the conclusion that there is no illegality in the impugned order.

18. In the case in hand, final form has been submitted by the police stating therein no case is made out because as if any case is there which is civil in nature. The Magistrate has not assigned any reason as to why he has differed with the police report. As per the final form, the case is civil in nature. In the judgments relied by O.P. No. 2, the fact of submitting the final form was not there in those cases. It has already been discussed above about the mode of the Magistrate for differing with the police report and taking any independent opinion on the materials available on record. Differing with the final form and assigning reason thereof it will reflect that the Magistrate has applied his mind. In the case of "***Nupur Talwar***"(*supra*), the learned Magistrate has assigned reason for differing with the police report which was affirmed by the Hon'ble Supreme Court.

19. In the case in hand, there is nothing to suggest that the Magistrate has applied his judicial independent mind while differing with the police report. The main consideration of impugned order was whether the Magistrate applied his judicial independent mind which must be required to be reflected in the impugned order.

20. In the present case, the Magistrate has only stated that he perused the F.I.R., chargesheet and case diary and took cognizance. No reason of differing with the final form has been assigned in the impugned order. The final form on the basis of investigation includes the statements of witnesses. The police has already exonerated the petitioners after investigation but on the

same set of materials, the Magistrate differed with the police report and took cognizance. For taking cognizance after differing with the police report, the Magistrate was required to give reason.

21. Accordingly, order taking cognizance dated 30.11.2018 passed by the learned Judicial Magistrate, Ist Class, Jamshedpur in connection with Sonari P.S. Case No. 41 of 2018, corresponding to G.R. No. 707 of 2018 arising out of C/1 Case No. 3510 of 2017 pending in the Court of learned Judicial Magistrate, Ist Class, Jamshedpur is hereby quashed.

22. The matter is remitted back to the concerned court for passing a fresh order in accordance with law as indicated here-in-above within a period of 12 weeks from the date of receipt/production of a copy of this order.

23. With the aforesaid observation and direction, this criminal miscellaneous petition is allowed and disposed of. I.A., if any, stands, disposed of.

(Sanjay Kumar Dwivedi, J.)