Bombay High Court
Gurudev Singh Puri And Ors., ... vs Nari Tekchand Anandani And Anr. on 12 September, 1980
Author: V Kotwal
Bench: V Kotwal
JUDGMENT V.S. Kotwal, J.

1. Sometimes on June 30, 1975 there were unexpected visitors at the door of one Shri Nari Anadani, who is the complainant in these proceedings and who dealt in the manufacture of plastic articles with the industry located at Ulhasnagar. That is a proprietory concerned. The said three visitors including accused No. 1, one S. Vijaykumar, who claimed to be the Manager of M/s. Sudarsan Chits (India) Limited, which is claimed to be a corporate body with its registered office at Calicut (shortly stated as the 'said company') and another by name Arjun Lulla, contacted the complainant and the accused No. 1 and said Vijaykumar were introduced by the said Shri Lulla as being the official and manager of the said company. During the course of talk the said official tried to impress upon the mind of the complainant about the credentials of their company and lucrative prospects of investing in the said concern and for that purpose communicated to the complainant that the office bearers, agents and the managers were all respectable persons with repute and that big companies are being financed and they have also lot of fixed investment in several sister concerns and they are also doing the business of chit fund. It was also made known to the complainant that the said company has several branches all over India. Thereafter, the functioning of the chit funds was explained to the complaint and it is at the point of time that they actually came to the crus of the matter. They had especially accused No. 1 and the said manager told the complainant that they had recently started a group S C L B S C 10 where the requirement was of 80 persons and they were short of 5 members and, therefore, on account of this deficiency in reaching target vis-a-vis the number of persons their group could not function effectively. It is thereafter, that the complainant was informed that he should become the member of the five shares against which they will advance money immediately as and when the complainant needed the said amount and in any circumstances the money would be refunded after 50 months with divide and interest and also consolation prizes. This claim is put obviously to luring the complainants as in addition to the principle amount he was promised to get dividend, interest and to have further impression, it was also made known to him, that he would also be entitled to get the prizes.

2. Initially the complainant could not accede to the said request and was obviously reluctant. However, the said persons showed more patience on account of which the patience of the complainant was exhausted and he was completely lured and came under the grip of their assurance and it is thereafter, as both of them insisted and actually persuaded the complainant to accept the proposal. It was also impressed on the complainant's mind that the said Lulla had also joined the said group and once the said shortage of 5 members is made good, then the group could function smoothly by paying Rs. 500/- per month deducting the dividend for 15 months. The complainant was thus lured into these assurance and appearance of bright prospects and thereafter he took five shares in the said group numbering 42 to 46 of Rs. 500/- per month for 50 months commencing from July 3, 1975.

3. The complainant started making regular payment without any default since July 1975 and paid all the share amount till 44th instalment and the interception came not on account of the default on the part of the complaint, but because at that time no one was present to receive the payment and the branch Manager who is one of the accused persons, had informed the complainant that the balance payment should be deferred as there were no member bidders as share holders to receive the payment. It was also made known to him that he need not make further payment as the series are being completed by August 1979. The complainant thus made payments of all the four shares bearing serial Nos. 42 to 46 up to February 20, 1979 and their is thus credit of Rs. 22,000/- each out of the five shares, as one share at serial No. 46 which the complainant had taken in advance in bid and consequently an amount of Rs. 88,000/- being the balance of said four shares, plus interest and other consolation prizes were due from the company in favour of the complainant.

4. The complainant then approached some of the office beares of the said company, who are accused No. 1 to 4 sometime in August 1979 on which occasion one of them i.e. accused No. 3 on behalf of the company informed the complainant that the full payment would be made after two months and a letter to that effect has also been scribed dated August 24, 1979. The complainant thereafter approached the said four persons within short intervals as he was expecting payment after the stipulated time of two months was over. The complainant by that time became anxious and apprehensive of the bona fides of those persons and was making frantie efforts. He also knocked the residential doors of accused No. 4 at Mulund as the said accused is claimed to be the head of Bombay circuit of the said company.

