

# Avneesh Harvansh Singh vs The State Of Maharashtra And Ors on 17 January, 2020

**Equivalent citations: AIRONLINE 2020 BOM 1233**

**Author: A. M. Badar**

**Bench: A. M. Badar**

912-WP-5842-2019.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5842 OF 2019

AVNEESH HARVANSH SINGH

)...PETITIONER

V/s.

1) STATE OF MAHARASHTRA	)
	)
2) DR.SUBIRKUMAR BANERJEE	)
	)
3) MR.SUVRA BANERJEE	)
	)
4) MRS.GAURI BANERJEE-BHATTACHARYA	)
	)
5) MRS.RITUPURNA SUBIRKUMAR BANERJEE	)
	)
6) MR.SUDHIRKUMAR BANERJEE	)...RESPONDENTS

Mr.Shirish Gupte, Senior Counsel a/w. Mr.Rajput Karansingh,  
Advocate for the Petitioner.

Mr.S.V.Gavand, APP for the Respondent - State.

Mr.M.S.Mohite i/b. Mr.Chaitanya Pendse a/w. Mr.Sandeep Patil,  
Mr.Vishal Bhanushali, Advocate for Respondent Nos.2 to 6.

CORAM : A. M. BADAR, J.

DATE : 16th/17th JANUARY 2020

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ORAL JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2 By this petition, petitioner, First Informant, who set the law in motion by lodging First Information Report (FIR) on 22nd September 2015 with Police Station Rabale for offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code is challenging the order passed by the learned Additional Sessions Judge, Thane on 19 th October 2019 whereby, by dismissing the revision petition filed by the petitioner, order accepting "C" Summary passed by the learned Judicial Magistrate First Class, Vashi, Navi Mumbai, dated 18 th August 2017 came to be confirmed.

3 Facts leading to the filing of the present petition under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C. for the sake of brevity) can be summarised thus :

912-WP-5842-2019.doc

(a) Petitioner Avneesh Singh so also respondent nos.2 to 6 are trustees of Nagar Yuvak Shikshan Sanstha, Navi Mumbai, which is running some colleges and schools. On 22 nd September 2015, petitioner Avneesh Singh lodged FIR against respondent nos.2 to 6 with Police Station Rabale, Navi Mumbai, which resulted in registration of Crime No.323 of 2015 for offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code. It is averred by the petitioner/ First Informant in the said FIR that respondent/accused persons are also trustees of the Nagar Yuvak Shikshan Sanstha. The petitioner made averments regarding forgery, forgery for the purpose of cheating, using forged documents as genuine and fabrication of documents.

He alleged that for obtaining favourable orders from the Charity Commissioner, forged documents are produced by accused persons. It is specifically averred in the FIR that accused Nita Singh filed nomination papers for the post of member of the Managing Committee by using forged signatures of Priti Singh and Karuna Singh as proposer and 912-WP-5842-2019.doc seconder on her nomination papers. Violation of constitution of Trust is also alleged in the FIR lodged by the petitioner. It is

averred therein that on 11th September 2010, meeting of trustees of the Nagar Yuvak Shikshan Sanstha came to be convened. However, notice dated 22nd August 2010 convening this meeting does not bear signature of trustees from Singh family of which petitioner Avneesh Singh is one of the members. It is alleged that only trustees from accused Banerjee family signed that notice of meeting meaning thereby that they were only invited for the meeting. According to the First Informant for appointing Gauri Banerjee as Treasurer of the Nagar Yuvak Shikshan Sanstha, consent of all Trustees by resolution was necessary but consent of four Trustees from Singh family was never obtained by accused persons. For filing Change report it was necessary to get approval of the Trustees but Change report bearing no.594 of 2014 came to be filed without approval of four trustees from Singh family. The First Informant in his FIR further contended that Gauri Banerjee, Rituparna 912-WP-5842-2019.doc Banerjee, Shreejal Bhattacharya and Aparna Bhattacharya came to be appointed as Trustees of the Nagar Yuvak Shikshan Sanstha illegally and in utter violation of provisions in the constitution of the Trust. In addition, it is alleged in the FIR that President of the said Trust i.e. respondent no.2 Dr.Subir Kumar Banerjee is having another institution by name New Horizon Public School, at Panvel. According to the First Informant, an amount of Rs.14,55,11,688/- came to be transferred from the account of Nagar Yuvak Shikshan Sanstha to the account of New Horizon Public School, Panvel by respondent no.2/accused Dr.Subir Kumar Banerjee, Chairman of the Nagar Yuvak Shikshan Sanstha.

(b) On registration of crime in pursuance to this FIR, investigation followed and it ultimately culminated into filing of Final Report under Section 173 of the Cr.P.C. whereby the Senior Police Inspector of Rabale Police Station, Navi Mumbai, prayed for granting "C" Summary. This police report was accompanied by Memorandum of Understanding 912-WP-5842-2019.doc dated 21st June 2017 executed between the parties i.e. the petitioner herein as well as respondent nos.2 to 6 and others. Supplementary statement of the petitioner/ First Informant recorded on 11th July 2017 so also his letter dated 21 st June 2017 addressed to the Police Station Officer Rabale was also annexed with the police report claiming "C" Summary.

(c) Undisputedly, on 18th August 2017, the learned Judicial Magistrate First Class, Vashi, Navi Mumbai, had signed the rubber stamp order granting "C" Summary in the matter, as prayed by the police without noticing the petitioner/ First Informant.

(d) Feeling aggrieved by the order granting "C" Summary without noticing him and recording any reasons but by just signing the rubber stamp order, the petitioner herein/ First Informant approached the revisional court by filing Revision Application bearing no.163 of 2018. By the impugned order dated 19 th October 2019 the learned Additional Sessions Judge, Thane, 912-WP-5842-2019.doc was pleased to reject the said revision petition by confirming the order of the learned Judicial Magistrate First Class, Vashi, Navi Mumbai, granting "C" Summary in Crime No.323 of 2015 registered on the FIR lodged by the petitioner/ First Informant with Police Station Rabale, Navi Mumbai. 4 Mr.Shirish Gupte, the learned senior counsel drew my attention to the order of the Judicial Magistrate First Class, Vashi, granting "C" Summary by signing the rubber stamp order and contended that it is settled position of law that prior to granting the said summary, the learned Judicial Magistrate First Class, Vashi, ought to have noticed the petitioner/ First Informant. He relied on following judgments to buttress this contention :

