

M/S.Sundaram B.N.P.Paribas Home ... vs State Of Tamil Nadu on 26 August, 2011

Author: P.Jyothimani

Bench: P.Jyothimani

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.08.2011

CORAM:

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.2513, 2514 and 2922 of 2011

1.M/s.Sundaram B.N.P.Paribas Home Finance Ltd.,
Rep by its Managing Director

2.Srinivas Acharya,
Managing Director,
M/s.Sundaram B.N.P.Paribas Home Finance Ltd.,

3.G.Sundararajan,
Vice President & Head Finance,
M/s.Sundaram B.N.P.Paribas Home Finance Ltd.,

4.Ms.V.Janaki,
DGM-Information Systems,
M/s.Sundaram B.N.P.Paribas Home Finance Ltd.,
all having office at Sundaram Towers,
40, Whites Road,
Chennai 600 014.

..Petitioners in all W.P

vs.

1.State of Tamil Nadu,
Rep by the Secretary to Government,
Home Department,
Secretariat, Fort St. George,
Chennai 600 009.

- 2.State of Maharashtra,
Rep by the Secretary to Government,
Secretariat, Mumbai.
- 3.The Senior Inspector of Police,
Cyber Police Station,
Crime Branch, CID, Mumbai
1st Floor, BKC Police Station Building,
B.K.C., Bandra (East),
Mumbai 400 051.
- 4.Subhash Jadhav,
Inspector of Police/
Investigating Officer,
Crime Branch, C.I.D, Mumbai,
1st Floor, BKC Police Station Building,
B.K.C., Bandra (East),
Mumbai 400 051.
- 5.Major V.P.Singh,
Director,
M/s.Kensoft Infotech Limited,
"D" Wing, 4147-8, Oberoi Garden Estate,
Chandivali Farm Road,
Andheri East,
Mumbai 400 072.

..Respondents in W.Ps.

Prayer in W.P.(MD)Nos.2513 & 2514/2011: Writ Petitions filed under Article 226 of the Co

Prayer in W.P.(MD)No.2922/2011: Writ Petition filed under Article 226 of the Constitutio

For Petitioner : Mr.A.L.Somayajee
(In all W.Ps) Senior Counsel.
for Mr.T.K.Bhaskar

For 1st Respondent : Mr.V.Jayaprakash Narayanan
(In all W.Ps) Additional Government Pleader.

For Respondents 3&4 : Mr.J.Rajakalifullah
(In all W.Ps) Additional Government Pleader.

For 5th Respondent : Ms.Geetha Ramaseshan
(In all W.Ps)

COMMON ORDER

While in W.P.Nos.2513 and 2514 of 2011, the petitioners have challenged the order passed by the third respondent, the Senior Inspector of Police, Cyber Police Station, Crime Branch, CID, Mumbai, dated 24.01.2011, by which the third respondent has directed on the basis of the complaint given by

the fifth respondent as a Director of M/s.Kensoft Infotech Limited, Mumbai, to submit material evidence for investigation purpose and also to produce various documents listed therein containing electronic record/documents for the purpose of investigation respectively, W.P.No.2922 of 2011 is filed to quash the First Information Report registered in Crime No.30/2010 in the third respondent police station based on a complaint given by the fifth respondent against the petitioners.

2.The first petitioner is a Joint Venture of M/s.Sundaram Finance Limited and M/s.B.N.P.Paribas Home Finance Limited registered with a National Housing Bank as a Housing Finance Company and it is a multi-crore conglomerate having branches through out the country and the second petitioner is a Managing Director of the first petitioner company and the third and fourth petitioners are Vice President and Head Systems, DGM respectively of the first petitioner company.

3.It is the case of the petitioners that M/s.Kensoft Infotech Limited (hereinafter referred to as "KENSOFT") has developed application software for the first petitioner company and was providing annual maintenance support to the said software. During the renewal of annual maintenance contract, the said KENSOFT without the knowledge of the first petitioner company has introduced that the software is licensed to the first petitioner company. On objection from the first petitioner, the said clause was removed in the annual maintenance contract. Therefore, the relationship of the KENSOFT and the first petitioner was in respect of the development of software on work on hire basis. Due to frequent disruption of this software, the first petitioner company has decided to migrate to a more efficient integrated application software developed by Sundaram Infotech Solutions. The KENSOFT has filed C.S.No.270/2009 before this Court seeking an order of injunction on the basis that KENSOFT is the owner of the software namely, KEN-HFS. In the meantime, the first petitioner company filed an application under Section 8 of the Arbitration and Conciliation Act and sought for Arbitration which was allowed on 16.09.2009 and that was challenged by KENSOFT, the fifth respondent before the Division Bench of this Court which has passed an order to the effect that arbitration will not lie remitted back to the learned single Judge.

4.The first petitioner company has filed a Special Leave Petition before the Hon'ble Supreme Court in SLP (Civil) No.13085 to 13087 of 2010 and the fifth respondent has entered appearance and the matter is pending. In the meantime, it is stated that certain persons from the third respondent police station have visited the premises of Sundaram Infotech Solutions on 29.01.2011 and served the impugned notices, dated 24.01.2011 challenged in W.P.Nos.2513 and 2514 of 2011. The said notices were issued under Section 91 Criminal Procedure Code seeking certain documents. On coming to know about the said impugned notices the petitioners have realised that the fifth respondent KENSOFT has filed a criminal complaint before the third respondent in Crime No.30 of 2010 on the same subject matter for an alleged offence under Sections 406 and 420 IPC besides the provisions of the Information Technology Act and Copyright Act. Immediately thereafter, the petitioners have explained to the third respondent about the pendency of the civil suit in the High Court of Madras and requested the third respondent to hand over a copy of the First Information Report stated to have been registered at the instance of the fifth respondent. There was a serious dispute regarding the jurisdiction of Mumbai Police to investigate the matter especially when the fifth respondent himself has filed a suit before the Madras High Court in respect of the same subject claiming ownership over the software and time was sought for consultation, however, the third

respondent again visited the office of the first petitioner company on 30.01.2011. According to the petitioners, the third respondent has no jurisdiction not only to register the First Information Report, the petitioners attributed against the fifth respondent that filing of complaint is malicious act with an intention of extracting money from the petitioner company and it is vexatious and therefore, directing the petitioners to produce the documents and other softwares are in violation of Articles 20 and 21 of the Constitution of India.

5.The orders are challenged on various grounds including that the notices issued under Section 91 Criminal Procedure Code are unconstitutional and ultra vires the provisions of Criminal Procedure Code since it amounts to self-incrimination by compulsion which is not permissible by virtue of Article 20(3) of the Constitution of India in view of catena of decisions of the Hon'ble Supreme Court; that it is unconstitutional making invasion to the petitioners' fundamental right by the third respondent; that though a criminal complaint is technically maintainable, the third respondent ought to have appreciated that the fifth respondent complainant himself has claimed ownership in respect of the software already sold in favour of the first petitioner which is a subject matter of dispute in a civil dispute filed by the fifth respondent in the Madras High Court; that for the first information report filed by the fifth respondent and registered under the third respondent police, there is no cause of action and no criminal case has been made out and cause of action has never arisen within the jurisdiction of the third and fourth respondents; that the fifth respondent has approached the Madras High Court and filed C.S.No.270 of 2009 specifically stating that the cause of action arose within the jurisdiction of the Madras High Court cannot maintain any complaint in respect of the same matter before the third respondent; that even on merit, the entire dispute arose by the illegal conduct of the fifth respondent and the filing of the complaint before the third respondent is an abuse of Criminal Procedure Code; that the impugned notice and the first information report are arbitrary and illegal hit by Article 14 of the Constitution of India; that the first information report does not even remotely show that the cause of action arose within the Maharashtra State; that the first information report, on the face of it, has not made out any case for the third respondent police to investigate, since no cause of action arose within its jurisdiction and no commission of offence has been made out by disclosing the same in the impugned first information report especially, the commission of Cyber crime; that the filing of first information report itself is only due to the mala fide attitude of the fifth respondent; that the fifth respondent has wilfully misrepresented and suppressed the material facts; that the third and fourth respondents while demanding to collect certain vital commercial information pertaining to the petitioners business have kept the petitioners in dark as to whether the petitioners are treated as accused or as witnesses; that apart from the fact that the first information report does not make out a criminal offence warranting investigation by the third respondent; that no offence made out under Section 63 of the Copyright Act as the very same claim of the fifth respondent in respect of the ownership of software is seriously in dispute in the civil suit; that the fifth respondent admitted in his statement that the petitioners proposed to migrate to another software and therefore, misrepresentation does not arise; that no offence has been made out under the Information Technology Act, 2000 by the de-facto complainant, apart from various other grounds.

