Karnataka High Court Lmj International Limited, (A ... vs State Of Karnataka And Shylaja ... on 6 July, 2007 Equivalent citations: 2007 CriLJ 4437 Author: V Jagannathan Bench: V Jagannathan ORDER V. Jagannathan, J. 1. The facts and circumstance leading to these two petitions are one and the same and both these petitions arise out of one incident of the petitioners' company issuing a cheque for an amount of Rs. 10 lakhs to the 2nd respondent and as the cheque was dishonoured and returned to the 2nd respondent with an endorsement that the drawer had given instruction to the Bank for stop payment of the cheque, the said event led to two complaints being filed by the 2nd respondent before the JMFC Court at Somwarpet. 2. The Private Complaint No. 22/02 was filed alleging that the petitioners herein had committed an offence of criminal breach of trust and pursuant to the said complaint lodged, the trial court directed the PSI, Kushalnagar to investigate and submit a report as par Section 156(3) of the Cr.P.C. for offences punishable under Sections 418, 420 and 406 of the I.P.C. The very same incident of the cheque are being dishonoured also led to another complaint being filed by the 2nd respondent in Private Complaint No. 133/01 and in the said complaint, it was alleged that the petitioners herein had committed offences punishable under Sections 138 and 142 of the N.I. Act and under Section 420 of the I.P.C. The trial court registered the case on the basis of this complaint and an order of issuance of process to the petitioners had been passed. The said orders of the trial Court namely directing the police to investigate under Section 156(3) of the Cr.P.C. and the F.I.R. registered in Crime No. 180/02 against the petitioners, Pursuant to P.C.No. 22/02 as well as the P.C.No. 133/01 are called in question in these two petitions. 3. I have heard Sri. Paras Jain, learned Counsel for the petitioners, Sri. T.A. Karumbaiah, learned Counsel for the 2nd respondent and Sri. Honnappa, learned HCGP for the 1st respondent/State. 4. Sri. Paras Jain, learned Counsel for the petitioners though argued at great length, the sum and substance of his argument is that a plain reading of both the complaints will not make out any of the ingredients of the offences alleged in the two complaints and the learned Magistrate without scrutinising the complainant's allegation has mechanically ordered issuance of process and investigation by the police and therefore the said orders of the trial Court are liable to be quashed by this Court in exercise of its power under Section 482 of the Cr.P.C. 5. It is further submitted by him that there was business transaction between the petitioners and the 2nd respondent and several memorandum of understanding were entered into between the parties, under which the petitioners' Company was to supply the coffee for being cured by the 2nd respondent and as the business transaction spread over for several years, the petitioners' Company did make payment in respect of all the debt vouchers raised by the 2nd respondent and as many as 38 debt vouchers which were raised by the 2nd respondent-Firm, were fully paid and no amount was due from the petitioners side. At the same time, as par the accounts maintained by the petitioners' company there was excess of payment of Rs. 8 lakhs to the 2nd respondent in addition to Rs. 35 lakhs worth coffee lying with the 2nd respondent and therefore such being the business transaction between the parties, the question of petitioners' committing breach of trust did not arise and