5. It is one of the said visits that accused No. 4, according to the complainant, had tried to put the complainant on a wrong track. The said person promised the payment of Rs. 25,000/- at first instance in November 1979 and thereafter by the end of December 1979 all the amounts were promised to be paid. There was again a sort of repeat performance as the complainant was made to move from one agency to another with no fruitful efforts. It is on the last occasion i.e. in the month of January 1980 that he contacted accused No. 4 at his residence at Mulund and there sprung a complete surprise on the complainant by the most unexpected conduct of said accused No. 4. It is alleged that the said accused had already got some papers scribed ready and asked the complainant just to sign the said letter which purported to have been written by the complainant and addressed to the company regarding the payment of his dues and a further show was made therein that the complainant would accept a lump sum of Rs. 79,000/- as due from the company and that too it was the complainant, who was supposed to apply for instalments, on behalf of the company. The further revelation was equally surprising inasmuch as the complainant was directed by accused No. 4 to sign an advance debt voucher of Rs. 9800/- as part payment, without receiving any amount. The entry did not contain any date. This was perhaps the last straw when the complainant's hopes were completely shattering when he realised that systematic attempt to cheat him has been made which culminated in the attitude by Accused No. 4 on the same occasion.

6. Ultimately, the complainant was obliged to file a private complaint in January 1980 in the Court of the Judicial Magistrate (First Class) at Ulhasnagar, which is the subject matter of Criminal Case No. 283 of 1980, for an offence under section 20 read with section 34 of the Indian Penal Code, wherein seven persons were arranged as accused in addition to the company which was made

accused No. 8. It is claimed that Accused Nos. 1 to 4 are the employees of the said company while accused Nos. 5 to 7 are the directors, managing the affairs of the company and accused No. 8 was the company concerned. It was further alleged that these are not the stray instances but a part and parcel of conspiratal agreement, wherein each of the accused person has performed his part and attributed to the achievement of the object of the conspiracy.

7. The learned trial Magistrate taking cognisance of the complaint, recorded verification of the complainant on the same day. He also perused the relevant documents and after having been satisfied that a prima facie case has been made out for issuance of process under section 204 of the Code of Criminal Procedure, he on the same day issued process under section 420 read with section 34 of the Indian Penal Code against all the accused persons and he also was pleased to issue bailable warrants in the sum of Rs. 1,000/-, which were made on February 28, 1980.

8. It appears that the several attempts to get the bailable warrants served or executed were frustrated and it is alleged that the accused persons were systematically avoiding the said service. The record reveals that out of the said lot of seven persons, ultimately only original accused No. 4 one Puri appeared in the Court below and executed a bail bond. This would mean that rest of the accused persons have so far never appeared before the trial Court even though process has been issued against them. It is thereafter that the said original accused No. 4 moved this Court by an application under section 482 of the Code of Criminal Procedure for quashing of the proceedings, which is the subject matter of Criminal Application No. 814 of 1980, which was filed on July 8, 1910. Some of the accused persons followed him; though it is relevant to note that they had never appeared in the trial Court. Thus Criminal Application No. 922 of 1980 has been filed on behalf of the company, original accused No. 8 on July 31, 1980. Criminal Application No. 1036 of 1980 has been filed on behalf of original accused No. 5 sometime in the month of August 1980 which Criminal Application No. 1037 of 1980 has been filed on behalf of accused Nos. 6 and 7 again sometime in the month of August 1980.

9. I have already indicated the nature of the allegations incorporated in the complaint, so also, an affidavit has been filed by the complainant and we find that an affidavit of another person by name Lobo has been filed in support of the case and to meet the contentions raised on behalf of the petitioners. To recapitulate the gravamen of the complainant's case is that he was practically lured in the trap arranged systematically by the accused persons with the sweet words omitting from some of them and it would be improper to consider the case of some of the accused persons in isolation, as several accused persons appear to have been in the conspiracy. Shri Vakil, the learned Counsel appearing on behalf of the petitioners, very strongly submitted that this appears to be an out and out a civil dispute of or a dispute of civil nature and in the fitness of things, this Court will be justified in exercising discretion in favour of the petitioners in quashing the proceedings under the inherent powers. It was then contended by Shri Vakil that even according to the complainant, as disclosed in the complaint, that the so called representation was made by Vijaykumar, who is claimed to have been in the employment of the company and surprisingly he has not been impleaded as accused person. The grievance was also made that the said Lulla, who actually introduced Vijay with the complainant has not been impleaded as accused person. Shri Vakil further submitted that none of these accused persons, who are now sought to be placed in the dock had made any representation,