(i) Bhagwant Singh vs. Commissioner of Police and Another<sup>1</sup>

(ii) Gangadhar Janardan Mhatre vs. State of Maharashtra and Others<sup>2</sup>

(iii) Ajay Kumar Parmar vs. State of Rajasthan<sup>3</sup>

(iv) Vishnu Kumar Tiwari vs. State of Uttar Pradesh, Through Secretary Home, Civil Secretariat, Lucknow and Another<sup>4</sup> (1985) 2 Supreme Court Cases 537 (2004) 7 Supreme Court Cases 768 (2012) 12 Supreme Court Cases 406 (2019) 8 Supreme Court Cases 27 912-WP-5842-2019.doc With the aid of these judgments, the learned senior counsel strenuously urged that the First Informant, who set criminal law in motion must know what is the result of the investigation initiated on the basis of his report. It is further argued that when the Magistrate is not inclined to take cognizance of the offence and issue process, then in such situation, the First Informant can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. In submission of the learned senior counsel, it is mandatory to pass order granting summary by application of mind to the protest petition, if any, filed by the First Informant upon being noticed by the Magistrate and it is mandatory to grant opportunity of hearing to the First Informant in such matter. Issuance of notice to the First Informant, according to the learned senior counsel is an essential requirement of law laid down by the Hon'ble Supreme Court in these rulings. However, this mandatory formality is not complied by the learned Judicial Magistrate First Class at Vashi and as such, the impugned order passed by the learned Additional Sessions Judge cannot be sustained.

912-WP-5842-2019.doc 5 In order to demonstrate as to why notice to the First Informant upon submission of the report claiming "C" Summary is necessary, the learned senior counsel drew my attention to the Minutes of Meeting dated 24th January 2017 and argued that by keeping away Trustees from the Singh family, meeting of the Managing Committee of the Nagar Yuvak Shikshan Sanstha, Airoli, came to be held on 24 th January 2017 and in that meeting it was resolved to avail loan of Rs.27 crore from M/s.Reliance Capital Ltd. even without seeking permission from the Charity Commissioner. Notice dated 2nd January 2017 of meeting of the Managing Committee is also pointed out by the learned senior counsel and it is argued that in pursuance to this notice, meeting of the Managing Committee of the Nagar Yuvak Shikshan Sanstha came to be convened on 16th January 2017. In this meeting also, Trustees from the Singh family were kept away by not noticing them and it was decided to avail loan of Rs.35 crore from Abhudaya Co-operative Bank Limited. The learned senior counsel submitted that all these developments were not known to the petitioner/ First Informant when he signed the Memorandum of 912-WP-5842-2019.doc Understanding on 21st June 2017. Had he been given notice of filing of "C" Summary he would have persuaded the learned Judicial Magistrate First Class to take cognizance of the offence alleged by him, and therefore, issuance of notice before accepting "C" Summary and that too by mechanical order, was necessary. 6 The learned senior counsel also drew my attention to the offence registered by two groups of Trustees i.e. Trustees from Singh family (First Informant) and Trustees from Banerjee family (accused/respondents) in the Nagar Yuvak Shikshan Sanstha against each other so

also the affidavit sworn by the petitioner/ First Informant in the quashing petition filed by accused persons in respect of subject Crime No.323 of 2015 registered at his instance. It is urged that though the petitioner/ First Informant had sworn the affidavit in support of accused/respondents' petition for quashing the subject Crime No.323 of 2015, he has not filed that affidavit before the Division Bench of this court because he was not desirous of getting the offence registered at his instance, quashed and set aside.

912-WP-5842-2019.doc 7 To counter these submissions, Mr.Mohite, the learned counsel appearing for respondent nos.2 to 6 drew my attention to the letter dated 21st June 2017 which came to be handed over by the petitioner to Police Station Rabale on 23rd June 2017 as well as the supplementary / verification statement of the FIR recorded by the Investigating Officer on 11th July 2017. With the aid of these documents, the learned counsel for respondent nos.2 to 6 argued that when the petitioner/ First Informant had unequivocally decided not to proceed further in the offence registered at his instance against accused persons. Therefore, there was absolutely no necessity to issue notice to him prior to acceptance of "C" Summary and such is not a requirement of any statute. Each case depends on its own facts.

8 By drawing my attention to the Final Report in Crime No.323 of 2015 claiming "C" Summary filed by Rabale Police Station, Navi Mumbai, it is argued by the learned counsel for respondent nos.2 to 6 that allegations levelled by the petitioner/ First Informant were, infact, thoroughly investigated by the police 912-WP-5842-2019.doc authorities and finding on each and every allegation came to be recorded by the Investigating Officer in his Final Report. It is also reflected from the Final Report that money advanced to the New Horizon Education Society came to the account of the Nagar Yuvak Shikshan Sanstha, Airoli and similar advances were also made to the Shri Ram Education Society of the petitioner/ First Informant. The Final Report also shows that despite investigation, nothing to infer forgery of documents as alleged by the petitioner came to be found. According to Mr.Mohite, the learned counsel, the Final Report also reflects the fact that not a single pie from the amount of Rs.14,55,11,688/- was ever transferred to the account of any of the accused persons. On the point of issuance of notice to the First Informant prior to accepting the "C" Summary report, it is argued on behalf of respondent nos.2 to 6 that such notice is necessary in order to enable the First Informant to know as to what offence is committed and who has committed the offence alleged by him. Notice is mandatory only when the First Informant desires to persuade the Magistrate to take cognizance 912-WP-5842-2019.doc of the offence. However, in this case, in submission of the learned counsel for respondent nos.2 to 6, the petitioner/ First Informant by executing Memorandum of Understanding, by submitting his letter to the police station and by swearing affidavit for quashing the subject FIR, has unequivocally shown his desire to close the matter and therefore, issuance of notice was not necessary. It is further argued that it is not the case of the petitioner/ First Informant that Memorandum of Understanding has been obtained from him fraudulently or his letter to the police station and supplementary statement is a result of fraud played by him. 9 The learned counsel for the respondent nos.2 to 6 further argued that the grounds urged by the learned senior counsel appearing for the petitioner/ First Informant for objecting the "C" Summary report are outside the purview of the subject FIR and resultant investigation. The matter regarding loan taken from M/s.Reliance Capital Ltd. as well as Abhudaya Co-operative Bank is pending before the Charity Commissioner in pursuant to provisions of Section 36A(3) and 36A(3A) of the Maharashtra