6.In the counter affidavit filed by the fourth respondent both on his behalf and on behalf of the respondents 1 to 3, it is stated that the filing of the writ petitions are misconceived and abuse of

process of law and are not maintainable and hence liable to be dismissed. It is stated that based on the complaint given by the fifth respondent First Information Report has been registered by the Senior Inspector of Police, Cyber Police Station, Crime Branch, CID., Mumbai and investigation was taken up and at this stage, the writ petitions have been filed. It is stated that the remedy for the petitioners is lie only before the High Court of Mumbai and this Court has no jurisdiction to entertain the writ petitions.

7.The summons issued under Section 91 Criminal Procedure Code which are in the course of investigation and the purpose of filing of the writ petitions is to scuttle the investigation process. It is further stated that even otherwise the remedy of the petitioners is only before the Criminal Court and cannot invoke Article 226 of the Constitution of India. It is also stated that the petitioners cannot challenge the First Information Report when the investigation is still pending. It is stated that the petitioners having agreed to co-operate with the enquiry have stealthily filed the present writ petitions and obtained interim orders and the interim orders affect the investigation against the purported criminal offenders. Inasmuch as the writ petitions have been filed before this Court in respect of criminal proceedings initiated outside the territorial jurisdiction of this Court, the writ petitions are to be dismissed in limine for want of jurisdiction and maintainability. It is stated that First Information Report is only a piece of information on the basis of which, investigation is set in motion as per Sections 154 to 156 Criminal Procedure Code and therefore, it cannot be quashed as the complainant has made out a prima facie case since a serious and cognizable offence has been made out. The summons issued under Section 160 read with Section 91 Criminal Procedure Code are only normal process of investigation. The petitioners remedy is only under Section 482 Criminal Procedure Code, if they are aggrieved. It is stated that the first respondent Government of Tamil Nadu is not a necessary party and added only for the purpose of subverting the question of jurisdiction. The complaint given by the fifth respondent before the Additional Commissioner of Police, Crime, Mumbai Police was to the effect that the fifth respondent being the Director of Kensoft Infotech Limited having address at D-4247, 8, Oberoi Garden Estate, Chandivali Farm Road, Andheri(E), Mumbai-72 and one of the softwares of Kensoft, is Kensoft Housing Finance Software "KEN-HFS" and registered with the Registrar, Copyrights Government of India and the said software said to have been developed by the fifth respondent company since 1992 in Mumbai and from 1994 onwards, the same was given for licensed usage to various companies across the country and all Intellectual Property Right (IPR) and source code of the software are in Mumbai. The current version 8.x of the said KEN-HFS software was released for licensed use to the first petitioner company and various agreements, including annual maintenance agreements between the fifth respondent and the first petitioner company were signed in 2005, 2006, 2007 and 2008 and all agreements clearly mentioned that the copy right, IPR belonging to the complainant, namely the fifth respondent and the software is to be used exclusively by the petitioners should not be given to any third party and no reverse engineering or alteration should be made to the software by the petitioners. It is stated that as per the complaint of the fifth respondent the petitioners wrote a communication admitting that the KEN-HFS software is in their licensed usage. It is stated that in the fifth respondent's complaint before the third respondent, it is complained that the petitioners on many occasions given assurance to the fifth respondent that IPR and copy right of the complainant will not be violated by the petitioners and third party access was prohibited by the contract. In spite of the said contract, it is stated that the petitioners have handed over software to the third party and

having full knowledge of this fact, the petitioners have entered into agreements with the complainant that the software would not be handed over to any third party and therefore, tampering of code and hacking of the software were committed. It is stated that the technical reports from Indian Institute of Technology, IIT, Bombay has established the violation as per its report. It is stated that the petitioners have paid large amount of money to the third party namely, Sundaram Infotech Solutions. The allegations in the First Information Report are against Ms.V.Janaki, Head of Systems, Sundaram B.N.P Home Finance Limited (2)Mr.N.Palany, M.D., Sundaram B.N.P Home Finance Limited (3) Mr.G.Sundararajan, Vice President, Sundaram B.N.P Home Finance Limited, (4)Mr.Sacharya, Director, Sundaram B.N.P Home Finance Limited and (5) Mr.K.Swaminathan and others.

8.It is stated that on a perusal of evidence and during preliminary investigation, it was revealed that the copy right in the software as per the petitioners own admission in November 2008 and September 2008 lie with the 5th respondent; that the petitioners have been handed over complainant's software, in trust which was transferred, to a third party Sundaram Infotech Solutions; that while in possession of the third party, the software was tampered and the software scheme hacked into; that when offences were discovered, the petitioners resorted to various acts of dishonesty and fraud to cover up their acts and various criminal offences; that evidence of offences have been submitted and verified by the fourth respondent; that reports from the IRCC (Industrial Research and Consultancy Centre and Intellectual Property Cell, IIT Bombay) and the Institute of Intellectual Property Studies (IIPS Report -reference from NASSCOM), establishing IPR and copyright of Kensoft and the offences committed by the petitioners are on record; that after going by the available facts and evidence, preliminary enquiry was conducted for an offence under Section 406, 420 and 34 IPC, read with Section 43 (b)(i)(j) read with Sections 66, 65 72(A) of the Information Technology Act read with Sections 63, 63(b) of the Copyright Act and the complaint was registered with the third respondent in Crime No.30 of 2010; that the statements of important witnesses, including those of renowned industrial stalwarts and senior experts were recorded; that the digital evidence produced by the complainant was also taken on record; that the team went with Forensic Tool Kit to collect copies of certain digital evidence of current use of the housing finance software which ensures that back up of any digital record can be taken without disturbing any source data and without causing any damage to the petitioners/usage/user. Therefore, summons were issued under Section 91 Criminal Procedure Code by the Investigating Officer namely, the fourth respondent to the petitioners to produce documents. It is stated that when the fourth respondent has proceeded to investigate at Chennai with the assistance of D-2, Anna Salai Police Station, the petitioners have chosen to challenge the criminal complaint without furnishing any materials. It is also stated that afterwards search warrant was obtained from the appropriate court namely, the Additional Chief Metropolitan Magistrate, 37th Court Esplanade, Mumbai. It is also stated that suppressing all these facts, interim order has been obtained by the petitioners. It is further stated that the petitioners have made false affidavit suppressing material facts and that the Mumbai Police has jurisdiction to investigate and it is stated that at least part of the offence has been committed by the petitioners in Mumbai and therefore, the Mumbai Police has got jurisdiction since the complainant voluntarily resides and carries on business personally works for gain in Mumbai. It is also stated that under Sections 178 and 179 Criminal Procedure Code, the Mumbai Police alone are competent to register and investigate the complaint.

9.It is stated that there is no coercion from the fourth respondent and it is not correct to state that the copy of the first information report was not shown to the petitioners and it is stated that the complaint was read over and explained in Hindi and English. It is stated that the software has been developed in Mumbai. The Complainant company and complainant are residing at Mumbai. The source code and IPR of the software are in Mumbai. The Copyright registration certificate registered by the Registrar of Copyrights, Government of India, at Mumbai and therefore, any hacking or tampering of software anywhere affects the victim at Mumbai and therefore, the registration of complaint by the Mumbai police is within its jurisdiction and Cyber Crime Police station of Mumbai is having jurisdiction all over Mumbai and not restricted to any beat numbers etc., It is also stated that when the petitioners themselves have admitted that pendency of any civil proceedings in the Madras High Court does not prevent the aggrieved person from launching criminal proceedings they cannot have any grievance. It is also stated that the third respondent has never visited Chennai during the course of investigation and fifth respondent was not present when the fourth respondent went to premises of the petitioners. Hence, it is stated that the filing of the writ petitions is abuse of process of law and any delay in investigation will defeat the very object and if the timely action is not taken, there is every possibility of the evidence being destroyed and will become a farce and therefore, the third respondent has prayed to vacate the interim order already granted by this Court.

10.In the counter affidavit filed by the fifth respondent which is also in the same line of counter affidavit filed by the fourth respondent, it is stated that the writ petitions are not maintainable since no cause of action arose within the jurisdiction of this Court and FIR was registered under the third respondent only after prima facie case was made out about the allegations and the third respondent after registering the FIR under various sections forwarded the same to the Court of competent jurisdiction namely, the Additional Metropolitan Magistrate, Court 37 which is under the jurisdiction of Maharashtra High Court for all purposes under Articles 226 and 227 of the Constitution. It is also stated that the fifth respondent has chosen to file the suit in a place where the defendants is carrying on business as per Section 12 of the Letters Patent and Sections 51,55 and 62 of the Copyright Act. Insofar as the filing of the FIR and the violations of the provisions of Information Technology Act are concerned, the fifth respondent is entitled to file such complaint before the third and fourth respondents before whom the investigation is under progress.

