Motorola Incorporated A Company ... vs Union Of India (Uoi), State Of ... on 8 August, 2003

Equivalent citations: 2004CRILJ1576

Author: J.A. Patil

Bench: J.A. Patil

JUDGMENT

J.A. Patil, J.

1. Rule, returnable forthwith. By consent heard finally.

2. By this petition under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner has challenged the order dated 6.11.2001 regarding issuance of process passed against it in Cri. Case No. 181/2001 by the learned Judicial Magistrate, F.C., Khadki, Pune. The said case is a private complaint filed by respondent No. 3 against the petitioner and six others on the charge of having committed an offence punishable under Section 420 r.w.s. 120B of the India Penal Code.

3. The petitioner is a company incorporated under the laws of the state of Delaware (U.S.A.). Respondent No. 3 (Original Complainant) is also a company incorporated under the Companies Act, 1956 on 24.10.1994. The said complainant relates to equity investments made by the respondent No. 3 in Iridium Inc., a company incorporated under the law of the state of delaware (U.S.A.) which later on became Iridium LLC.. The allegations made in the complaint are that Iridium (Inc/LLC) was a mere instrumentality of the petitioner which conceived, directed and controlled Iridium at all material times. Initially the entire equity in Iridium was held by the petitioner but subsequently it was diluted on account of sale to various investors and shareholders. In 1992 Iridium floated a Private Placement Memorandum (PPM) with the intention of attracting investments from large companies in the world for the purpose of financing the Iridium System/Project which is a commercial wireless communication system designed to provide global digital hand held telephone, data, facsimile, paging and geolocation services similar to cellular phones. The said PPM set out in details the salient features of the Iridium System, its technical suitability and commercial feasility. The said P.P.M. also set out the strengths and weaknesses of the Iridium System, in particular, the risk factors which the Iridium System would involve. The PPM was in the nature of prospectus containing an invitation to invest. The representations made in the PPM were supplemented or reiterated by personal representations made by the senior functionaries of the petitioner, who have been arrayed as accused Nos. 2 to 7 in the said complaint. The personal representations were made with the intention of inducing the persons to invest in Iridium. The representations made on behalf

of the petitioner were that the Iridium System was a tested and proven to be successful technology and it was eminently viable; that it was designed to provide a subscriber link on a global basis which would be accessible virtually anywhere on the earth surface except where unusual conditions prevented the reception; that the Iridium phones would be compact in size and that they would be pocketable and palm sized; that the system was designed to offer a very high quality of voice, data or fax reception; that the system would offord the investors to participate in allied ancillary business including a preferential right to engage in both the gateway and service provider businesses; (A gateway is a ground station which acts as an inter-connection point linking satellites to terrestrial communications) and that the system would be extremely financially rewarding, etc; etc..

4. Respondent No. 3 further averred in its complainant that the petitioner posed itself as an established company in the wireless telecommunication and space market, having a total global annual turnover in excess of 20 billion U.S. dollars (Rs. 60,000/- crores) and that it had enormous technological abilities and capabilities. It was also represented that the total cost of the Iridium System would be about 4 billion U.S. dollars (Rs. 12,000/- crores) and that the petitioner was going to invest about 300 million U.S. dollars. (Rs. 945 crores) and that the balance amount of 3.68 billion U.S. dollars (Rs. 11,055 crores) was required to be sourced from outside by the persons would be strategically placed global partners. All these representations were made to reputed Indian Companies, banks and financial institutions to induce them to believe that Iridium was a company worth investing in by purchasing shares and operating a gateway.