912-WP-5842-2019.doc Public Trusts Act and therefore, parallel prosecution in respect of the same subject matter cannot lie before the criminal court. 10 It is further argued that order passed by the learned trial Magistrate accepting the "C" Summary was ultimately merged in the revisional order passed by the learned Additional Sessions Judge and the said order is impugned in the instant petition. Therefore, as the revisional court is empowered to exercise all powers of the Appellate Court, reasons for not issuing notice to the petitioner/ First Informant can be found in the impugned order which cannot be said to be perverse or illegal. Even otherwise, if contention as raised on behalf of the petitioner is accepted, then also, non-disclosure of reasons cannot be said to be an irregularity which may vitiate the proceedings. 11 To buttress his submissions, Mr.Mohite, the learned counsel appearing for respondents nos.2 to 6 has relied on following judgments :

912-WP-5842-2019.doc

i) Madhavrao Jiwajirao Scindia and Others vs. Sambhajirao Chandrojirao Angre and Others<sup>5</sup>

ii) Laxman Vithoba Jadhav and Others vs. State of Maharashtra and Others<sup>6</sup>

iii) Paramjeet Batra vs. State of Uttarakhand and Others<sup>7</sup>

iv) Mrs.Usha Badri Poonawalla vs. K. Kurien Babu & Anr.<sup>8</sup>

v) Kunhayammed and Others vs. State of Kerala and Another<sup>9</sup>

vi) Khoday Distilleries Limited and Others vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal<sup>10</sup>

12 I have also heard Mr.S.V.Gavand, the learned APP appearing for the State. He drew my attention to the letter dated 21st June 2017 submitted by the petitioner/ First Informant to the Police Station Rabale on 23rd June 2017. He also pointed out the Memorandum of Understanding executed by the petitioner / First Informant as well as the accused persons on 21 st June 2017 and (1998) 1 Supreme Court Cases 692 2016(1) Bom.C.R. (Cri) 167 (2013) 11 Supreme Court Cases 673 2005 ALL MR (Cri) 2728 (2000) 6 Supreme Court Cases 359 (2019) 4 Supreme Court Cases 376 912-WP-5842-2019.doc argued that even if it is assumed that subsequently the petitioner / First Informant came to know about mishappenings in the Nagar Yuvak Shikshan Sanstha, it was incumbent on the part of the petitioner / First Informant to approach the Police Station Officer Rabale for withdrawing/cancelling his letter dated 21 st June 2017. Similarly, the petitioner / First Informant ought to have got the Memorandum of Understanding executed on 21 st June 2017 cancelled by some written instrument. It is also urged by the learned APP that taking help of the Memorandum of Understanding dated 21st June 2017, the petitioner / First Informant got two crimes registered against him as well as other persons from his family quashed from this court by making the respondents/ accused in subject Crime No.323 of 2015 to swear an affidavit in support of the petitioner / First Informant for getting this FIR quashed. Therefore, the learned APP contended that the learned trial Magistrate was justified in accepting "C" Summary presented by the police which is

now confirmed by the revisional court.

912-WP-5842-2019.doc 13 I have considered the submissions so advanced. As the "C" Summary report is accepted by the learned trial Magistrate without recording any reason and without issuing notice to the petitioner/ First Informant, let us put on record settled position of law in this regard crystallised in several judgments of the Hon'ble Apex Court. In the matter of Bhagwant Singh (supra), the Hon'ble Apex Court has observed that the First Informant is interested in seeing that the Magistrate takes cognizance of the offence and therefore, when the Magistrate is not inclined to take cognizance of the offence by issuing process, the First Informant must be given an opportunity of being heard so that he can make his submissions for persuading the Magistrate to take cognizance of the offence. It is further held by the Hon'ble Supreme Court that the First Informant takes the initiative in lodging the FIR with a view to initiate the investigation for the purpose of ascertaining whether any offence has been committed and if so, by whom. The First Informant is vitally interested in the result of the investigation. Observations of the Hon'ble Supreme Court as found in the relevant portion of paragraph 4 needs reproduction 912-WP-5842-2019.doc and they read thus :

"4 .....But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub- section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take 912-WP-5842-2019.doc cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

14 In the matter of Gangadhar Janardan Mhatre (supra) similar view is again reiterated by the Hon'ble Apex Court by holding that opportunity of hearing to the First Informant becomes mandatory when the Magistrate decides not to take cognizance and to drop the proceedings though there is no provision in the Cr.P.C. for issuance of such notice. Relevant observations made in

paragraph 9 of the judgment read thus :

912-WP-5842-2019.doc "9 .....But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. Therefore, this Court indicated in Bhagwant Singh's case (supra) that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the Informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code of issue of a notice in that regard."

Similar view is expressed by the Hon'ble Apex Court in the matter of Ajay Kumar Parmar (supra) in upholding that failure of the Magistrate to issue any notice to the complainant before dropping the proceedings amounts to violence of mandatory requirement of law.

912-WP-5842-2019.doc 15 In the matter of Vishnu Kumar Tiwari (supra) the Hon'ble Apex Court has held that the Investigating Officer may rest content by submitting Final Report but it is necessary for the Magistrate to peruse the entire material by hearing the complaint and he needs to decide about further course of action by considering the contents of the protest petition. Paragraph 27 of that judgment reads thus :

"27 It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down."

912-WP-5842-2019.doc 16 It is, thus, clear that the First Informant is entitled for notice when the Magistrate is of the opinion that there is no sufficient ground for proceeding further in the matter so as to give an opportunity to the First Informant to persuade the Magistrate to take cognizance of the offence alleged by him and further to issue process. The Magistrate is entrusted with the task of going through the entire material submitted by the Investigator so also contents of Protest Petition in order to decide further course of action, even if the Investigator had chosen to file Final Report praying for issuance of "C" Summary. Thus, application of mind by the Magistrate is must. In other words, the requirement of notice to the First Informant is for following the principle of natural justice in order to see that no adverse order on the crime registered at his instance is passed behind his back. If unscrupulous Investigator fails to conduct investigation in right direction or neglects in



discharge of his duty of collection of relevant available evidence in the subject crime, the First Informant upon his appearance on noticing him, can persuade the court to require further investigation by police. The First 912-WP-5842-2019.doc Informant can demonstrate from Final Report itself that there are sufficient grounds for proceeding further and taking cognizance of offence alleged by him. The First Informant, by his Protest Petition, can demonstrate availability of necessary evidence constituting grounds sufficient to proceed against the accused for issuing process.