11.A bare reading of the contents of the First Information Report shows that the third respondent police is the competent authority especially when Sections 78, 80 and 81 make it very clear that the provisions of Information Technology Act, 2000 will override the provisions of Code of Criminal Procedure. While reiterating that the Kensoft Infotech Limited is a software development company and that has developed finance software for use of housing companies and home loans business, the fifth respondent company states that it is an ISO 9001:2000 certified company with certification from BVQI and ANAB (ANSI-ASQ) National Accreditation Board of USA. The company has also been an Oracle partner for over 13 years and one of their major software that they developed is KEN-HFS and that was licensed in India to various companies since 1994, including the Bank of India, GIC Housing Finance, ICICI Bank etc., and also to Government of Andhra Pradesh, Andhra Pradesh State Financial Corporation, Economic Development Corporation Goa etc. In addition to that various software have also been used by the Reliance Petro Chemicals, Air India, Afro Asian Games, Government of Andhra Pradesh etc., It is stated that the petitioners have violated by

tampering with the software, schema, source code of the fifth respondent resulting in tremendous loss to the fifth respondent. It is also stated that the petitioners have themselves assured the fifth respondent that the IPR will be protected by them. However, after admitting the same in November 2008 and in December 2008 after perpetuating the fraud the petitioners have falsely claimed copyright of the software and after violations were discovered the infringing code found on petitioners' server to cover up their illegal activities. It is stated that there is no disruption in the software and letters written by the second and fourth petitioners on behalf of the company would clearly indicate that they have satisfied with the work of the fifth respondent. It is also stated that they exposed to and colluded with the third parties who control hacking and tampering, copying and offences were committed and reverse engineered the software provided by the fifth respondent company and hacked the software schema source code committing violations of the provisions of the Information Technology Act, 2000. While it is true that the fifth respondent has filed a suit in C.S.No.270 of 2009 before the High Court of Madras, seeking various reliefs against the petitioners and the third party are not party to the arbitration and in spite of it an application was made for the purpose of referring to arbitration under Section 8 of the Act and that has been rejected in the appeal in O.S.A.Nos.431 to 433 of 2009. It is true that against the order in the abovesaid appeals, S.L.P has been filed by the petitioners and no stay has been granted by the Hon'ble Supreme Court. It is also stated that the petitioners have violated the Copyright of the fifth respondent and the illegal acts done by the petitioners have been established in the technical report of the Indian Institute of Technology, Computer Science and Engineering Department, IIT, Bombay, apart from the report of Dr.N.L.Sarda, who is an independent and eminent expert of international repute and other reports of experts.

12.According to the fifth respondent, a perusal of the First Information Report indicates the gross violations committed by the petitioners and there is no abuse of process of law and the First Information Report cannot be quashed as a matter of course which has been well settled to the effect that even if an iota of fact is available in the First Information Report that is sufficient for investigation to continue.

13.Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioners would submit that at the first instance that on the basis of the contents of the First Information Report, no case has been made out against the petitioners and therefore, the First Information Report is liable to be quashed. It is his further submission that the impugned First Information Report is tainted with mala fide. It is his further submission that the investigation sought to be done by the third respondent police in Mumbai is in violation of Article 20(3) of the Constitution. In summoning the petitioners to produce the documents being an evidence against them is in violation of the constitutional guarantee as stated above. It is his further submission that the entire issue revolves on one fact namely as to whether the petitioners or the fifth respondent is the owner of the software of KEN-HFS in respect of claiming ownership over the said software. The fifth respondent has voluntarily filed a civil suit on the original side of the Madras High Court for a declaration to that effect. In that suit, the fifth respondent having stated that the cause of action for the said suit arose wholly within the jurisdiction of the Madras High Court cannot give a complaint to the third respondent in Mumbai. Therefore, according to the learned Senior Counsel, the conduct of the fifth respondent in giving complaint because the petitioner is at Mumbai is only a method for the purpose of extracting money

from the petitioners and therefore, according to the learned Senior counsel, it is an abuse of process of law. It is also his submission that as per the provisions of the Criminal Procedure Code especially Sections 177 and 179, the complainant must mention the consequences of the conduct of the complaint and as to whether it has occurred in Mumbai. In the absence of such contents in the FIR which is impugned in these writ petitions, no investigation is possible by the Mumbai police. It is also his submission that even under the Information Technology Act, the fifth respondent has not made out a prima facie case against the petitioners for investigation at Mumbai, when he was voluntarily approached the Madras High Court for declaration of his right either in the Trade Mark or under the Information Technology Act in respect of the software. When prima facie there is no offence made out, this Court exercising jurisdiction under Article 226 of the Constitution of India, especially after the amendment by which Article 226 (2) of the Constitution was inserted the part of cause of action having arisen in respect of the alleged criminal conduct at Madras, the complaint given in Mumbai police namely, under the third respondent has no jurisdiction and this Court has jurisdiction. He also would rely upon the judgments reported in AIR 1986 CrL.L.J 522 AP.H.C (Muppala Ranganayakamma Vs.Smt.K.Ramalakshmi and others) apart from the decision reported in AIR 1965 SC 1319 (Mohd.Sulaiman Vs.Mohd.Ayub and another), and in The State of Gujarat Vs. Jaswantial Nathalal reported in AIR 1967 SC 700, to substantiate his contention.

14.In respect of cases relating to the summoning of the petitioners to produce documents, it is the case of the learned Senior Counsel that it amounts to compelling the petitioners to give evidence against themselves which is not permissible in law. For the purpose of substantiating his contention about the jurisdiction of the Mumbai police to investigate, learned Senior Counsel would rely upon various judgments namely, in AIR 1998 SC 128 (Pepsi Foods Ltd., and another Vs.Special Judicial Magistrate and others), 2010 3 LW 481 (Rajendran and another Vs.R.K.Misra and others), 1992 Supp (1) SCC 335 (State of Haryana and others Vs.Bhajan Lal and others). That apart, to prove malice in law, he would rely upon a judgment of the Hon'ble Supreme Court reported in AIR 2008 SC 247 (All Cargo Movers (I) Pvt., Ltd., and others Vs.Dhanesh Badarmal Jain and another). It is his submission that the entire issue is basically of civil nature and therefore, the complaint is not maintainable. When the impugned First Information Report does not made out a case, the third respondent cannot be permitted to explain the lacuna in the counter. Such explanation by the third respondent police can only be treated as mala fide. For which, he would rely upon a judgment of the Hon'ble Apex Court reported in (2000)7 SCC 640 (Navinchandra N.Majithia Vs. State of Maharashtra and others). Not only for the competent Criminal Court in taking cognizance of offence but also the investigating authority to proceed with the investigation, there must be jurisdiction on the part of the investigating authority. The incidents which are alleged to have happened taken to be the cause of action for the criminal complaint have admittedly happened much prior to the filing of the suit and knowing that a suit was also already pending, the fifth respondent has chosen to give the complaint especially when the ownership is in dispute and therefore, it has to be taken that the complainant has not made out a prima facie case for the purpose of investigation.

15.Mr.J.Raja Kalifulla, learned counsel for the respondents 2 to 4 would raise the question of maintainability and jurisdiction of this Court to entertain the writ petitions under Article 226 of the Constitution of India. It is basically his submission that when the fifth respondent has given a complaint against the petitioners, it is the duty of the third respondent police when it is found that

the cause of action for the crime has been taken place within the jurisdiction of the Mumbai police to proceed with the investigation in accordance with the provisions of the Criminal Procedure Code. It is not as if the petitioners have been considered as accused while summons are issued to produce the documents. It is his submission that the petitioners have not chosen to state as to how this Court has got jurisdiction to entertain the writ petitions under Article 226 of the Constitution of India. He would rely upon the Bhajan Lal's case reported in 1992 Supp (1) SCC 335 to substantiate his contention that jurisdictional issue has to be decided especially in criminal investigation. He has also stated by relying upon the judgment of the Hon'ble Supreme Court (2002) 1 SCC 567 (Union of India and others Vs. Adani Exports Ltd., and another) that when a complaint is made, it is the duty of the Mumbai police to investigate before either enclosing complaint or taking further action by filing report before the Jurisdictional Magistrate.