5. Relying upon the representations made on behalf of the petitioner, respondent No. 3 in good faith invested a sum of Rs. 25.12 crores constituting 20% of the paid up capital. In addition, respondent No. 3 also invested 70 million U.S. dollars in equity of Iridium. Out of the same 25 million U.S. dollars (about Rs. 130.50 crores) were already invested by IDBI, IL & FS, I.C.I.C.I, S.B.I and EXIMP Bank prior to 24.10.1994 and the same were transferred in favour of respondent No. 3 and treated as its investment in the equity of the petitioner. After its incorporation in 1994, respondent No. 3 made a further investment of 45 million U.S. dollars (about Rs. 235 crores). Respondent No. 3 having thus made a large investment was allotted a gateway and thereafter, it was required to spend about Rs. 126.09 crores in connection with the construction, management and operation of the Indian gateway. Respondent No. 3 alleged in its complaint that it later on found that the Iridium System was a complete failure and that all the material representations made on behalf of the petitioner were totally false, dishonest and fraudulent. It was found that the said system could not generate signals, strong enough which could be picked up by satellite phones inside buildings or automobiles. The promised virtual accessibility of the signals any where on the globe, which was the main attraction of the Iridium System, was never achieved. Even where the signals were picked up, the quality of the same was extremely poor. The size of the Iridium satellite phones was not as per what was represented and it was found to be bulky in size and weight. The initial lot of handsets did not function properly and was required to be recalled. The services regarding data, fax, paging and geolocation were not provided. The entire investment of Rs. 116.42 crores in the Indian gateway, was a total loss as the system itself did not work. Respondent No. 3 further alleged that the petitioner was fully aware that the said system would not become operational and had serious technical shortcomings, but this was deceitfully concealed when the PPM of 1992 was issued. In the subsequent PPM issued in 1995, the representations and assurances were substantially watered

down and it was indicated that the system may not operate successfully. No copy of the PPM of 1995 was ever given to respondent No. 3. According to respondent No. 3, the petitioner was the only beneficiary of the said intentional misrepresentation and made a huge earning of 3.68 billion U.S. dollars (about Rs. 11,055 crores) against its equity contribution of 315 million U.S. dollars (rs. 945 crores). The entire exercise of the petitioner besides generating money to itself was to experiment with other's money and at other's risk but that has caused a wrongful loss of about Rs. 301 crores to respondent. The Iridium project finally collapsed when Iridium went into bankruptcy and in March, 2001 all its assets were sold to the Collusy Group, which is now operating the system on a limited scale.

6. In October 2001, respondent No. 3 filed its complaint in the court of the judicial Magistrate F.C. Khadki, Pune against all the seven accused and the learned Magistrate upon being satisfied that there are sufficient grounds for proceeding issued process against the accused for the offence Under Section 420 r.w.s. 120B of the I.P. Code. The petitioner has its registered office at Schaumburg in U.S.A. and all the other six accused are residents of various places in U.S.A., The learned Magistrate therefore, sent all the summonses addressed to the accused to the Indian Embassy in Washington for being served on the petitioner and the other accused. The Indian Embassy in turn forwarded the same to the petitioner. The necessity of mentioning this fact has arisen because it was strongly contended on behalf of the petitioner that there has been no proper and legal service of the summonses in accordance with the provisions of Section 105 of the Cr.P.Code and the petitioner has specifically made it clear "that filing of this petition ought not to be treated as and is not tantamount to the Petitioner Company submitting to the jurisdiction of the Learned Magistrate nor is the filing of this petition tantamount to an admission that the receipt of the summons in the United States of America was legal, proper and valid service in accordance with law".

7. After filing of this petition on 3.4.2002, this court granted ad-interim relief staying the proceeding of C.C. No. 81/2001 pending on the file of the learned Magistrate. Respondent No. 3 then filed Special Leave Petition in the Supreme Court challenging the ex-parte stay. The Supreme Court declined to interfere with the same but requested this court to dispose of the petition by the end of July, 2003 and while so doing also to decide whether the decision of this court will bind those parties who have not approached the High Court challenging the summons issued by the trial court to them.

8. I have heard at length the learned counsel of both the parties who made exhaustive submissions before me on various aspects of the case. They also took me through various documents particularly the Private Placement Memoranda of 1992 and 1995 as well as the Stock Purchase Agreements to point out whether or not there was any fraudulent or dishonest inducement on the part of the petitioner to induce respondent No. 3 to invest money in the Iridium Project. The main contentions raised on behalf of the petitioner are as under:-

> i) The petitioner is a company and being a juridical person it is incapable of having the requisite mens rea to commit the offence of cheating. Therefore, the petitioner cannot be prosecuted for the offence Under Section 420 r.w.s. 120B of the I.P.Code.

ii) The dispute in question is of civil nature and that process of criminal court is being abused to settle the said dispute.

iii) There is no material to make out a prima facie case of cheating and conspiracy against the petitioner. Therefore, the learned Magistrate ought not to have issued process.

iv) The court of the Judicial Magistrate F.C. at Khadki, Pune has no territorial jurisdiction to take cognizance of the alleged offence and issue process as no part of cause of action has arisen within its territorial jurisdiction.

v) There is no proper and legal service of summonses to the petitioner and other accused in accordance with the provisions of Section 105 of the Cr.P. Code.

vi) This is a fit case wherein the exercise of its inherent powers by this court is necessary to prevent buse of process of the criminal court and also to secure the ends of justice.