17 Let us, therefore, ascertain from record whether facts of the instant case shows that by not noticing the petitioner/ First Informant, the learned trial Magistrate committed grave error of law and procedure resulting in gross miscarriage of justice warranting interference at the hands of this court. At this juncture, it is apposite to note that in the matter of Madhavrao Jiwajirao Scindia and Others (supra) while dealing with the quashing petition, the Hon'ble Apex Court in paragraph 7 has categorically held that it is necessary for the court to take into consideration any special feature which appears in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so, on the basis 912-WP-5842-2019.doc that, the court cannot be utilized for any oblique purpose. In the instance case, the petitioner/ First Informant is virtually seeking for continuation of prosecution by ultimately praying for quashing and setting aside the order granting "C" Summary by the learned trial Magistrate, thereby closing the proceedings initiated in pursuant to the FIR lodged by him. The petitioner/ First Informant has invoked provisions of Article 227 of the Constitution of India apart from that of Section 482 of the Cr.P.C. It is needless to mention that supervisory jurisdiction of this court is required to be exercised when criteria of perversity, procedural irregularity or impropriety are demonstrated. Similarly, inherent powers of this court are required to be exercised sparingly and in exceptional cases in order to prevent abuse of process of court in furtherance of ends of justice.

18 Let us now examine the impugned order in order to ascertain whether a case for interference at the hands of this court is made out. The order granting "C" Summary passed by the learned trial Magistrate by signing rubber stamp order came to be 912-WP-5842-2019.doc impugned in revision petition before the learned Additional Sessions Judge at Thane by the petitioner/ First Informant and ultimately, that Revision Petition bearing No.163 of 2018 came to be dismissed by upholding the order granting "C" Summary by the learned trial Magistrate. It is, thus, clear that order granting "C" Summary by the learned trial Magistrate on 18 th July 2017 is merged in the impugned revisional order dated 19 th October 2019. In the matter of Khoday Distilleries Limited and Others (supra) the Hon'ble Apex Court has reiterated that where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law. Doctrine of merger is stated by the Hon'ble Apex Court in the matter of Kunhayammed and Others (supra) in paragraphs 7 and 8 of its judgment, which read thus :

912-WP-5842-2019.doc "The doctrine of merger :

7 The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. On more occasions than one this Court had an opportunity of dealing with the doctrine of merger. It would be advisable to trace and set out the judicial opinion of this Court as it has progressed through the times.

8 In Commissioner of Income-tax, Bombay Vs. M/s Amritlal Bhogilal and Co., AIR 1958 SC 868, this Court held :

"There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the 912-WP-5842-2019.doc confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement."

19 The impugned order, is an order, passed by the learned Additional Sessions Judge in revisional jurisdiction conferred to it under Section 397 of the Cr.P.C. Section 399 of the Cr.P.C. provides that while exercising revisional jurisdiction, the Sessions Judge may exercise all or any of the powers which may be exercised by this court under sub-section (1) of Section 401 of the Cr.P.C. As per provisions of sub-section (1) of Section 401 of the Cr.P.C., in its revisional jurisdiction, this court may, in its discretion, exercise any of the powers conferred on a court of appeal by Sections 386, 389, 390 and 391 of the Cr.P.C. or on a court of Sessions by Section 307 of the Cr.P.C. Thus, in exercising revisional jurisdiction, the Sessions Court can certainly exercise powers conferred on the court of appeal by Section 386 of the Cr.P.C. Equipped with all these powers, the learned Revisional Court tested the order accepting 'C' Summary of the learned 912-WP-5842-2019.doc Judicial Magistrate First Class, Vashi, and confirmed it by a reasoned order.

20 Now let us examine special features of the case in hand in order to decide whether it is expedient and in the interest of justice to permit the prosecution of accused/respondents herein to continue by acceding to the request of the petitioner as made in the instant petition. Undisputedly, the petitioner and his family members so also respondent nos.2 to 6 and their family members are trustees of the Nagar Yuvak Shikshan Sanstha, Airoli, Thane and the subject Crime No.323 of 2015 registered at the instance of the petitioner is in respect of the alleged mismanagement and misdeeds in the affairs of that Public Trust. At this juncture, it is apposite to note that both these rival factions i.e. Singh and Banerjee in the management of the Trust have lodged some FIRs against each other for prosecuting each other. Following charts will reveal the crimes registered on the basis of the FIRs lodged against each other by these warring factions of the Nagar Yuvak Shikshan Sanstha, Airoli, Thane.

912-WP-5842-2019.doc Chart showing details of crimes registered at the instance of petitioner/First Informant Avneesh Singh :

Sr.No. Crime No. Date of FIR Police Sections Station 1 381/2015 27/11/2015 Powai 420, 465, 467, 468, 471 r/w. 34 2 323/2015 22/9/2015 Rabale, Navi 420, 465, 467, (subject crime) Mumbai 468, 471 r/w. 34 Accused persons in these crimes registered at the instance of petitioner/First Informant Avneesh Singh and his family members approached this court for getting these crimes quashed by preferring Criminal Applications under Section 482 of Cr.P.C.

bearing No.765 of 2017 and 755 of 2017 by relying on Memorandum of Understanding dated 21 st June 2017 between the rival groups of Trustees of the Trust.

Chart showing details of crimes registered at the instance of respondents herein/accused against petitioner Avneesh Singh :

Sr.No. Crime No. Date of FIR Police Station Sections 1 420/2015 17/12/2015 Rabale, Navi 406, 420, 409, 465, Mumbai 467, 468, 471 r/w.34 2 203/2015 27/11/2015 Khandeshwar, 406, 420, 409, 465, Navi Mumbai 467, 468, 471 r/w.34 912-WP-5842-2019.doc Petitioner/ First Informant Avneesh Singh and others who were accused in these crimes preferred criminal applications under Section 482 of Cr.P.C. bearing nos.737 of 2017 and 739 of 2017 before this court for quashing these crimes, on the basis of very same Memorandum of Understanding executed by the parties on 21st June 2017. It is averred in those applications for quashing that the matter has been amicably settled and the Memorandum of Understanding dated 21st June 2017 is executed for full and final settlement of dispute. Respondent nos.2 to 6/accused in these crimes filed affidavits in support of claim of petitioner Avneesh Singh and others for quashing these crimes. That is how, on 19th July 2017 and 20th July 2017 both these crimes registered on the basis of FIRs lodged by accused/respondents herein against the petitioner/ First Informant came to be quashed by this court. This makes it clear that the petitioner/First Informant made use of Memorandum of Understanding executed by both parties on 21st June 2017 for getting the crimes registered against him quashed by requiring the respondents herein (First Informant in those crimes) to file affidavits in support of claim for quashing 912-WP-5842-2019.doc those crimes.