16. Mr. Rajakalifulla, learned counsel would also submit that it is after investigation, the third respondent may even drop all further proceedings against the petitioners and it is not known as to how the petitioners have presumed as if after investigation necessarily a report will be filed before the Judicial Magistrate who would take cognizance of offence. It is his case that unless and until the jurisdictional Magistrate takes cognizance of the offence, the petitioner cannot presume as an accused and the investigation is in a preliminary stage and therefore, no one can interfere with the investigation at this stage. He would rely upon latest judgment on this issue including 1994 (4) SCC 711 (Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others), 2006 3 SCC 658 (Mosaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd., and others), 2000 (7) SCC 640 (Navinchandra N. Majithia Vs. State of Maharashtra and others), 2008 (5) SCC 115 (Mahavir Prasad Gupta and another Vs. State of National Capital Territory of Delhi and others), 2002 CrL.J. 706 (C. Krishnakumar Menon Vs. M/s. Neoteric Informatique Pvt., Ltd., and another), 2007 (5) SCC 786 (Asit Bhattacharjee Vs. Hanuman Prasad Ojha and others), and (2011) 1 SCC 74 (Iridium India Telecom Limited Vs. Motorola Incorporated and others) and therefore, according to the learned counsel, the petitioners apprehension is totally misconceived.

17. It is his submission that when once the fifth respondent who has formulated the software at Mumbai which is the subject matter of contract between the fifth respondent and the petitioners, when it is the complaint of the fifth respondent that the petitioners against the contract have started misusing the software by transferring the same to the others which is an offence under the Information Technology Act and therefore, the Software having started in Mumbai, the Mumbai Police has jurisdiction to investigate and it cannot be stated that the third respondent Mumbai Police station has no jurisdiction at all.

18. It is the submission of the learned counsel for the fifth respondent who also would rely upon the judgment of the Bajanlal's case and submit that mere filing of a civil suit on the original side of the Madras High Court by the fifth respondent does not bar the fifth respondent in giving a complaint against the petitioners, if there is violation of the Information Technology Act or various other provisions of the Indian Penal Code. According to her, they are parallel proceedings, the ownership in respect of the software is different from misusing of software system which is an offence under the provisions of Information Technology Act. According to her, there is absolutely no mala fide in the sense that the coding system is situated in Mumbai. Mere statement by the fifth respondent in

the suit filed in Madras High Court, the jurisdiction lies with the Madras High Court does not in any way take away the powers of the third respondent when a part of the offence has been committed within the jurisdiction of the third respondent in respect of which the fifth respondent has given complaint.

19.It is her submission that the conduct of the petitioners would amount to tampering of the software which is an offence under Section 65 of the Information Technology Act. According to her, under the Information Technology Act, tampering can be done at any place but if such tampering resulting in consequence at Mumbai wherein the fifth respondent is residing, the fifth respondent is very much entitled to give complaint in the third respondent police at Mumbai. She would also rely upon a judgment of the Hon'ble Supreme Court reported in AIR 1999 SC 3536 (Satvinder Kaur Vs. State (Govt. of NCT of Delhi) and another). She has also submitted that the conduct of the petitioners would show that not only there is violation of the provisions of the Information Technology Act but there is an offence committed under the Copyright Act also and therefore, according to her, by relying upon the Information Technology Act, especially Sections 75, 78 and 80, the Mumbai Police is competent to investigate on the complaint.

20.I have considered the submissions made by the respective parties and given my anxious thought to the issue involved in these writ petitions.

21.Since the question of jurisdiction of this Court to entertain the writ petitions in respect of complaint filed before the third respondent at Mumbai has been raised, it is relevant to consider the same at first. After the Constitution of 42nd Amendment Act, 1976 which came into effect from 01.02.1977, the power of the High Courts to issue writs, directions or orders are exercisable by the High Courts within whose jurisdiction cause of action wholly or in part arise, even though, the seat of such Government is not within the territory of that High Court. It is useful to extract Article 226 (1) and (2), which is as follows:

"226.Power of High Courts to issue certain writs:-(1)Notwithstanding anything in article 32, every High Court shall have powers, through out the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose].

(2)The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories]".

Therefore, if a part of cause of action in respect of the complaint given by the fifth respondent to the third respondent has arisen in the territory within the jurisdiction of this Court, the Constitution enables this Court to entertain a writ petition. For that, it is relevant to refer the complaint given by the fifth respondent which is the basis for registering of FIR by the third respondent. While the complainant which is a company having registered office at Mumbai, it is not disputed that the accused against whom the complaint has been given who are the petitioners are residing within the territorial limits of this Court. The gist of the complaint shows that the fifth respondent is the owner of KEN-HFS with its copy right and intellectual property right as the agreement was entered with the accused entrusting them to the licenced user and against the agreement, the accused have handed over to a third party. While it was tampered and altered, foreign external programmes were inserted in KEN-HFS by the accused in collusion. Therefore, the allegation against the accused is the conspiracy to misappropriate intellectual property right of KEN-HFS for the wrongful gain. Therefore, the offence stated to have been disclosed as per the complaint was under Sections 406, 420 and 34 IPC. In addition to that, there is accusation of criminal breach of trust, since it is alleged that the fourth accused has exposed the KEN-HFS software to third party. Prima facie, as it is seen in the complaint of the fifth respondent that the accused who are the petitioners are residing in Chennai have committed the conduct in respect of the software prepared at Mumbai and such conduct is stated to have been committed in Chennai. In addition to that, the complaint relates to infringement of copyright.

22. Admittedly, the fifth respondent has filed a suit in the High Court of Madras for injunction in respect of its ownership on the KEN-SOFT software. In such circumstances, it cannot be held that this Court cannot entertain a writ petition challenging the complaint and First Information Report. In the suit, admittedly, the fifth respondent has stated that the cause of action in the suit arose at Madras. In the plaint filed in respect of the suit filed for the relief claimed before the High Court, wherein it is specifically stated that "the defendants have committed acts of torts and misfeasance within the jurisdiction of this Court". In the context of such stand having been taken by the fifth respondent, certainly it is not open to the fourth respondent to say that this Court has no jurisdiction to entertain the writ petition.

23. In W.P.No.2513 of 2011, the petitioners have chosen to state as follows:

"10.....Since the very jurisdiction of Mumbai Police to investigate in respect of offences alleged to have been committed in Chennai was in serious doubt and the very legality in the action of the third respondent in compelling the petitioners herein to produced documents and electronic records in a criminal case filed against them being very doubtful, the petitioners requested for time to consult their lawyers and accordingly sought for time".

24. In Union of India and others Vs. Adani Exports Ltd., and another reported in (2002) 1 SCC 567 heavily relied upon by the learned counsel for the respondents 2 to 4 while considering the implication of Article 226 (2) of the Constitution of India, the Hon'ble Apex Court has held that the High Court must be satisfied from the facts pleaded in support of cause of action and to satisfy whether it would empower the Court to decide the disputes even if part of it has arisen with its

jurisdiction in the following paragraph:

"17.It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad".

25.On the pleadings in the affidavit filed in support of the writ petitions and also on a cursory glance of the complaint made by the fifth respondent, there is no doubt that at least a part of cause of action has arisen within the territorial jurisdiction of this Court wherein not only the petitioners being the parties to the agreement are residing, the agreement was entered and the act of the petitioners complained of, by the fifth respondent has taken place within the jurisdiction of this Court and therefore, by applying the yardstick prescribed by the Hon'ble Apex Court, in my considered view, it cannot be held that this Court has no territorial jurisdiction to entertain the writ petition.

26.To explain about the integral part of the cause of action in the context of Article 226 of the Constitution of India, it was held by the Hon'ble Supreme Court in Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others reported in 1994 (4) SCC 711 relied upon by the learned counsel for the respondents 2 to 4 that to decide about the territorial jurisdiction, the Court must take all the facts pleaded in support of the cause of action without making enquiry about the correctness or otherwise of the said facts by holding that cause of action is the bundle of facts which has to be proved, if traversed. The relevant portion of the judgment is as follows:

"6.It is well settled that the expression cause of action means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour v. Partab Singh¹ Lord Watson said:

... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. Therefore, in determining the objection of lack of

territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court".

27.However, on the facts of that case wherein the cause of action was said to be proved only on the ground that the advertisement was read at Calcutta, offers made from Calcutta, representations made from Calcutta, while the advertisement itself shows that it must be submitted at New Delhi, would be scrutinized at New Delhi and final decision regarding the award of contract would be taken at New Delhi and therefore, the Hon'ble Apex Court held that the Calcutta High Court cannot be held to have territorial jurisdiction on the basis of constituting facts forming an integral part of cause of action.

28.On the factual matrix of the case and taking note of the fact that the alleged breach of agreement resulting in the constitution of offence has been made at Chennai and therefore, there is no difficulty to conclude that the facts forming integral part of the cause of action are within the jurisdiction of this Court.