directly or otherwise, to the complainant much less, lured the complainant to part with the said amount. It was lastly contended that may be that the company has financial stringency which should not be confused with any dishonest intention. Shri Paranjape, the learned Counsel appearing on behalf of the complainant, has, however, tried to repeal this contention and in that process brought to my notice several intrinsic features. He contended that it is not as if that a stray incident had occurred when the said Vijay, accused No. 1 and Lulla had contacted the complainant. May be that the other accused persons had not participated in the said conversation or may be that they were not physically present along with the said Vijay at that time. However, it is submitted that it is a part and parcel of one conspiracy, which is hatched by all these accused persons, who are partners in the said crime. A further submission is that the entire concern is a bogus one and have been collecting the funds on huge dimensions from the members of the public all over India not restricting their field of operation to Bombay only and it is also brought to my notice that it is too much of a coincidence that the most crucial juncture all the branch officers were found to be closed by the members of the public. It is also submitted that there is a private arrangement between holding company and its subsidiary concerns, when certain amounts are very easily transferred to the holding company and there is some motive behind that. The specious contention of a financial stringency is only a camouflage to cover up the dishonest intention. Shri Paranjape ultimately submitted that it is not a fit case for exercising discretion under the inherent powers of this Court in favour of accused persons. The last submission made by Shri Paranjape, the learned Counsel for the complainant was that the prosecution cannot be threttled at the threshold as sufficient opportunity should be given to the complainant to substantiate his claim.

10. It is true that even according to the plain reading of the complaint, it appears that except accused No. 1, Vijay and Lulla nobody had approached the complainant at the inception of the transaction. It is equally true that the said Vijay and Lulla are not impleaded as accused persons. It is submitted on behalf of the complainant that Vijaykumar had left the concern and the enquiries revealed that his whereabouts are not known at all. The complainant has cited Lulla as a material witness and, therefore, the grievance is restricted only to Vijaykumar. It is not possible under the circumstances to summarily reject this contention on behalf of the complainant when he submits that inspite of diligent efforts and search the whereabouts of Vijaykumar are not known and it is rightly submitted by Shri Paranjape that a reasonable opportunity serves to be granted to the complainant to substantiate his claim.

11. The matter is sought to be over simplified by Shri Vakil, the learned Counsel on behalf of the petitioners. However, a little probe in he background and subsequent events would expose the hollowness and the contentions raised by Shri Vakil. The complaint, in terms, mentions that Vijaykumar and Lulla at that time were accompanied by original accused No. 1, who is admittedly an agent of the said company. It is in his presence that the representation was made and actually he also participated in the said conversation. It is, therefore, not as if that the total strangers had contacted the complainant, but a definite nexus or foundation was sought to be established even at the inception between the authors of the representation and the company itself. This has been overlooked in the submission canvassed by Shri Vakil in that behalf. Therefore, even assuming that Vijaykumar has not been made a co-accused that would hardly make a difference atleast at this stage when the evidence is yet to be recorded in the present case and the participation of accused No. 1 in