21 Now, therefore, let us put on record what is the settlement arrived at between the parties which ultimately culminated into execution of Memorandum of Understanding of 21st June 2017. This Memorandum of Understanding which is part of record shows that the same came to be executed between the parties as respondent no.2 Dr.Subir Kumar Banerjee and other respondents namely Mrs.Suvra Banerjee, Mr.Sudhir Banerjee, Mr.Amitabh Bhaduri, Mrs.Sumita Bhaduri, Mrs.Gauri Bhattacharya and Miss Rituparna Banerjee as First Party to it and petitioner Mr.Avneesh Singh with Mrs.Karuna Singh, Mrs.Nita Singh and Mrs.Priti Singh as Second Party to it. Relevant portion of this Memorandum of Understanding reads thus :

" In order to not to cause prejudice to the trust, Nagar Yuvak Shikshan Sanstha Airoli (PTR NO.F-3745/Thane), its affairs and management and to ensure smooth functioning of the trust, both Banerjee and Singh families have decided to rest out their differences for betterment of trust. Singh family has decided that they will withdraw the following cases filed against Banerjee family 912-WP-5842-2019.doc members; or support in quashing of FIRs if required.

1) FIR filed at Rabale Police Station - FIR No.323 of

2) FIR filed at Powai Police Station - FIR Proceedings filed at the office of the Charity Commissioner Mumbai being application No.291/2015, 292/2015, 293/2015, 294/2015 - under Section 70A of the Maharashtra Public Trusts Act 1950, and No.385/2015 - under Section 36A (3) of the Maharashtra Public Trusts Act 1950, and No.51/2016 - under Section 41D of the Maharashtra Public Trusts Act 1950 and No.96/2016 - under Section 41E of the Maharashtra Public Trusts Act 1950.

Banerjee family has decided that they will withdraw the following cases filed against Singh family members; or support in quashing of FIRs if required.

1) FIR filed at Rabale Police Station - FIR

2) FIR filed at Khandeshwar Police Station - FIR

3) Proceedings filed in the office of the Charity Commissioner, Mumbai being application No.528/2015 under Section 41D of the Maharashtra 912-WP-5842-2019.doc Public Trust Act 1950.

4) Change reports filed in the office of Assistant Charity Commissioner, Thane being Change Report No.560/2016 and 743/2016 under Section 22 of the Maharashtra Public Trusts Act 1950.

In each case the First Informant concerned and the family to which he/she belongs shall bear the onus of ensuring that the matter is closed and put to an end. Both the parties shall keep each other informed of all progress in this matter, on a regular basis and extend complete relevant information to the assignment and provide relevant development as and when necessary."

22 This Memorandum of Understanding is signed by the petitioner/ First Informant apart from all other parties in presence of witnesses to it. Thus, on 21 st June 2017, in no unclear terms, petitioner Avneesh Singh and Trustees of his group have agreed to and decided to rest their differences for betterment of the Nagar Yuvak Shikshan Sanstha by withdrawing several proceedings including subject FIR bearing no.323 of 2015 which at the 912-WP-5842-2019.doc relevant time was under investigation with Police Station Rabale. 23 The matter did not rest here. In compliance of the stipulation of Memorandum of Understanding dated 21st June 2017, petitioner Avneesh Singh visited Police Station Rabale on 23rd June 2017 and submitted letter dated 21 st June 2017 under his signature. It is apposite to reproduce contents of this letter addressed by him to the Senior Police Inspector of Rabale Police, Navi Mumbai, for proper understanding of the matter. It reads thus :

"Sir, C.R.No.323/15 registered with you on 22.09.2015 I have filed a complaint on 22.09.2015 and the captioned F.I.R. was registered on the basis of my said compliant.

The complaint filed by me emanated from the following background :

I am the trustee of Nagar Yuwak Shikshan Sanstha. The accused no 1 to 4 named in my complaint are also trustees of the said trust/society.

Certain differences developed between the trustees. A situation arose where the 912-WP-5842-2019.doc communication gap widened to a very great extent. With reference to the financial transactions about which clarifications and further details were sought by me, prompt and satisfactory response was not forthcoming from the persons who have been named by me as accused no.1 to 4 in my written complaint that constituted the basis of the F.I.R.

I therefore filed a complaint with you against the said persons. As a trustee I deemed it necessary to take such an action as per law.

However in the subsequent period, the interactions between the trustees have resumed. The misunderstandings arising out of inadequate communication were cleared.

I was thus in a position to obtain necessary details and clarifications about the transactions that constituted the subject matter of the captioned C.R. Thereafter I have discussed the various issues and have been satisfied that there is no need to proceed any further with the aforesaid complaint. I have taken a decision to drop any further action since all the transactions were undertaken in ordinary course of functioning of the trust.

912-WP-5842-2019.doc Considering the aforesaid developments, I do not have any grievance or complaint against the accused persons and therefore request you to treat my complaint as closed.

Yours truly, sd/-

Avneesh H. Singh."

24 Bare perusal of this letter makes it clear that cause of lodging the subject FIR No.323 of 2015, was communication gap and non-responsive attitude of the rival faction of the Trustees, as stated therein by the petitioner/ First Informant. It is further vouched by him in the said letter itself that now misunderstandings have been cleared, interaction is resumed and therefore, various issues have been discussed and now he does not have any grievance or complaint against accused persons in Crime No.323 of 2015 registered at his instance. It was made clear by him to the Investigator that he is not willing to pursue the FIR and 912-WP-5842-2019.doc he wants that the proceedings be

closed/dropped. 25 The Police Station Officer Rabale, it seems, was not satisfied with mere perusal of this letter of the petitioner/ First Informant and therefore, the petitioner/ First Informant came to be summoned to the police station to verify his averments made in this letter dated 21st June 2017. Accordingly, the petitioner/ First Informant attended the Police Station on 11 th July 2017 and gave his statement before the Senior Police Inspector, Police Station Rabale, Navi Mumbai, under his own signature. It was reduced in writing. He stated before the Senior Police Inspector in no unclear terms that without making full verification of facts, he lodged the FIR against respondent no.2 Dr.Subir Kumar Banerjee and others on 22nd September 2017. He further stated that, however, he noticed that nobody had forged signatures. The petitioner further stated that an amount of Rs.14,55,11,688/- is returned to the Trust. In his statement he requested the Senior Police Inspector that as he lodged the FIR of Crime No.323 of 2015 because of differences and misunderstandings with accused persons and that 912-WP-5842-2019.doc his misunderstandings have now been cleared. Now he has verified that there is no cheating of the Trust, he had submitted letter in writing dated 21st June 2017 on 23rd June 2017 for quashing his FIR. The petitioner/ First Informant had put his signature on the said statement recorded by the Senior Police Inspector of Rabale Police Station.