29.Again reliance heavily placed by the learned counsel for the respondents 2 to 4 on the judgment of the Hon'ble Apex Court in Mosaraf Hossain Khan Vs.Bhagheeratha Engg. Ltd., and others reported in (2006) 3 SCC 658 is not applicable to the facts of the present case. That was a case where the appellant before the Hon'ble Apex Court entered a contract with the first respondent company for supply of stone chips for putting up construction of a major bridge in the State of West Bengal as an ongoing project of the National Highways Authority of India. It was for executing the work, the first respondent company, an engineering contractor of the National Highways Authority has handed over few of the post dated cheques to the appellant for securing payment for supply of stone chips. The cheques presented in Suri Branch, West Bengal was dishonored and after the demand notice was issued by the appellant to the first respondent in respect of one of the cheques payment was made by the first respondent from Ernakulam, State of Kerala, where the first respondent company was having its registered office when a complaint under section 138 of the Negotiable Instruments Act was filed by the appellant before the Chief Judicial Magistrate, Birbhum at Suri, West Bengal and the Chief Judicial Magistrate has taken cognisable of offence issued summons on the first respondent. The first respondent has filed a writ petition in the High Court of Kerala at Ernakulam challenging the proceedings of the Chief Judicial Magistrate at West Bengal on the ground that one of the payments in respect of the dishonoured cheque was made from Ernakulam and therefore, a part of cause of action has arisen within the territorial jurisdiction of the

Kerala High Court. When the Kerala High Court granted interim stay, the Honble Apex Court has set aside the order of the Kerala High Court on the basis that on a bare perusal of the complaint/petition it would show that according to the complainant, the entire cause of action arose within the jurisdiction of Suri which was unquestionable. Therefore, the arguments advanced by the learned counsel for the respondents 2 to 4 that this Court is not having territorial jurisdiction to entertain the writ petitions cannot be countenanced.

30.The Hon'ble Apex Court in Ramesh Chandra Mehta, Vs. The State of West Bengal reported in AIR 1970 SC 940 has also held as follows:

"Normally a person stand the character of an accused when a First Information Report is lodged against him in respect of an offence before an Officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial of the offence".

31.The term "accused" was considered to have a meaning of wider connotation which has to be construed in the context in which it is deployed. It may even denote a person who was arrested or a person simply accused or a person who is facing the trial. In this regard as held by the Hon'ble Apex Court in Directorate of Enforcement Vs. Deepak Mahajan and another reported in (1994) 3 SCC 440 wherein while considering the provisions of the then existing Foreign Exchange Regulation Act, it was held as follows:

"102.From the foregoing discussion, it is clear that the word accused or accused person is used only in a generic sense in Section 167(1) and (2) denoting the person whose liberty is actually restrained on his arrest by a competent authority on well-founded information or formal accusation or indictment. Therefore, the word accused limited to the scope of Section 167(1) and (2) particularly in the light of Explanation to Section 273 of the Code includes any person arrested . The inevitable consequence that follows is that any person is arrested occurring in the first limb of Section 167(1) of the Code takes within its ambit every person arrested under Section 35 of FERA or Section 104 of the Customs Act also as the case may be and the person arrested can be detained by the Magistrate in exercise of his power under Section 167(2) of the Code. In other words, the person arrested under FERA or Customs Act is assimilated with the characteristics of an accused within the range of Section 167(1) and as such liable to be detained under Section 167(2) by a Magistrate when produced before him".

32.The observation of the Hon'ble Apex Court in Ramesh Chandra Mehta's case referred to above came to be affirmed by the Hon'ble Apex Court also in the light of the Article 20(3) of the Constitution in Ramanlal Bhogilal Shah and another Vs. D.K.Guha and others reported in (1973) 1 SCC 696. Again that was affirmed in Nandini and another Vs. P.L.Dani and another reported in (1978) 2 SCC 424 by the Hon'ble Apex Court by referring to Ramesh Chandra Mehta's case by extracting the paragraph in the said judgment which is as follows:

"39.In R.C.Mehta also the Court observed: (SCR p. 472) Normally a person stands in the character of an accused when a first information report is lodged against him in respect of an offence before an officer competent to investigate it, or when a complaint is made relating to the commission of an offence before a Magistrate competent to try or send to another Magistrate for trial of the offence. Where a Customs Officer arrests a person and informs that person of the grounds of his arrest, [which he is bound to do under Article 22(1) of the Constitution] for the purpose of holding an enquiry into the infringement of the provisions of the Sea Customs Act which he has reason to believe has taken place, there is no formal accusation of an offence. In the case of an offence by infringement of the Sea Customs Act and punishable at the trial before a Magistrate there is an accusation when a complaint is lodged by an officer competent in that behalf before the Magistrate.

33.The next point which also relates to the jurisdiction of this Court is in respect of the powers of the High Court either under Article 226 of the India or under Section 482 Criminal Procedure Code to quash the First Information Report. Before that, it is relevant to point out the plea raised by Mr.Rajakalifulla, learned counsel for the respondents 2 to 4 that the petitioners having summoned only to produce some records for the purpose of preliminary investigation and the petitioners cannot presume themselves to be the accused.

34.The term 'complaint' defined in Section 2(d) of the Criminal Procedure Code, 1973 which is as follows:

"2(d)"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report".

No doubt, means it is an allegation but it is made before the Magistrate.

35.Admittedly, the fifth respondent has given a complaint to the third respondent which was registered as First Information Report challenged by the petitioners in W.P.No.2922 of 2011. The offence alleged to have been committed by the petitioners are punishable under Sections 406, 420, 34 IPC read/with 43(b)(i)(j), 66, 65, 72 (a) of the Information Technology Act read/with Sections 63, 63(b) of the Copyright Act. Based on that, the third respondent has proceeded for investigation. In course of investigation, the third respondent has directed the petitioners to produce various electronic records and documents as per Section 91 Criminal Procedure Code on 24.01.2011 which are challenged in W.P.Nos.2513 and 2514 of 2011 and the First Information Report was registered under Section 154(1) Criminal Procedure Code by the third respondent.

36.Section 154 (1) of Criminal Procedure Code reads as follows:

"154.Information in cognizable cases:1)Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the

informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf".

The petitioners were arrayed as accused for the offence alleged to have committed as per the statement annexed with the First Information Report.

37.Pursuant to the said information which is registered, the third respondent is to proceed with the investigation and thereafter, file a report before the jurisdictional Magistrate to take cognizance of the offence alleged to have been committed. Till that time, the investigation process is on. It is true that based on the oral or written information, the investigation may be in the form of a preliminary enquiry to find out as to whether there is any substance in the First Information Report lodged. But the investigation whether it is in the preliminary stage or otherwise such investigation may be closed when the information has not been substantiated. But the question is whether at any stage of investigation, it could be said that the person against whom complaint has been made or information has been given, cannot be treated as an accused. The contention made by the learned counsel for the respondents 2 to 4 that the entire stage is in preliminary and the third respondent may drop the proceedings, does not mean that the power of this Court under Article 226 of the Constitution of India or under Section 482 of Criminal Procedure Code in interfering with the First Information Report, is taken away for that reason. Therefore, this aspect of the contention made by the learned counsel for the respondents 2 to 4 that the petitioners need not apprehend to be the accused, in my considered view, is not proper. In any event, law is well settled that in respect of the powers of this Court to interfere at the First Information Report stage, it is in the rarest of rare cases only such power can be exercised for the reason that free investigation cannot be hampered by interference.

38.Now coming to the power of this Court in respect of quashing First Information Report, the Hon'ble Supreme Court in State of Haryana and others Vs.Bhajan Lal and others reported in 1992 Supp (1) SCC 335, on analysing the provisions of the Criminal Procedure Code, especially relating to the registering of First Information Report, conducting of investigation, including the powers of the High Court to interfere with the First Information Report either under Section 482 Criminal Procedure Code or under Article 226 of the Constitution of India has issued broad guidelines which are as follows:

"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".

39. Therefore, for the purpose of considering as to whether the First Information Report could be directed to be proceeded with, it is the content of the statement given in the First Information Report that has to be considered without going into the truthfulness or otherwise of such contents, to find out as to whether there is any substance or material for the police to proceed with. As it was held by the Hon'ble Apex Court in Mahavir Prasad Gupta and another Vs. State of National Capital Territory of Delhi and others reported in 2008 (5) SCC 115 by referring to the judgment in Bajanlal's case, a note of caution was added to the fact that the power of quashing the criminal proceedings should be exercised very sparingly and that circumspection that too in the rarest of rare cases. It was clarified as follows:

"Undoubtedly there could be interference in rarest of rare cases. However, one such case would be when the complaint itself does not disclose any offence. In this case, as set out hereinabove, the complaint merely pointed out that the goods had been entrusted to the petitioners and that the same, even though accepted and even though lorry receipt had been issued, were not delivered and were withheld. On those facts the police had to inquire whether there was any criminal breach of trust and forgery as claimed. On these facts it could not be said that the police should not have registered an FIR and/or to make an inquiry".