the capacity as agent of the company, which ultimately lured the complainant to part with the money on substantial scale, has utmost importance and must have necessary impact on the other features. It is then important to note that though accused No. 4 might not be present in the city of Greater Bombay, at the relevant time as he was functioning as an official of the concern in the other State, yet the subsequent events not only involve accused No. 4 but also annexed to him a sharing of guilty mind along with other accused. It is important to note that the complainant has made it very clear in the complaint that after accused No. 4 was transferred to Bombay as the head of this Bombay region he tried to contact him on several occasions. Some of the attempts were frustrated though some reaped certain fruits. On every occasion not only accused No. 4 but also accused No. 1 together and/or individual were trying to avoid the issue under one pretext or the other. On one occasion he was sought to be silenced by another promise that entire amount will be paid within two months. The complainant, who was by that time in a very vulnerable situation had nothing to do except to watch the scene where he was the victim and the accused were the conquerors. He waited for two month and again knocked the doors of the accused persons, who again gave another pretext that the amount will be paid after some time. The complainant was practically disappointed. Then came a proposal from accused No. 4 himself that the part payment of Rs. 25,000/- would be made in the first instance in the month of November 1979 while by the end of December 1979 the entire dues will be cleared off. However, even the month of December was passed, but the promise was not fulfilled and it is in the month of January 1980 that a very surprising situation and development occurred which was not in the expectation of the complainant himself. The complainant is categorically in his complaint in alleging that on January 1, 1980 when the complainant contacted accused No. 4 at his residence, accused No. 4 at that time had presence certain documents with a pen in his hand and tried to prompt the complainant to sign the documents. The complainants was fortunately careful in reading the contents of the documents and to his utmost surprise he noticed that one document created an impression that it was the complainant, who was to write a letter and addressed in the name of the company whereunder he was agreeable to accept Rs. 79,000/- in lump sum towards full settlement and further interesting part is that it was the complainant, who himself was shown to be agreeable to the instalments even in respect of this amount. Another document was in the nature of an advance debit voucher, under which the complainant was to receive Rs. 9800/-. The said voucher significantly bear no date. The complainant made it very clear in the complaint that not a single paisa was being paid to him and instead of that without making any payment, the documents were sought to be executed. This conduct on the part of Accused No. 4 cannot be examined de hors the entire tenture of all the events taken in totality. If Accused No. 4 had no hand in the transaction and conspiracy as such then there was no occasion for him at first instance to prolong the matter by giving false excuses and promise one after another and on such occasions to prompt or compel the complainant to execute obviously the false documents, which were against the interest of the complainant. Shri Paranjape, the learned Counsel appearing for the complainant, actually placed before me all these documents which he claims to be the same, which were produced before his client for his signature and which he managed to keep in his custody. I have perused those documents and those prima facie atleast substantiate the contentions raised by the complainant in his complaint, as to whether there are genuine documents or as to whether those were actually scribed by accused No. 4 or anyone in his behalf is a matter of evidence and the complainant is legitimately asking for a fair opportunity to substantiate this claim and it will be too premature at this juncture to express any opinion in that respect.

12. It is then interesting to note another feature which is rather disturbing and also quite striking. An affidavit has been filed by the complainant in support of the complaint and also in reply to the contentions raised on behalf of the petitioners in the petition. A specific statement has been made thereunder that the branch offices with which these accused are concerned in Bombay have been closed at the most crucial time so as to create a difficult handle in the way of the complainant even to contact the accused persons. A query was made to Shri Vakil during the course of his submission as to whether his client wanted to have an affidavit in rejoinder. No definite suggestion was made in that behalf on behalf of the petitioners and more important feature is that no affidavit as such has been filed, pertaining to this aspect, which finds place in the affidavits of the complainant. When an oral query was made to the learned Counsel as to whether he had to say anything as to whether the branch office is really functioning or not, after too much of reluctance, the learned Counsel ultimately submitted that it appears that the office has been closed though he clarified that the reason is entirely different. According to the learned Counsel, there arose a dispute between the landlord and the company, who is a tenant and that is how the company had to vacate the premises. This is again a matter which requires certain probe at the trial which can be founded only on evidence and not on conjecture. The closer of the office at the most crucial time is also a relevant feature and the excuse sought to be placed on record by the petitioner is a lame one and at that crucial juncture it is worth nothing that the landlord created a dispute with the tenant and we are asked to believe that the tenant inspite of several statutes could readily vacate the premises for more asking. The matter, however, does not rest there. The affidavit of one Shri Lobo has been filed in this proceeding, to which no doubt an objection has been taken by Shri Vakil the learned Counsel for the petitioners, contending that he is not made aware of such as affidavit and even assuming otherwise it will not be admissible in this proceeding. Normally one may not have locked in the said affidavit in this narrow field when the inherent powers are invoked, however, this is a typical case where charge of cheating is levelled and it is common knowledge that the complainant is entitled to show that the alleged not of the petitioners was not an accidental act and this he can show on the basis of evidence vis-a-vis the conduct of the petitioners in other cases. It is true that it is not specifically mentioned in the complaint, but in my opinion, this will be merely an item of elaborating point or the allegation which ultimately lead to the commission of the offence, and, therefore, the nature of evidence and its details need not be incorporated in the complaint. To that limited extend one may be permitted to look into the said affidavit. More relevant feature in the said affidavit is that the said Lobo is also a victim of similar cheating where the said modus operandi has been practised. One may not go into details of the said affidavit as it is not the subject matter of this proceeding though at the trial and complainant would be entitled to lead that evidence to substantiate his claim that the act of the accused was not an accidental one. The more interesting feature in the said affidavit reveals that even Thana Branch Office is also closed at the most crucial juncture. Unfortunately there is no plea that the landlord of Thane premises had any grievance against the tenant i.e. the company. On the contrary it is clearly mentioned that the said office has been deliberately closed. There is thus common pattern in all these transactions and the subsequent conduct. The closer of these branch offices at the most crucial juncture, when the amounts are ripe for being paid, is a very strong circumstance, which prima facie atleast cannot be thrown over board. In my opinion, all these features obviously require a probe which however, can be founded only on recording of the evidence.