26 Acting on the Memorandum of Understanding executed between both rival factions of the Trust on 21 st June 2017, respondent nos.2 to 6 herein had consented for quashing the crimes registered at their instance against the petitioner herein by swearing and filing affidavits supporting the petitioner/ First Informant in Criminal Applications bearing Nos.737 of 2017 and 739 of 2017 filed by the petitioner before this court. As noted above, the petitioner by making use of Memorandum of Understanding dated 21st June 2017 executed by the parties, thus has got both crimes registered against him quashed from this court.

912-WP-5842-2019.doc 27 Having gained advantage from the Memorandum of Understanding by getting the crimes registered against him quashed, let us now examine as to what the petitioner/ First Informant did further so far as subject crime bearing no.323 of 2015 and 381 of 2015 registered at his instance against the respondents/ accused. The respondents/accused in these crimes simultaneously preferred Criminal Applications under Section 482 of Cr.P.C. bearing Nos.765 of 2017 and 755 of 2017 before this court for quashing crimes registered against them. The petitioner/ First Informant then sworn an affidavit in support of claim of respondents/accused for getting these crimes quashed. It is apposite to reproduce relevant paragraphs of the affidavit sworn by the petitioner/ First Informant in Criminal Application bearing No.755 of 2017 filed by respondents/accused for getting the subject Crime no.323 of 2015 quashed. Paragraphs 1 to 5 of the affidavit sworn by the petitioner/ First Informant in Criminal Application No.755 of 2017 read thus :

"1 I say that I had lodged the present F.I.R.

912-WP-5842-2019.doc against the Applicant named above, bearing C.R.No.323 of 2015, registered with the Rabale Police Station, Navi Mumbai, Dist.Thane for offences punishable under Sections 420, 465, 467, 468, 471 r/w S.34 of the I.P.C. dated 22.09.2005.

2 I say that on 21.06.2017, I have given my consent and affixed my signature to a settlement deed stating that the entire complaint arising out of the C.R.No.323 of 2015, registered with the Rabale Police Station, Navi Mumbai, Dist. Thane was a dispute primarily between me and the Applicants and that the same has been amicably settled by and between us.

3 I say that I am aware of the fact that the present Applicants have preferred the aforementioned application for quashing the

pending C.R./F.I.R. before this Hon'ble Court under section 482 of the Criminal Procedure Code, 1973.

4 I further say that in furtherance of the amicable settlement between myself and the present Applicants, I have no objection if the FIR bearing C.R.No.323 of 2015, registered with the Rabale 912-WP-5842-2019.doc Police Station, Navi Mumbai, Dist.Thane against the Applicants for offences punishable under Sections 420, 465, 467, 468, 471 r/w S. 34 of the IPC is quashed and set aside by this Hon'ble Court.

5 I say that I am filing this affidavit on my own free will and therefore I give my complete consent to the prayers made by the present Applicants in their aforementioned application for quashing of the FIR bearing C.R.No.323 of 2015, registered with the Rabale Police Station, Navi Mumbai, Dist. Thane against the Applicants for offences punishable under Sections 420, 465, 467, 468, 471 r/w S. 34 of the I.P.C. without any force or coercion."

28 Duly sworn testimony of the petitioner/ First Informant reflected from this affidavit makes it clear that by acting upon the Memorandum of Understanding, he had given no objection for quashing the subject Crime No.323 of 2015 registered against respondent nos.2 to 6. However, it is apposite to note that the petitioner/ First Informant though had sworn this 912-WP-5842-2019.doc affidavit and supplied copy thereof to the respondents/accused, had conveniently chosen not to file it before this court in the quashing proceedings. Criminal Application No.755 of 2017 filed by the respondents/accused in the subject crime so also another Criminal Application bearing No.765 of 2017 were then withdrawn by the respondents/accused on 7th September 2017 because of filing of "C" Summary by the police and its acceptance by the learned Judicial Magistrate First Class on 18th August 2017. 29 Thus, special features of the case in hand make it clear that the petitioner/ First Informant himself had firstly executed the Memorandum of Understanding on 21st June 2017 by taking a conscious decision to get the proceedings of Crime No.323 of 2015 stopped by withdrawing the allegations made by him. He, then, sworn an affidavit in the quashing proceedings by giving "No Objection" for quashing the subject crime. The petitioner/ First Informant himself, taking advantage of the Memorandum of Understanding got two crimes registered against him quashed by getting supporting affidavits filed by respondents in his quashing 912-WP-5842-2019.doc proceedings. He, then, gave letter dated 21st June 2017 under his signature to the concerned police station acting on

the Memorandum of Understanding and then gave elaborate statement before the Senior Police Inspector on 11 th July 2017 categorically mentioning the fact that there is no cheating, forgery or fabrication of documents. Upon being questioned by this court, the learned senior counsel appearing for the petitioner/ First Informant very fairly stated that it is not the contention of the petitioner/ First Informant that these documents are outcome of any fraud, undue influence, misrepresentation or coercion exerted on the petitioner/ First Informant by anybody. The learned senior counsel candidly stated that the petitioner/ First Informant is accepting all these documents as it is and has no dispute whatsoever regarding these documents.

30 These factual developments in the course of investigation of the subject crime recorded by me in the foregoing paragraphs makes it clear that the petitioner/ First Informant was well aware of the fact that he had intimated the police to take 912-WP-5842-2019.doc steps for getting proceedings of the Crime No.323 of 2015 registered at his instance closed by filing report before the Magistrate. The petitioner/ First Informant never got the Memorandum of Understanding cancelled nor approached the concerned police station for cancelling his written letter dated 21 st June 2017 or for withdrawing his statement recorded by the Senior Police Inspector on 11th July 2017. He never approached the learned Judicial Magistrate First Class in the light of several documents executed by him for withdrawal of criminal proceedings initiated at his instance, with a request that the report, if any, which the police may file in the matter, should not be entertained. Rather, he kept mum in the matter and continued to get advantage of the settlement by getting crimes registered against him quashed with the help of the respondents/ accused. To state further, the petitioner/ First Informant was very well aware about the fact that the crime registered at his instance in the year 2015 is under process of closure, at his instance, in July 2017. Thus, it was the specific request of the petitioner/ First Informant to the police machinery to take necessary steps for 912-WP-5842-2019.doc submitting closure report to the Magistrate in his FIR, which was under investigation. Consequently, as the thorough investigation could not reveal any material against respondents/accused, police filed report claiming "C" Summary and incidentally it was mentioned therein that even the petitioner/ First Informant has requested for closure of the matter due to clearing of misunderstanding between him and co-trustees. Ultimately, in August 2017 "C" Summary came to be presented by police and accepted by the learned Judicial Magistrate First Class. When the petitioner/ First Informant himself insisted for closure of the investigation of crime by submitting report in the light of settlement by swearing an affidavit and submitting a letter apart from giving clear statement in that regard to the police, he cannot be heard to say that he ought to have been served with a notice on submission of closure report by the police before the Magistrate. The police report and its forwarding letter dated 18th August 2017 of the Deputy Commissioner of Police clearly mentions about the supplementary statement of the petitioner/ First Informant regarding request of the petitioner/ First Informant for closing the 912-WP-5842-2019.doc matter as he had no subsisting grievance in the matter. Ultimately, object of issuance of notice on receipt of the "C" summary is to make the First Informant aware about the progress in the crime registered at his instance and the end result of the investigation. Even in the matter of Bhagwant Singh (supra) the Hon'ble Apex Court has specifically stated that after registration of crime at the instance of the First Informant, the First Informant has interest in knowing whether any offence has been committed and if so, by whom it is committed. The Hon'ble Supreme Court has further observed that, therefore, law requires that the action taken by the Officer in-charge of the police station on the