even a plain reading of the two complaints will go to establish that the dispute between the parties at the most could be termed as one of civil nature, which cannot be construed by any stretch of imagination as giving raise to criminal liability on the part of the petitioners. He further submitted that no where in the two complaints is there any averment to the effect that the petitioners had the intention of cheating the 2nd respondent or for that matter, the petitioners acted dishonestly. Under the said circumstances, the order passed by the trial Court directing the police to investigate cannot be sustained in law and the said order is therefore liable to be set aside by this Court. 6. As far as the complaint lodged pertaining to the offences alleged under the N.I. Act are concerned, learned Counsel Sri. Paras Jain submitted that even in the said complaint, there is no mention of the fact that the petitioners herein owed any amount to the respondent No. 2-Firm and mere mentioning of the balance due on account of the coffee curing business itself will not be sufficient to hold that the petitioners owed the said amount of Rs. 10 lakhs as a debt to the respondent No. 2. Therefore, when the very ingredient of Section 136 of N.I. Act has not been made out either in the complaint or by annexing any documents in proof of any debt being due by the petitioners to the 2nd respondent, the trial Court could not have directed the case being registered and summons being issued to the petitioners. It was also submitted that the 2nd respondent has failed to produce before this Court or in these matters before the trial court any slip of paper to indicate any debt being due from the petitioners and even before this Court from the data of filing of the criminal petitions till data, the respondent No. 2 had not placed any document to show that the petitioners were due in an amount of Rs. 10 lakhs to the 2nd respondent and therefore under the above circumstances, the question of offences under the N.I. Act being attracted will not arise. The trial Court therefore committed serious error in directing issuance of process to the petitioners. 7. One other submission made by the learned Counsel for the petitioners is that setting in motion the criminal law is a serious matter and the Courts will have to carefully scrutinise the complaints filed before them and unless a case is made out disclosing the essential ingredients of the offences alleged in the complaint, merely on the basis of the complaint filed, the trial Court should not issue the process and in this connection the learned Counsel drew my attention to the case of Pepsi Foods reported in 1998 SCC Vol. 5 Page 749 and also the decision of the Apex Court reported in 2002 SCC Vol. 4 page 636. In essence it was submitted that the 2nd respondent instead of taking recourse to the Civil Court for remedy has chosen to go before the criminal Court only with an intention to harass the petitioners and for nothing more. Based on the above submissions, the learned Counsel prays for quashing of both the orders, which are impugned in these petitions. 8. Sri. T.A. Karumbaiah, learned Counsel for the 2nd respondent-Firm contended that the complainant's allegations make out the essential ingredients of the offences which are mentioned therein and the petitioners by issuing cheque for Rs. 10 lakhs and later on ordering stop payment have actually deceived the complainant and committed criminal breach of trust and as such no interference is called for by this Court against the orders passed by the trial Court. 9.

Nextly, it was submitted that the 1st petitioner also filed a original suit before the Civil Court at Bangalore in O.S.No. 15276/01 and the said suit was for declaration, that the 2nd respondent herein is not the holder in due course of the suit schedule cheque and for permanent injunction. The said suit of the 1st petitioner herein came to be dismissed in the course of its order, the Court took note on document Ex. P2 produced therein which document clearly goes to establish that the petitioners issued a cheque in a sum of Rs. 10 lakhs to the 2nd respondent and therefore in the light of the observations of the Civil Court in the said case, it is not open to the petitioners now to contend that no debt is due to the respondent No. 2 by the petitioners. In the alternative, it was submitted that the trial Court has only directed the police to submit its report after investigation and the petitioners therefore can very well inform the police about the business transaction that no amount was due by them to the 2nd respondent and, therefore this Court cannot interfere with the police investigation. 10. Sri. Honnappa, learned HCGP for the state also toed the above line of arguments addressed by the learned Counsel Sri. T. A. Karumbaiah for respondent No. 2. 11. In the light of the submission made as above, and after going through the materials placed before this Court, the only point that arise for consideration is whether the order passed by the trial Court directing the police to investigate under Section 156(3) of the Cr.P.C. and the order directing the issuance of process to the petitioners can be sustained in law? 12. As these two petitions are under Section 482 of the Cr.P.C., it is necessary at the outset to keep in view the preposition of law laid down by the Apex Court with regard to the inherent power of this Court under Section 482 of the Cr.P.C. In the recent decision namely CBI v. Ravi Shankar Srivastava , the Apex Court has observed thus: The High Court was, therefore, not justified in quashing the proceedings instituted on the basis of the FIR lodged. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the court possessed before the enactment of the code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (I) to (sic) effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. In exercise of the powers the Court would be justified to quash