13. As I have stated at the outset, the matters are sought to be over simplified when the problem is being approached like an arithmetic problem. This, in my opinion, would be most irrational approach. It is contended that there is holding company and subsidiary company. A vast amounts from several subscribers had been collected and a very convenient arrangement has been made between the apparent body and subsidiary body so that the amounts can be adjusted very conveniently so as to suit the purpose. The branches of the company are spread over at different places in different States. Merely because accused No. 4 was not in Bombay at the relevant time when the representation was made, it will hardly make any difference. Apart from the subsequent conduct of accused No. 4, it is rightly submitted by Shri Paranjape that when the entire episode flows out of a single continuing conspiracy, one person remaining outside the State would hardly make any difference. It is important to note that this is a company against whom the allegations of fraud and cheating are being levelled and these accused persons acting on behalf of the company when they are part and parcel of the said concern, have perpetrated the said crime. It is not as it all these accused persons are strangers to the company, but they are very much within the inner circle of the transaction so much so that the impact of one must have on the other. In my opinion, therefore, there is no substance in the contention raised by Shri Vakil in that behalf. Apart from this, the complainant cannot be denied a reasonable opportunity to bolster up his case by adducing evidence in the case on his behalf and if he fails to prove the contentions raised in the complaint then the petitioners can legitimately ask for their discharge or recording an order of acquittal. It is not permissible in such cases to take into account a circumstance in isolation, but the total impact of all the circumstances must be considered in proper perspective and when that is done, I have no reservation in my mind that this is not a fit case where the complain can be throttled or short circuited that the threshold. This is, on the contrary, manifestly a fit case which requires further probe after leading proper evidence and giving reasonable opportunity to the complainant. Implicity in this process is a further protection to the accused also so that they can also ventilate their grievances and put fourth grounds to earn a discharge or an acquittal.

14. It cannot be overlooked that this is a warrant triable case and there is an intervening stage of framing of the charge at which stage the accused after cross-examining the complainant and further propagating all their relevant points may earn discharge. If they persuade the learned Magistrate that no case has been made out against them to warrant conviction the, they can ask for discharge under section 245 of the Code of Criminal Procedure and that stage is obviously available to the accused. But this cannot be equated with the fact that the complainant should be denied a reasonable opportunity to lead evidence even before charge. The Code of Criminal Procedure has also taken care of another contingency when even after some evidence is recorded and before framing of charge, at such intervening stage also the accused can ask for a discharge. To say the least, a short question in this proceeding would be whether on the prima facie view of the matter can it be said to be a case which can be thrown out at the inception without giving reasonable opportunity to the complainant to lead evidence and can it be said that the continuation of the complaint under these circumstances is merely an abuse of process of the Court. It cannot be overlooked, as rightly contended by Shri Paranjape, the learned Counsel for the complainant, that a fraud at a huge scale and dimension is alleged to have been perpetrated and the complainant would be in a position to fortify his contention in that respect. It is rightly submitted that the payments have been made by the persons who are not necessarily financially well off and their hard earned