40.The difference between the cause of action for entertaining the writ petition under Article 226(2) of the Constitution of India and a charge of criminal offence has been distinguished in the latest judgment of the Hon'ble Apex Court in Asit Bhattacharjee Vs.Hanuman Prasad Ojha and others reported in 2007 (5) SCC 786 in the following terms:

"23.The necessary ingredients for proving a criminal offence must exist in a complaint petition. Such ingredients of offence must be referable to the places where the cause of action in regard to commission of offence has arisen. A cause of action as understood in its ordinary parlance may be relevant for exercise of jurisdiction under clause (2) of Article 226 of the Constitution of India but its definition *stricto sensu* may not be applicable for the purpose of bringing home a charge of criminal offence. The application filed by the appellant under Section 156(3) of the Code of Criminal Procedure disclosed commission of a large number of offences. The fact that major part of the offences took place outside the jurisdiction of the Chief Metropolitan Magistrate, Calcutta is not in dispute. But, even if a part of the offence committed by the respondents related to the appellant Company was committed within the jurisdiction of the said court, the High Court of Allahabad should not have interfered in the matter."

41.In the latest judgment of the Hon'ble Apex Court in Iridium India Telecom Limited Vs.Motorola Incorporated and others reported in 2011 (1) SCC 74 while dealing with the corporate offences, the decision of the Hon'ble Supreme Court in Bajanlal's case has been clarified holding that in the rarest of rare cases only the power has to be exercised *ex debito justitiae* and such inherent power cannot be stifle legitimate prosecution. The Hon'ble Supreme Court has held as follows:

"76.As noticed earlier, both the appellants and the respondents have much to say in support of their respective viewpoints. Which of the views is ultimately to be accepted, could only be decided when the parties have had the opportunities to place the entire materials before the Court. This Court has repeatedly held that power to quash proceedings at the initial stage has to be exercised sparingly with circumspection and in the rarest of rare cases. The power is to be exercised *ex debito justitiae*. Such power can be exercised where a criminal proceeding is manifestly attended with *mala fides* and have been instituted maliciously with ulterior motive. This inherent power ought not to be exercised to stifle a legitimate prosecution.

77.In the present case, the parties are yet to place on the record the entire material in support of their claims. The issues involved are of considerable importance to the parties in particular, and the world of trade and commerce in general. In such circumstances, in our opinion, the High Court ought to have refrained from indulging in detailed analysis of very complicated commercial documents and reaching any definite conclusions".

42.Accordingly, on the face value of the complaint a prima facie offence must be made out, the materials accompanying First Information Report should disclose the cognizable offence justifying investigation, the uncontroverted allegations in the First Information Report must disclose commission of any offence and even if the allegation constitutes only a non-cognizable offence, there can be no investigation except on the order of the Judicial Magistrate that the complaint must be probable for a prudent person to reach a conclusion, that there should not be any bar in any provision of the Code and it should not be manifestly mala fide with a malicious intention or ulterior motive.

43.Now coming to the impugned First Information Report which is based on the statement given by the fifth respondent in the form of complaint, it is seen that the fifth respondent claiming himself to be the owner of the KEN-HFS software, registered with the Registrar Copyrights, Government of India stated to have been prepared at the Mumbai since 1992 completed in 1994. It is relevant to point out that it is in respect of that software ownership, the fifth respondent has filed a suit on the original side of the High Court of Madras stating that Chennai is the place of cause of action.

44.Now coming to the contents of the statement attached to the impugned First Information Report, the software prepared by the fifth respondent is stated to have been taken in the CD and loaded on the computers of the customers at Mumbai and outside and it is stated that the service is provided from Mumbai. The software is given to the others including the petitioners only for use without any right over the same. It is specifically stated that the licence to use the software was given to the petitioners Sundaram Home Finance, at 46, Whites Road, Royal Sundaram Building, Chennai for usage to Sundaram Home Finance, their present name being Sundaram BNP Paribas Home Finance Limited and an agreement was made annually from 2005 to 2008. The annual maintenance right lies with the fifth respondent. It is stated that the petitioners have given an undertaking in the agreement that they will not allow any access, duplication, change in software by the third party, nor will any one have its own copyright. The agreement also contained an undertaking from the petitioners being the agreement holders that they would not give the said software directly to anyone and stated that by using the software namely, KEN-HFS version 8.x' software, Sundaram BNP Paribas Home Finance Ltd., have met the business to the extent of crores of rupees being the licensee.

45.It is the specific case of the fifth respondent that there has been misuse of software violating the Copyright in the year 2008 by the petitioners who are alleged to have not even allowed the connectivity for repairing bugs/errors. It is also the specific case of the complainant that in the agreement, dated 05.04.2008, the petitioners have suggested annual maintenance contract only for three months whereas it is normally one year and therefore, it has created a suspicion in the minds

of the complainant, the fifth respondent. It is further stated that since in accordance with annual agreement, Sundaram Company has stopped giving connectivity and backup for repairing errors, it is stated that it was at that time, the complainant was convinced that something doubtful is happening and in spite of the efforts taken, the complainant was unable to access of their server. According to the complainant, it is to cover up the doubtful happening, the petitioners have started maligning the image of the company. In the complaint, it is stated that the Sundaram B.N.P.Paribas Home Finance Limited as per the invoice, dated 31.03.2008 have purchased another software from Sundaram Infotech Solutions stated to be a division of Sundaram Finance Limited for Rs.77,22,000/- and according to the complainant, before purchasing such software from the associate company of the petitioners, they should have informed the complainant and on the other hand, have appreciated the usefulness of the business thereby diverting the attention of the complainant. It is specifically stated that when the complainant demanded physical access of the server on which KEN-HFS version 8.x' was loaded and having agreed, the Sundaram B.N.P.Paribas Home Finance Limited have denied such access. But at the same time, the said software was kept on the server in the building of Sundaram Infotech Solutions, First Floor 47, Whites Road, Royapettah, Chennai-14 and therefore, the basis of the complaint is that the access and complete control of the software was given to third company namely Sundaram Infotech Solutions which admittedly situated in the same premises where the Sundaram B.N.P.Paribas Home Finance Limited is situated with whom the agreement was entered and it is also stated that it is the case of the petitioners that Sundaram Infotech Solutions is the sister concern of Sundaram B.N.P.Paribas Home Finance Limited and that was proved by a log sheet and CD backup signed by two of the officials namely, Mr.Kalivarthan, Associate Manager and Mr.K.Haridas, Senior Manager belonging to Sundaram Infotech Solutions and therefore, it is clear that software access belonging to the complainant has been given to Sundaram Infotech Solutions who is the third party.

46.Inasmuch as in the agreement it is clearly stated that Sundaram B.N.P.Paribas Home Finance Limited has been entrusted the Software with a specific undertaking not to give it to any third party without the permission from KEN-SOFT, the alleged conduct is stated to be cheating and committing breach of trust. It is also stated that while the officials of Sundaram B.N.P.Paribas Home Finance Limited on the one hand were giving assurance that they will take full care of the said Software, on the other hand, they were tampering and hacking the software thereby cheating the complainant. It is also complained that for the purpose of protecting the intellectual property right in respect of the software created by the complainant, a joint meeting was sought for between the officials of the complainant and the Sundaram B.N.P.Paribas Home Finance Limited for which it has not given its approval for co-ordination and the explanation required for the same. Without meeting the persons, it is complained that the Sundaram B.N.P.Paribas Home Finance Limited has sent list of data required to be migrated and it was observed that there was a discrepancy between the list and the list which they sent in August. It is stated that Dr.D.B.Phatak, Professor IIT, Mumbai along with the officials of the complainant have met the Sundaram B.N.P.Paribas Home Finance Limited in which the expert has given opinion that intellectual property right of KEN-SOFT must be honoured and proper method for data migration should be adopted which was stated to be accepted by the Sundaram B.N.P.Paribas Home Finance Limited. The further complaint is that on the one hand, Sundaram B.N.P.Paribas Home Finance Limited has been giving order for data migration and on the other hand, they were accessing the complainant licenced software hacking and making