any proceeding if it finds that initiation/continuance of it amount to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court stay examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. 13. It is therefore clear from the above proposition of law laid down by the Apex Court that, 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 in exercise of its inherent power under Section 482 of the Cr.P.C. For this purpose, the complaints will have to be read as a whole. 14. With the above observations of the Apex Court in view, I proceed to examine the complaints filed by the 2nd respondent before the trial Court. The Private Complaint No. 22/02 which led to the trial Court directing the investigation under Section 156(3) of the Cr.P.C. for the offences punishable under Sections 418, 420 and 406 of the I.P.C., is produced at Page No. 75 to the Crl.P.No. 1760/02 and a plain reading of the entire complaint, does give a impression that the entire dispute between the parties was in respect of supply of raw coffee from the petitioners to the 2nd respondent and in turn the 2nd respondent to cure the said coffee and send it back to the petitioners. 15. It is stated in the said complaint that in respect of the said transaction, the petitioners have caused loss to the complainant by giving coffee for curing to others. It is also stated in the complaint that the terms of the agreement were not fulfilled by the petitioners herein thereby leading to a loss of Rs. 30 crores to the 2nd respondent herein. It is also stated in Paragraph-8 of the complaint that attempts were made to settle the issue amicably before the panchayathdars and for the wrongful loss caused to the petitioners it was also agreed to compensate by the 2nd respondent/complainant. It is also stated in the complaint that the petitioners herein are crorapathis and had no difficulty in paying compensation to the 2nd respondent/complainant. The complainant concludes with the averments that the petitioners herein thus

committed criminal breach of trust and cheating. 16. After giving a plain reading to the complaint and taking it at its face value, one cannot come to any other conclusion other then the following. The entire complaint taken on the whole is indicative of a dispute between the parties which is purely of a civil nature. No where in the said complaint, it has been stated that the petitioners herein had acted dishonestly or had the intention of cheating the 2nd respondent/complainant. The whole of the complaint only speaks about the business transaction of giving raw coffee by the petitioners and delivery of cured coffee by the 2nd respondent and there being some violation of certain conditions of the agreement entered into between the parties and causing loss to the complainant. As such it cannot be said from the reading of the said complaint without either adding or subtracting anything to the complaint that the said complaint disclosed the necessary ingredients of the offences alleged therein. 17. Therefore the trial court was totally in error in mechanically directing the police to investigate under Section 156(3) of the Cr.P.C. and the trial Court did not take the necessary pains to examine the complaint to find out the nature of the dispute between the parties. The Apex Court in a very recent decision in the case of Indian Oil Corporation v. NKPC India Ltd. has observed thus: However, there is a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. 18. Having regard to the above position in law and after going through the complaint filed in P.C.R.No. 22/02, the conclusion that the dispute raised therein is more of civil nature and does not give raise to take the view that it give raise to any criminal liability becomes inescapable. As such the order passed by the learned trial Judge directing the police to investigate under Section 156(3) of the Cr.P.C. cannot be sustained in law and as rightly submitted by the learned Counsel for the petitioners a criminal case has been lodged by the 2nd respondent in respect of a matter which is purely of a civil nature. In the case of Pepsi Food Ltd. and Anr. v. Special Judicial Magistrate and Ors. , the Apex Court has observed thus; D. Criminal Procedure Code, 1973 - Section 204 - Summoning of accused - Order must show that

Magistrate applied his mind to the facts of the case and law applicable thereto - He should carefully scrutinise the evidence brought on record and may himself put questions to the complainant and his witnesses to find out the allegations. 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 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. As such the order passed by the learned Magistrate dated 5.4.02 is liable to be quashed and also the proceedings pursuant to that. 19. Coming to the P.C.R.No. 133/01, the allegations in the said complaint are to the affect that the petitioners herein had committed the offences alleged under Sections 138 and 142 of the N.I. Act and under Section 420 of the I.P.C. As far as this complaint is concerned, the background facts concerning the petitioners issuing the cheque for Rs. 10 lakhs to the 2nd respondent are the same as in the earlier case. 20. Since the offences under the N.I. Act are alleged, it is necessary for the trial Court to examine the complaint to find out as to whether the essential ingredients of Section 138 of the N.I. Act are made out in order to issue process against the petitioners. A reading of Section 138 of the N.I. Act, makes it clear that the cheque in question issued by one person to another person must be in respect of a whole or in part of any debt or any liability. Unless the complainant makes out on the fact of it a case of attracting Section 138 of the N.I. Act, the question of issuance of process will not arise. 21. It is contended by the petitioners' Counsel that a cheque for Rs. 10 lakhs was issued as a collateral security and as per the accounts maintained by the petitioners' company there was no amount due from the petitioners to the 2nd respondent and all the 13 debt notes raised by the 2nd respondent have been paid and he also argued that the petitioners have produced statement of accounts which the petitioners' company had with the respondent No. 2, and the statements clearly go to show that the amount due by the petitioners is to the tune of Rs. 51,60,847.13/- whereas the amount which is at credit with the 2nd respondent was to the tune of Rs. 58,96,865.75/- and thus there is an excess of around Rs. 7 lakhs and odd with the 2nd respondent coupled with 35 lakhs worth raw coffee, and in order to dispute the said statement which it filed before this Court as per Annexure-D, the 2nd respondent has not placed any material. Therefore the question of petitioners being liable in any sum to the 2nd respondent does not arise and no debt either in whole or in part is due by the petitioners to the 2nd respondent. The said submission