moneys had gone to the pockets of these persons, who are trying to utilise the same for their personal gains. There are several victims similarly cheated by the said modus operandi. Similar frauds have been committed. One of such victims his come to the Court in the shape of affidavit. The offices are closed at the most crucial time, systematic attempt has been made to get the documents executed from the complainant. Every accused person, therefore, to some extent atleast has assisted in the said field of operation in one way or the other. This is, of course only a prima facie view of the matter emerging from the record which would be subject to proof by the complainant, which can be done only when the complainant is given an opportunity in that behalf which in turn can only be at the trial.

15. All said and done, on the plain reading of the complaint and even leaving out of consideration, all other aspects and material and thus restricting only to the complaint, issuance of process is well justified whereas quashing of proceeding is unwarranted.

16. It was then submitted by Shri Vakil, the learned Counsel, that the company itself had some difficulties of financial funds so much so that the company was obliged to file suits against certain persons and this was sought to be utilised for the purpose of holding that this be treated as civil nature. Shri Paranjape, however, submitted that may be some suits might have been filed, though there is no evidence as yet and he further submitted that looking to the huge amounts collected, the subject matter of the said suits may be comparatively meagre. This again is a matter of some evidence and in fact the petitioners would be at liberty to ventilate this aspect also at the time of trial. Apart from this, this is not a stage at which finer shades can be appreciated. The more germane point which arises is as to whether on the record, as it stands, can it be said that the learned Magistrate have dismissed the complaint under section 203 of the Code of Criminal Procedure holding that in his opinion, there were no sufficient grounds for proceeding and the allied question would be as to whether the complainant could be denied a reasonable and fair opportunity to substantiate his claim at the trial. In my opinion, this can never be said to be a fit case for quashing the proceeding. Same would apply to the relief of dismissal of the complaint. It cannot be said that the learned Magistrate was unjustified in issuing process and not dismissing the complaint forming a view that there are sufficient grounds to proceed. Ultimately transpires will again depend on the facts and evidence and at any rate this cannot be said to be a case that even by plain reading of the complaint one can say with certainly that there is absolutely no criminal offence made out or that it would be a civil dispute. In my view, even to arrive at some decision some evidence is absolutely necessary, though the complainant has made out a prima facie case for the issuance of process. As I have stated, there are several intervening stages before the stage of framing of charge is reached, when the petitioners can be discharged or ultimately they can earn discharge under section 245 of the Code of Criminal Procedure if the evidence is such that if not rebutted it would not warrant into a conviction. When all these safeguards are provided by the statute itself, then it is futile to contend that at the initial stage itself the prosecution should be throttled.

16-A Shri Vakil, the learned Counsel for the petitioners, submitted that this Court can exercise its inherent powers on the facts on the present case, as against which Shri Paranjape, the learned Counsel for the complainant respondent, submitted that such powers should be sparingly utilised and this cannot be said to be a case which requires exercise of such powers against the petitioners.