FIR should be communicated to the First Informant. It is further observed in the said matter that if such steps are taken then the First Informant can persuade the Magistrate to take cognizance of the offence and issue process, in the event the Magistrate is not inclined in that regard. However, in the instant case, the petitioner/ First Informant after executing Memorandum of Understanding with his opponent Trustees on 21st June 2017 had started taking steps to get investigation of the crime registered at his instance, closed, 912-WP-5842-2019.doc by informing the police authorities in writing and even by swearing an affidavit for tendering the same before this court in quashing proceedings. Even during the course of arguments, these facts were candidly accepted by the petitioner/ First Informant through the learned senior counsel appearing for him, and therefore, in peculiar set of facts of this case, though law mandates issuance of notice and hearing the First Informant in the event of filing summary, the learned Additional Sessions Judge has correctly held that non-issuance of notice to the First Informant is not fatal. Similarly, when the result which was desired by the petitioner/ First Informant came to be given by the learned trial Magistrate, it cannot be said that as the "C" Summary came to be accepted by rubber stamp order, the impugned order needs to be quashed and set aside. It appears to have been passed on perusal of the police report as well as the forwarding letter of the senior most police officer of the zone reflecting request of the First Informant for closure of the matter.

31 Be that as it may, even perusal of the police report 912-WP-5842-2019.doc claiming "C" Summary makes it clear that Investigating Officer has carefully investigated the allegations made in the FIR by the petitioner/ First Informant, and thereafter, has recorded a finding that he could not get an iota of evidence in support of those allegations. Even during the course of hearing of this petition, the petitioner/ First Informant could not point out any lapse in the investigation of allegations levelled by him in the subject FIR of Crime No.323 of 2015. Thus, on merits, after thorough investigation, the Investigating Officer had recommended for issuance of "C" Summary by stating that he could not find any evidence enabling him to file a charge-sheet in the matter. 32 The learned senior counsel appearing for the petitioner / First Informant vehemently argued that the petitioner/ First Informant wanted to point out to the learned Magistrate the fact that the meeting of the Nagar Yuvak Shikshan Sanstha came to be convened on 24th January 2017 without noticing him as well as other members of Singh family. Then resolution came to be passed for availing loan of Rs.27 crores from M/s.Reliance Capital 912-WP-5842-2019.doc Limited. The learned senior counsel further argued that the petitioner/ First Informant wanted to point out to the learned Magistrate that excluding the Trustees from the Singh family including the petitioner/First Informant, the meeting of the Managing Committee came to be held on 16 th January 2017. Then, the Resolution No.3a came to be passed for availing loan of Rs.35 crore from Abhudaya Co-operative Bank Limited. Trustees of Singh family were excluded in taking such important decision in the matter of availing loan from two financial institutions. The learned senior counsel further submitted that these developments were not known to the petitioner/ First Informant while executing the Memorandum of Understanding. He wanted to agitate these facts before the learned Magistrate. Stand of the contesting respondents, in this regard, is to the effect that these aspects are being agitated before the learned Charity Commissioner and those civil proceedings are still pending, and as such, no parallel investigation is permissible in the matter. For this purpose, reliance is placed on Laxman Vithoba Jadhav and Others (supra) wherein the Division Bench of this court has held thus in 912-WP-5842-2019.doc paragraphs 8 and 9 :

"8 In the instant case, however, the question is as to whether a criminal case should be allowed to be parallel prosecuted by the respondent No. 3

- Govardhan when the civil dispute between the same parties in the form of suits is pending before the civil Court, particularly in respect of the same documents which are alleged to have been forged or in respect of which the criminal case has been filed. It is admitted fact that as yet the civil Court has not recorded any finding either way in respect of the said documents about which the respondent No. 3 is making grievance of fraud and forgery namely the documents of partition. It is also not in dispute that the said documents of partition in respect of which forgery or fraud has been alleged are the subject matter falling squarely for consideration in the civil suits before the civil Court."

"9 We, therefore, think that allowing the parallel criminal proceedings to continue in absence of any decision of the civil Court on the same issue about the documents of partition 912-WP-5842-2019.doc whether they are true or forged would tantamount to abuse of process of criminal Court. It would be duplication of the proceedings in respect of the same subject matter and as a matter of fact, it should be the civil Court which should record a finding as to the fraud or forgery or truthfulness about the documents of partition could be allowed to prosecute parallel criminal case. If the criminal case is allowed to be prosecuted and a civil case remains pending, there is likelihood of conflicting and contradictory findings. Therefore, in our opinion, since the issues regarding the documents of partition etc. are directly and substantially involved in the civil suits, we should not permit the prosecution of the parallel criminal case and it will amount to abuse of process of law. In our opinion, it is premature to have a charge-sheet in the same subject matter and we cannot countenance such a move on the part of the respondent No. 3 to set the criminal law in motion. We are, therefore, of the opinion that it is only after the civil Court records the finding, the complainant should be given liberty to take 912-WP-5842-2019.doc such steps as are available in law, but he should not be allowed to use the criminal law justice system as the civil Court is yet to adjudicate. We thus find that the aforesaid Constitution Bench judgment would have no applicability in the facts of the present case and for the reasons given by us above."