indicate that the dispute is of a civil nature. 22. If at all the petitioners were due in any sum to the 2nd respondent nothing prevented the complainant to say so in the complaint that is filed in P.C.R.No. 133/01, except saying that there is balance of Rs. 10 lakhs by the petitioners to the complainant, no other material is forthcoming in the complaint in proof of any debt actually owed by the petitioners to the 2nd respondent nor any enclosures are there to the complaint even to take a view that the said cheque of Rs. 10 lakhs was issued in order to discharge the debt due or any liability. The said submission of the petitioners will have to be accepted because as already stated by me when the transaction between the parties itself is of a civil nature and secondly as the complainant does not specifically state as to what was the amount due by the petitioners and as the complaint also does not say in clear voids that the cheque for Rs. 10 lakhs was issued in order to clear the said debt, as such there is merit in the submission of the petitioners counsel and as the essential ingredients of Sections 138 and 142 of the N.I. Act are missing from the complaint a mere omnibus statement that some amount is due to the complainant itself will not be sufficient in order to bring the case within the four corners of Section 130 of the N.I. Act. 23. As far as the submission made by the learned Counsel for the 2nd respondent that the petitioners filed a suit before the Civil Court and the said Court has made observation that a cheque for Rs. 10 lakhs was issued in respect of a debt is concerned, the submission of the petitioners Counsel is that, against the said order passed by the Civil Court, an appeal has been preferred before this Court and it pending in R.F.A. No. 1580/06. Therefore as regards the proceedings of the Civil Court is concerned, I do not deem it necessary for this Court to go deep into the aspect, but as the complaint is filed before the trial Court in P.C.R. No. 133/01, having regard to the totality of the facts and circumstances of the case on hand and the complaint not clearly mentioning the fact of any debt being owed by the petitioners to the 2nd respondent and that in the discharge of the said debt, a cheque for Rs. 10 lakhs was given by the petitioners, it is not possible to infer from a plain reading of the complaint that the cheque issued for Rs. 10 lakhs was in respect of any debt either whole or in part or any liability due from the petitioners. 24. As regards this Court's jurisdiction under Section 482 of the Cr.P.C., is concerned in the decision of the Apex Court in G. Sagar Suri and Anr. v. State of U.P. and Ors. , it has been observed that: Jurisdiction under Section 482 of the code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially or a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. The Supreme Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. Merely because the accused persons had already filed an application in the Court of Additional Judicial Magistrate for their discharge, it cannot be urged that the

High Court cannot exercise its jurisdiction Section 482 of the Code. Though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against them when no offence has been made out against them and still why must they undergo the agony of a criminal trial. 25. Therefore in view of the foregoing reasons and taking into consideration the complainant's allegation in both the cases, I am of the considered opinion that as necessary ingredients of the offences alleged in the two complaints cannot be made out even from a plain reading of the complaint, it is a fit case for interference under Section 482 of the Cr.P.C. in order to prevent the abuse of the process of law. 26. Hence, I pass the following: ORDER Both the Criminal petitions are allowed. All proceedings in P.S.No. 22/2002 leading to F.I.R. being registered in Crime No. 180/2002 by the Kushalnagar P.S., following order dated 3.4.2002 passed by the learned Magistrate, Somwarpet, and all further proceedings in P.C.No. 133/2001 on the file of the learned Magistrate, Somwarpet are hereby quashed.