17. In R.P. Kapur v. State of Punjab, A.I.R. 1960 Supreme Court 836, three contingencies are illustrated in which the Court may be justified in quashing of the proceeding, when there is a legal bar such as absence of sanction, then the Court can legitimately exercise these powers; if the case may arise where there is absolutely no tinge of any criminal offence which can be decided without even leading any evidence, where the Court may be justified in exercising the powers and the third contingency is that the offence has been made out though there is no legal evidence to establish the complicity of the accused even prima facie. In my opinion, none of the said contingencies embrace the facts of the instant case and to put it at the minimum this is primarily a fit case where the complainant should be given an opportunity to substantiate his claim by which process absolutely no prejudice would be caused to the defence inasmuch as they can still vanillate their grievances when the trial is in process. It is worth nothing that except accused No. 4 nobody has bothered to attend the trial Court, even though they had knowledge that the process has been issued and the complainant has asserted that except accused No. 4 all others have systematically avoided the execution of the bailable warrants and it is particularly when they have rushed to this Court for quashing of this proceeding. It is well settled that after issuance of the process it is not the end of the matter and even before recording the evidence, the petitioners are always at liberty to canvass all contentions, which the learned Magistrate may not be aware, in support of their plea that even before recording any evidence or after complainant's evidence is over, no proceeding should be continued, though, however, I may hasten to add that this cannot be said to be a case where the complainant should be denied a reasonable opportunity. It is true that in State of Karnataka v. L. Muniswamy, , it has been observed that in the exercise of the wholesome power under section 482 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 proceeding ought to be quashed. It, however, cannot be overlooked that the Supreme Court is that proceeding was concerned with the question of directing a discharge which had been done by the learned Sessions Judge. Apart from this, even in the said ratio there is an indication that really speaking application of the principles would depend on the facts of the case and the condition precedent is that the Court must feel that the continuation of the proceeding is nothing but an abuse of process of law. In my opinion, this cannot be said to be a case where such an event is likely to occur. In Kurekshetra University v. State of Haryana, A.I.R. 1977 Supreme Court 229, it has been observed as :

"Inherent powers do not confer as arbitrary jurisdiction on the High Court to not according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

With advantage I can refer to the decision of this Court in Jacob Harold Arasha v. Mrs. Veera Aranha, 1979 Cri.L.J. 974, wherein also a relief for quashing of the proceeding was asked for when the learned Magistrate had issued process. It has been held therein to the effect that at the stage of issuing process it is not the duty of the Court to find out as to whether the accused will be ultimately convicted or acquitted, and that the object of consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for proceeding further or not. It is also enunciated further that inherent powers should be exercised sparingly with circumspection and in rare cases and that too to correct, patent illegalities. This Court there also indicated that a

reasonable opportunity must be given to the complainant to substantiate his or her case which has been done in the same case. In the said case also some of the evidence was not very clear and yet this Court observed that the complainant asserted that she would be able to adduce evidence at a proper stage if the trial is allowed to proceed and that request was granted.

18. In Smt. Nagawwa v. Veeranna Shivalingappa, , it has been observed as :

"As 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. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one."

It has been further observed as :---

"The scope of the enquiry under section 302 is extremely limited-limited only to the ascertainment of the truth of falsehood of the allegation made in the complaint (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issuing of process has been made out and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact, it is well settled that in proceedings under section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

It is further observed as :---

"It is true that in coming to a decision as to whether, a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even the Supreme 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."

19. On the same lines are the observations in Hareram Satpathy v. Tikaram Agarwala, , wherein it is observed as :---

"As the Magistrate is restricted to finding out whether there is a prima facie case or not for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction is very limited the High Court cannot launch on a detailed and meticulous examination of the case on merits and set aside the order of Magistrate directing issue of process against certain persons."

20. In P. Vijay pal Reddy v. State (Govt. of India), , the same ratio has been enunciated more or less on the same grounds.

21. Shri Vakil, the learned Counsel relied on the ratio in Triolk Singh v. Satya Deo Tripathi, , wherein criminal proceedings were ultimately quashed. However, the facts are glaringly distinguishable inasmuch as that related the hire purchase agreement out of which the criminal proceeding was sought to be flown. The dispute was obviously about the amount involved in the purchase of the said truck and the said hire purchase agreement which followed thereafter and it is in that context that it has been held that out and out it was a civil dispute. In my opinion, it is not necessary to go into the details of the said ratio as the facts do not apply to the instant case. It is not necessary to multiply the illustration.