Reliance is also placed on judgment in the matter of Paramjeet Batra (supra) wherein it is held that if the civil suit is pending then similar criminal proceedings wherein allegations are to the effect that the documents are not genuine but are forged and fabricated, deserve to be quashed and set aside. 33 I have already set out in detail what are the allegations levelled against respondent nos.2 to 6/accused in the FIR of Crime No.323 of 2015 by the petitioner/ First Informant. Allegations regarding resolution for taking loan of Rs.27 crore from Reliance Capital Limited and that of Rs.35 crore from Abhudaya Co- operative Bank Limited, are beyond the scope of the FIR. Those are bound to be because the FIR of the subject crime came to be 912-WP-5842-2019.doc lodged on 22nd September 2015 whereas these resolutions are allegedly passed on 24th January 2017 and 16th January 2017 by the Managing Committee of the Trust. Therefore, these aspects have no bearing on

the result of investigation. These allegations can, at the most, be a ground for separate proceedings before the appropriate forum. Therefore, no substance is found in contention of the learned senior counsel that the petitioner/ First Informant could have persuaded the Magistrate to proceed further in the matter due to passing of resolutions regarding availing loan facilities for the Trust by the accused persons, in the year 2017. These resolutions are totally outside the purview of the subject crime which came to be registered in the year 2015. 34 Matter of Mrs.Usha Badri Poonawalla (supra) decided by the learned Single Judge of this court is on somewhat identical facts. In that matter, respondent no.1 therein filed a complaint for offence punishable under Section 138 of the Negotiable Instruments Act against the petitioner, who prayed for quashing and setting aside the said proceedings. The reason given by the 912-WP-5842-2019.doc petitioner/original accused in that matter is composition of dispute between the parties. However, the contention so advanced came to be disputed by the respondent/original complainant in the said matter. The learned Single Judge of this court relied on the composition found in Memorandum of Understanding Exhibit 58 in the said matter. Reliance was placed by the learned Single Judge of this court in the matter of Mohammed Shamim & Others vs. Nahid Begum (Smt.) and another<sup>11</sup> wherein after registration of the case under Section 406 and 498A read with 34 of the Indian Penal Code, there was compromise between the parties which resulted in filing petition for quashing. In the matter of Mohammed Shamim & Others (supra) this court refused to quash the criminal proceedings by observing that the complainant in that case was not willing to compromise the matter and wanted to continue with her complaint. The learned Single Judge, while deciding the matter of Mrs.Usha Badri Poonawalla (supra) quoted observations made by the Hon'ble Apex Court in paragraph 16 in the matter of Mohammed Shamim & Others (supra) which read thus :

2005 ALL MR (Cri) 828 (S.C.) 912-WP-5842-2019.doc "16 In view of the conduct of the first respondent in entering into the aforementioned settlement, the continuance of the criminal proceeding pending against the appellants, in our opinion, in this case also, would be an abuse of the process of the court. Appellant 1, however, would be entitled to withdraw the sum of Rs. 50,000/- which has been deposited in the Court. We, therefore, in exercise of our jurisdiction under Article 142 of the Constitution direct that the impugned judgment be set aside. The first information report lodged against the appellants is quashed. The appeal is allowed.

However, the order should not be treated as a precedent."

(emphasis supplied) Relying on these observations, the learned Single Judge of this court quashed the proceedings for the offence punishable under Section 138 of the Negotiable Instruments Act in the matter of Mrs.Usha Badri Poonawalla (supra) with following observations in paragraph 19 and 20 of the said judgment :

"19 Therefore, the oral evidence which is on record clearly discloses that the Memorandum was executed by the parties on 9th September 1997 912-WP-5842-2019.doc under which the Respondent No. 1 received a sum of Rs. 3,76,896/-. He admitted the contents of the said document on oath. The Memorandum specifically records that irrespective of the claim made by the

Respondent No. 1 in the Criminal Complaint, money matters involved in the case have been settled amicably. After having agreed to settle the dispute amicably and after having agreed to wants to prosecute the complaint only on the ground that he was to receive something more than what is mentioned in the written Memorandum. This stand has been taken nearly after seven years of the execution of Memorandum."

"20 Considering the conduct of the Respondent No. 1 it is certain that the continuation of the proceedings by him will amount abuse of process of law and therefore, the complaint deserves to be quashed. Accordingly the petition is allowed in terms of prayer clause (d)."

35 In the case in hand, after amicably settling the dispute and after getting the criminal proceedings against him quashed with the help of respondents herein/accused, the petitioner/ First 912-WP-5842-2019.doc Informant wants to prosecute the crime registered at his instance on the ground that he was not served with a notice in order to enable him to lodge a Protest Petition on filing "C" Summary report and that the learned trial Magistrate had passed the order, allowing the "C" Summary, mechanically without giving any reasons. It needs to be kept in mind that soon before filing of the "C" Summary report by police, and that too after finding no evidence in allegations on conducting full fledged investigation, the petitioner/ First Informant had entered into settlement, made respondents/accused to act upon that settlement, sworn the affidavit for quashing the subject crime, intimated these facts about settlement to the police authorities, and now, he has come up with a technical stand in the matter about acceptance of the "C" Summary report without notice to him. As observed by the learned Single Judge in the matter of Mrs.Usha Badri Poonawalla (supra), this conduct is certainly amounting to abuse of process of law.

36 The power conferred on this court under Article 227 of 912-WP-5842-2019.doc the Constitution of India is to advance justice and not to thwart it. While invoking the provisions of Article 227, this court would exercise such powers most sparingly and only in appropriate cases. The exercise of supervisory jurisdiction of this court is not available to correct mere error of law unless the error is manifest and apparent on the face of proceedings causing grave injustice to the affected party or gross failure of justice is resulted by such error. Such impugned order which results in causing manifest injustice needs to be quashed while exercising such supervisory jurisdiction under Article 227 of Constitution of India. Careful scrutiny of the impugned order does not allow me to hold that the same resulted in causing grave injustice to the petitioner/ First Informant or gross failure of justice has occasioned thereby. Acceptance of "C" Summary by an unreasoned order by the learned trial Magistrate without issuance of notice to the First Informant, in the light of peculiar and special facts of this case, cannot be said to be resulting in grave miscarriage of justice adversely affecting interest of the petitioner/ First Informant. On the contrary, considering special facts of the instance case, 912-WP-5842-2019.doc issuance of notice to the petitioner/First Informant after receipt of "C" Summary report would have been an exercise in futility. No fault, as such, can be found in the impugned revisional order confirming the action of the Magistrate in accepting the "C" Summary report. Resultantly, the petition fails, and therefore the order :

ORDER The writ petition is dismissed.

(A. M. BADAR, J.)