changes in it and using it and therefore, it amounts to cheating. It is further stated that when the complainant has informed Sundaram B.N.P.Paribas Home Finance Limited to give connectivity by email or to send CD back up, it was refused on the security reason and therefore, a request was made to disconnect test server from network and give connectivity by modem to avoid the security problem and that was also refused. It is stated in the complaint that when the Engineer of the complainant, Shailesh Patlekar was sent to Sundaram B.N.P.Paribas Home Finance Limited, it was found by him that changes were made in KEN-HFS Software and new external code was inserted. It was observed by him that software scheme was changed and external programme was loaded on it. It is stated that the manager of the complainant has requested to remove the external programme to avoid any error in future and in spite of the Sundaram B.N.P.Paribas Home Finance Limited was informed about it, no efforts taken to remove the external programme. It is stated that on 26.12.2008 a meeting was conducted in the office of Sundaram Finance along with Dr.Pathak, Mr.M.Acharya, Mr.Nitin Palani, Ms.V.Janaki, Mr.Swami Nathan etc., in which Dr.Pathak has mentioned that there has been a clear tampering of KEN-HFS software and it is stated that at that time, Mr.Acharya has accepted the loading of the external programme in the said software and the software was changed without assigning any reason. It is stated that the Sundaram B.N.P.Paribas Home Finance Limited has accepted that it will show the new software but never kept up the promise and the repeated request made by the complainant to remove the new software was not heeded to. It is stated that Dr.Pathak in his mail sent to Mr.Acharya, on 04.3.2009 that there has been violation source code and schema. It is thereafter, stated that Sundaram B.N.P.Paribas Home Finance Limited has failed to give connectivity and CD backup in order to avoid evidence to come to the hands of the complainant regarding hacking of the software belonging to the complainant. It is also specifically stated that the software was given for 75 Oracle Name User ASF licence but it transpired that about 300 oracle name users from back-up CD and by using more oracle name user and therefore, it is alleged that the petitioners have cheated the complainant using its KEN-HSF version 8.x software by copying it. It is stated that when the matter was sent to IIT, Mumbai for opinion, Dr.Sarda gave a report on 21.06.2009 stating that hacking and violation of various aspects was done. It is also stated by another Scientist, Dr.Jain of IRCC & Intellectual Property Cell, IIT, Mumbai, after considering the entire records in the report that IPR of KEN-HFS belonging to KEN Soft Company which is valuable and therefore, the claim made by the Sundaram company is wrong. Therefore, the complaint is that the Sundaram B.N.P.Paribas Home Finance Limited has misutilised the software belonging to the complainant by cheating and committing breach of trust causing damages to the company by deception preparing IPR stealing plan transferring to third party company and changing the software thereby committing breach of trust. It was based on the above said complaint given in the form of statement by the fifth respondent, the first information report came to be registered by the third respondent, which is challenged in W.P.No.2922 of 2011.

47.As per the settled law in this regard, namely the powers of this Court either under Article 226 of the Constitution of India or under Section 482 of Criminal Procedure Code, the complaint as such has to be looked into for the purpose of finding out as to whether any case has been made out for investigation so as to decide the validity of registration of First Information Report as it has been enumerated above in the series of judgments.

48.Under the Information Technology Act, 2000, the offences under the said Act are categorised in Chapter 11. Section 65 of the Act makes the tampering with computer stores documents, punishable upto 3 years or with a fine of Rs.2 lakhs or with both: Section 65 of the Information Technology Act reads as follows:

"65.Tampering with computer source documents.-Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Explanation.-For the purposes of this section, "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form".

49.Likewise, Section 66 of the Information Technology Act also makes the hacking with computer system punishable for three years which is as follows:

"66.Hacking with computer system.-(1)Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hacking.

(2)Whoever commits hacking shall be punished with imprisonment upto three years, or with fine which may extend up to two lakh rupees, or with both".

50.Section 78 of the Act empowers the police officer not below the rank of Deputy Superintendent of Police to investigate notwithstanding anything contained in the Code of Criminal Procedure which is as follows.

"78.Power to investigate offences.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a police officer not below the rank of Deputy Superintendent of Police shall investigate any offence under this Act".

Such of process of investigation is yet to commence.

51.On a reading of the above said Sections 65 and 66 of the Information Technology Act it is clear that in respect of tampering and hacking with computer system with the knowledge or intention if such act is done, the same would be an offence.

52.The term "information" is defined under Section 2(v) of the Act which includes dates, images etc., which is as follows:

"2(v)"information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche;"

53. Section 81 of the Act gives overriding effect to the said Act notwithstanding anything inconsistent with any of the provisions contained in any other law for the time being in force. When on the face of the complaint, the prima facie case has been made out to enable the investigating authority to investigate as it has been laid down consistently by the Hon'ble Apex Court any other opinion that might be obtained by the accused contrary to the contents of the statement given by the fifth respondent which was the basis of investigation, cannot be a ground for the High Court to interfere with the registration of First Information Report. Of course, under the Information Technology Act, such opinion of another expert which is contrary supporting the accused, can only be termed as defence at the time of investigation or trial and that itself cannot be a ground to interfere in the investigation at the threshold namely in the preliminary stage of the First Information Report.

54. On a bare reading of the complaint given by the fifth respondent based on which the impugned First Information Report was registered, I am unable to come to a conclusion that no case was made out for the purpose of investigation so as to treat the circumstances as one of the rarest of rare cases for this Court to interfere at the stage of First Information Report. Even in the report relied on the letter from IIT by the petitioners, dated 20.10.2010 which is in the form of information which is as follows:

"The information requested is furnished below point wise:-

1. The Report issued by Prof.K.Jain and Prof.R.M.Sonar is based on their individual professional opinion as faculty members of the Institute. As per our Institute rules, faculty members can take up consultancy and sponsored projects for several industries, based on their professional expertise. The Institute does not endorse or deny the opinion of the individual faculty.

2. IIT Bombay had taken up a consultancy project which had been given to Prof.R.M.Sonar in 2009-10 by Kensoft Infotech Ltd. and this report is the result of that consultancy project. The consultancy fee was paid to IIT Bombay for the said project.

3. We have had two consultancy projects with Kensoft Infotech and details are given in Annexure-1.

4. IIT Bombay has not appraised or certified Kensoft Infotech Limited. If any such report has been provided by IITB faculty as a part of a consultancy project, then such report is based on the professional opinion/expertise of the faculty members. The Institute does not endorse or deny the opinion of the individual faculty. A response from Prof.N.K.Sarda is enclosed as Annexure-2.

5.Please refer annexure 1 for information on projects given by Kensoft Infotech Pvt. Ltd. to IIT Bombay.

6.As per our Institute rules, faculty members can take up consultancy and sponsored projects, based on their professional expertise. The Institute does not endorse or deny the opinion of the individual faculty. The report given by Prof.Sarda is in his individual capacity as an expert and professional as well as an academician and researcher with national and international standing.

7.Please see Annexure 1 for details

8.Such information was received by Prof.Sarda from kensoft Infotech. However, these were returned back to Kensoft, as per feedback from Prof.Sarda.

9.As per our records, Prof.D.B.Phatak has not taken up any consultancy work with Kensoft. Kindly note that consultancy projects are taken up with clients under standard terms and conditions which mandates us to have confidentiality obligations as given:

'CONFIDENTIALITY:Due care will be taken by IIT Bombay to maintain confidentiality and discretion regarding confidential information received from the Client, including but not limited to results, reports and identity of the client.' A list of projects taken up by Prof.Phatak is enclosed in Annexure-3 for perusal and use as appropriate under the above restrictions.

10.as per our records, a)Prof.D.B.Phatak has not had any consultancy assignment with Kensoft or been part of the projects taken up by other faculty, b)Prof.N.L.Sarda has received Rs.39932(subject to IT deduction) for the project work with Kensoft c)Prof.Karuna Jain received a disbursement of Rs.52500/-(subject to IT deduction) and d)Prof.R.M.Sonar received a disbursement of Rs.52500/- (subject to IT deduction) for the project work Kensoft", there is nothing to state that the petitioners have not committed any act against the KEN-SOFT on the other hand, the information has chosen to only state something about Prof.N.L.Sarda and Prof.D.B.Phatak that they have not been the proper consultants of KEN-SOFT but that is not a ground, in my consideration, for this Court at this stage to interfere.

55.It was in *Satvinder Kaur v. State (Govt. of NCT of Delhi)* reported in AIR 1999 SC 3596, the Hon'ble Supreme Court on a reference to Sections 177 and 178 Criminal Procedure Code relating to the ordinary place of inquiry and trial has held that when it is uncertain in which of several local areas an offence was committed, it could be inquired into or tried by a Court having jurisdiction over any of such local areas. Regarding the investigation and First Information Report and the rights of this Court, it was held that the investigation has to be proceeded based on the allegation in the complaint and Court has no jurisdiction to find out the correctness or otherwise of it when once prima facie it discloses of commission of offence. The operative portion of the judgment is as

follows:

"14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.³ It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations".

It is also well settled that the powers of the Court to interfere with the investigation is very limited.