22. Having considered all the facts in proper perspective, I am of the opinion that this is not a fit case for exercise of inherent powers under section 482 for quashing of the proceeding or alternatively for exercise of revisional jurisdiction for dismissing the complaint. The facts do justify prima facie satisfaction of the learned Magistrate when he opined that there is sufficient ground to proceed. Further this case does not fail in any of the categories as indicated in Kapur's case (supra). It also cannot be said that this is out and out a civil dispute on the plain reading of the complaint. In fact as I have indicated earlier an intrinsic picture will have to be considered in such cases out of which must flow under the logical corollary that the complainant will have to be given a reasonable opportunity and fair chance to substantiate his case, especially when the allegations are of a serious nature and the complainant is in possession of certain material which can be adduced only at the time of trial. I have already indicated and catalogued some of the items which may be tendered at the time of the trial. That the accused may have good defence destroying any dishonest intention on account of the financial stringency can be adequately considered only when the trial proceeds. As I have already said there is further protection in the Code itself for the petitioner when the petitioner can approach the learned Magistrate and ventilate all the grievances and canvass all these points either as and when the trial could proceed and even before the framing of the charge, the Code permits the course where discharge can be claimed or the next stage is reached, when under section 245 of the Code he can claim discharge. That, however, cannot be equated with the process that the complainant should be denied an opportunity. Even before appearing in the trial Court some of the accused persons had reached this Court and in my opinion, that can hardly justify in quashing of the proceeding, though I am hasten to add that on merits of the case this is not a case where the proceeding can be quashed. The learned Magistrate was justified in exercising the discretion and forming the said opinion and satisfaction and once that is used by the learned Magistrate in lawful manner this Court should be normally very slow in intefering with the said discretion. Needless to say that it is not as if that the accused is being proclaimed as convicted at this stage itself. In fact, this is a stage so premature to decide anything in favour of the accused in the absence of adequate material and the counter part is that the complaint must get a reasonable opportunity to bolster up his case which can be done only by allowing the trial to proceed and not by throttling or short circulating the same.

23. At this juncture, Shri Vakil, the learned Counsel for the petitioners, submits that this is not a case where the identification of the accused even during the course of evidence is required. Some of

the accused persons are staying outside the State and apart from the financial stringency or strain, it will also cause hardship to them to appear at the trial on all these dates. He also brought to my notice that even at the first instance bailable warrants were issued, though in normal course summons could have served the purpose. The learned Counsel, therefore, submits that the accused persons can be legitimately granted exemption for appearing in the Court even during the course of trial till such stage is reached when their presence is indispensable. No doubt, there is enough force and justification in this submission, and in a criminal trial, though the complainant may knock the doors to get justice, still the same should not have any tinge of causing undue harassment to the accused. Consequently, the interest of justice would remain intact even if such concession is given to the accused and no prejudice would be caused to the complainant, provided that the accused persons would not challenge the claim of identification. Under the circumstances, the just order would be that the parties would be allowed to appear through their Advocates on the date which is being now fixed for their appearance, when the learned Magistrate would not insist on the execution of the warrants already issued so that it in will be deemed that the service has been effected and on view of the observations aforesaid and in the light of the fact that this is not a case where the presence of each and every accused would be necessary even for proceeding with the case on each date the learned Magistrate would certainly consider the plea which would be made on behalf of the accused about the exemption of the accused upto the particular stage when their presence in the Court would be felt indispensable for conducting the trial. I am sure, if such plea is made, the learned Magistrate would apply his mind in judicial manner. Doing justice or giving redress to the aggrieved party has also its counter part that the said process should not in its zeal entail into causing undue harassment or hardship to the adversary. Technicalities and niceties of procedural law should not be allowed to be used as camouflage. Punishment after trial on proof of the offence should not be confused with punishment before trial.

24. Shri Vakil, the learned Counsel appearing for the petitioners, submitted that the proceeding against the accused No. 8 which is a company obviously cannot survive. This aspect also can be considered properly by the learned Magistrate even before recording of the evidence and if the company i.e. accused No. 8 cannot be prosecuted, then the learned Magistrate would consider that aspect also. Thus, the object would be achieved even if that aspect is left to the learned Magistrate.

25. These observations about the prospective exemption could obviously apply and he restricted only to the petitioners who have approached this Court in these petitions and not to the others.

26. In the result, rule in all the four petitions is discharged. The parties to appear before the learned Magistrate on September 30, 1980 though their Advocates.

27. At this juncture, Shri Vakil makes an oral motion for leave to appeal to the Supreme Court and for a certificate of fitness in that behalf. Absolutely no ground has been made out for such leave. The facts are manifest and the law is well settled. The oral motion stands rejected.