56. The reliance placed on by the learned senior counsel for the petitioners the judgment in Pepsi Foods Ltd., and another Vs. Special Judicial Magistrate and others reported in AIR 1998 SC 128 has no relevance to the facts of the present case. That relates to the supervisory powers of the Courts under Article 227 of the Constitution as well as the inherent powers of the Court under Section 482 Criminal Procedure Code.

57. Again reliance placed on the judgment of the Hon'ble Supreme Court in Rajendran and another Vs. R.K. Mishra, Additional Commissioner of IT and others reported in 2010 3 LW 481 which relates to the seizure effected under the Income-tax Act which took place at Chennai and intercepted and questioned at Hyderabad where writ petition was filed and it was ultimately by the Hon'ble Apex Court held that the rejection of the writ petition filed in the Andhra Pradesh High Court is bad in law. That is not the facts of the present case.

58. Learned Senior Counsel also placed reliance on the judgment of the Hon'ble Supreme Court in State of Haryana and others Vs. Bhajan Lal and others reported in 1992 Supp (1) SCC 335.

59. By applying the principle laid down by the Hon'ble Supreme Court one cannot accept the contention as if the third respondent has no jurisdiction to register the complaint and investigate especially when prima facie case has been made out on a bare reading of the complaint given in the form of statement registered as First Information Report under Section 420 IPC read with Sections 43(b)(i)(j), 66, 65, 72(a) of the Information Technology Act.

60. The further contention of the learned Senior Counsel that the existence of malice would vitiate the criminal investigation is also baseless on the facts of the present case. It is no doubt true that when malice is proved, the Court can interfere. Merely because a suit has been filed in the High Court of Madras by the fifth respondent for an injunction in respect of the trade mark right by stating that cause of action has arisen within the city of Chennai, it does not mean that the third respondent cannot take any complaint even in respect of the subject matter of the suit if a part of

cause of action in respect of the criminal case has arisen within the jurisdiction of the third respondent. That cannot be, in my view, termed as a malice. It is not as if, even in the suit filed by the fifth respondent in the Madras High Court, he has attempted to extract by unjust benefit by approaching the High Court.

61.While deciding about the malice on the basis of the suit filed in a civil court, it was held by the Hon'ble Apex Court in All Cargo Movers (I) Pvt., Ltd., and others Vs.Dhanesh Badarmal Jain and another reported in AIR 2008 SC 247 as follows:

"16.We are of the opinion that the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, this Court may not only take into consideration the admitted facts but it is also permissible to look into the pleadings of Respondent 1-plaintiff in the suit. No allegation whatsoever was made against the appellants herein in the notice. What was contended was negligence and/or breach of contract on the part of the carriers and their agent. Breach of contract simpliciter does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the court. Superior courts while exercising this power should also strive to serve the ends of justice".

62.Even in the plaint filed by the fifth respondent in the Madras High Court in C.S.No.270 of 2009, it is not as if the fifth respondent has not stated anything about the offence stated to have been committed by the petitioners. The fifth respondent in the plaint has specifically stated as follows:

"Thereby, providing third party access to KEN_HFS software or involving in altering/tampering of source code amounts to copyright infringement and breach of confidentiality. The plaintiff came to know subsequently that defendant had sought to prima-facie infringe the copyright vesting in KEN_HFS version 8 on Oracle 9i. The complete access of KEN_HFS was given to the 2nd defendant by 1st defendant on servers which were in fact controlled by the 2nd defendant. Upon becoming aware of such infringement and tampering of source code by the first defendant in collusion with the 2nd defendant, the plaintiff bona fide sought expert opinion from one of the foremost technical institutions in the country, the reputed Indian Institute of Technology, IIT Bombay. The expert report from the Computer Science and Engineering Dept IIT Bombay, confirmed the outright infringement by the 1st defendant by tampering with KEN_HFS source code, insertion of external source

code, alterations tampering of schema and copying and reverse engineering of KEN_HFS. Such infringement was obvious from the conspicuous similarity between source code items column names, objects etc occurring in the plaintiff's proprietary source code amounting to several thousand instances of copying".

and the commission of offence under the provisions of the Information Technology Act has been specifically stated as follows:

"23.The 1st defendant has repeatedly denied access to plaintiff to the Computer, Computer system and Computer network maintained by Sundaram Home Finance Ltd utilizing KEN-HFS software of the plaintiff. The failure of 1st defendant to provide access to the computer, computer system and computer network maintained in their premises to the copyright owner of the software, that is to the plaintiff, and further acts of altering the plaintiffs source code and schema amounts to committing an offence under the Information Technology Act".

63.Regarding the alleged encroachment of copy right and violation, it is specifically stated as follows:

"31.The plaintiff states that the defendants' access to the backend program (schema) which converts and stores the raw inputs of user into data information in proprietary programs of the plaintiff is restricted. As merely a user with no source code rights, the defendants does not have any right over the backend programs of the plaintiff's KEN-HFS software. As stated earlier, as the plaintiff being original creator of the KEN-HFS software, access by any third party including the defendants would amount to unlawful encroachment into the copyright vested with the plaintiff.

32.The defendants reverse engineered the plaintiff's software KEN-HFS and hacked the source code of the same. The defendants has altered/modified/inserted various external source codes into the plaintiff's original software and are involved in manufacture of tampered software by reverse engineering of plaintiff software thereby violating the terms and conditions on the agreement. The defendants developed a tampered software by lifting substantial portion of source code from plaintiff's original software and exploited it commercially. The plaintiff states that this unauthorised commercial exploitation of source code would amount to the copyright violation. The adaptation and modification of the source code as well as KEN_HFS software, ORACLE AFSU software by the plaintiff amounts to infringement of copyright, the exclusive rights vested in the plaintiff in the software developed and maintained by them".

64.Regarding the hacking of software, the fifth respondent has stated in the plaint as follows:

"35.The plaintiff states that the defendants with their knowledge has illegally and without authorization inserted various source codes to plaintiff software with a mala

fide intent to prevent the plaintiff access and to tamper the evidence of their activities. The Log file also clearly reveals the insertion of external source code and reverse engineering committed by the defendants. Hacking, alteration of the software and unauthorized access is a trespass into the exclusive intellectual property rights vested in the plaintiff. The defendants have deliberately made unauthorized adaptation, alteration and misuse of the source code and software developed by the plaintiff which amounts to infringement of copyright. The defendants are also liable for the acts of torts and misfeasance committed by them deliberately and with dishonest intentions and motives".

Therefore, it cannot be said that the fifth respondent has suppressed anything and with a mala fide intention filed a criminal complaint before the third respondent to enable this Court to interfere at the preliminary stage.

65.In S.W. Palanitkar v. State of Bihar reported in AIR 2001 SC 2960, the Hon'ble Apex Court has held as follows:

"28.In the case on hand, we have already stated above that except against Appellant 7, no offence was made out against the remaining appellants as the ingredients of offences alleged against them were not satisfied. Unfortunately, the High Court failed to exercise jurisdiction under Section 482 CrPC to correct manifest error committed by the learned Magistrate in issuing process against Appellants 1-6 and 8 when the alleged acts against them did not constitute offences for want of satisfying the ingredients of the offences. The approach and considerations while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms of Sections 200 to 203 under Chapter XV CrPC, having due regard to the position of law explained in various decisions of this Court, and whereas while exercising power under Section 482 CrPC the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 CrPC should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 CrPC to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred".

66.The claim of the fifth respondent about his IPR and its ownership pending in the High Court of Madras has in my considered view has nothing to do with the allegation of criminal offence stated to

have been committed by the petitioners. In such circumstances, I have no hesitation to hold that on the facts and circumstances of the case, there is nothing for this Court warranting interference at this stage. It is always open to the petitioners to work out their remedy in the manner known to law, if there are any procedural or legal violations committed by the third respondent at any stage.

67. In such view of the matter, looking at any angle, I am fully satisfied that the petitioners are not entitled for any relief claimed in the writ petitions. The writ petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

sms To

1. State of Tamil Nadu, Rep by the Secretary to Government, Home Department, Secretariat, Fort St. George, Chennai 600 009.
2. State of Maharashtra, Rep by the Secretary to Government, Secretariat, Mumbai.
3. The Senior Inspector of Police, Cyber Police Station, Crime Branch, CID, Mumbai 1st Floor, BKC Police Station Building, B.K.C., Bandra (East), Mumbai 400 051.
4. Subhash Jadhav, Inspector of Police/ Investigating Officer, Crime Branch, C.I.D, Mumbai, 1st Floor, BKC Police Station Building, B.K.C., Bandra (East), Mumbai 400 051.
5. V.P. Singh, Director, M/s. Kensoft Infotech Limited, "D" Wing, 4147-8, Oberoi Garden Estate, Chandivali Farm Road, Andheri East, Mumbai 400 072