9. Coming to the first contention, it is the general principle of Criminal Law that a crime is not committed unless the person committing it has the mens rea viz. guilty mind. The maxim "actus non facit recum, nisi mens sit rea" means that the intent and act must both concur to constitute the crime. Crime is a general term. Offence is that crime which is made punishable by law. For commission of every offence the requisite thing is mens rea unless the statute expressly excludes it. So far as the offence of cheating is concerned it does require the mens rea to deceive. Section 415 of the I.P.Code defines the offence of cheating as under:

> 415. Cheating--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation - A dishonest concealment of facts is a deception within the meaning of this section.

Section 11 of the I.P.Code defines the word 'person' as including any Company or Association or body of persons, whether incorporated or not. The definition is not exhaustive but it is inclusive. Therefore, the word 'person' means both a natural person, whether man, woman or child and an artificial or juridical person like a Company or Corporation. Reading Section 415 in the light of the definition of the word 'person' as given in Section 11, it becomes clear that "any person" can be deceived. It need not be an individual or natural person but it can be a Company or Association as well. But the question is whether the deceiver can be any "person" viz. a natural person and a juridical person. In other words, whether the word "whoever" used in Section 415 means both natural person and juridical person. To put it more directly and specifically, whether a juridical

person like a Company or Corporation can commit the offence of cheating within the meaning of Section 415. There can be no dispute of the fact that the offence of cheating involves mens rea as an essential ingredient. This is obvious from the use of the words "fraudulently" or "dishonestly" or "wilful". Under Section 25 a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. Under Section 24 whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly". It therefore, follows that "whoever" is alleged to have deceived must be a person capable of having the requisite mens rea of fraudulently or dishonestly inducing the person so deceived. The question posed before me is whether a company can have the mens rea of deceiving others.

10. It was contended by Shri Chinoy the learned counsel for the petitioner that the petitioner being a company is a juridical person and as such incapable of having the requisite mens rea of deceiving. Shri Rohatgi on the other hand submitted that there is no bar to prosecute a company for the offence of cheating. Both the learned counsel have relied upon certain decisions to which reference must be made. In A.K. Khosla v. T.S. Venkatesan 1992 Cr.L.J. 1448, two companies alongwith other accused were charged of having committed offences under Section 420, 467, 471, 477A and 120B of the I.P. Code and the Magistrate issued process against all the accused. In the Calcutta High Court it was contended, inter alia that the said companies being juristic persons could not be prosecuted for offences under the I.P. Code where mens rea is an essential ingredient. The High Court upheld the contention and pointed out that there are two tests in respect of the prosecution of corporate bodies. The first being the test of mens rea and the other is the mandatory sentence of imprisonment. It was held that a company being a corporate body cannot be said to have the necessary mens rea, nor can it be sentenced to imprisonment as it has no physical body.

11. In Kalpanath Rai v. State one of the questions was whether a company which was arraigned as accused No. 12 in a case under the Terrorists and Disruptive Activities (Prevention) Act(TADA) was alleged to have harboured one of the terrorists. The said company was convicted by the trial court of the offence punishable under Section 3(4) of the TADA. Section 3(4) reads:-

> "Whoever harbours or conceal or attempts to harbour or conceal any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine".

The Supreme Court referred to the definition of the word 'harbour' as given in Section 52A of the I.P. Code and pointed out that there is nothing in TADA, either expressly or even by implication, to indicate that mens rea has been excluded from the offence under Section 3(4) of TADA. The Supreme Court referred to its earlier decisions in State of Maharashtra v. Mayer Hans George and Nathulal v. State of M.P. and observed that there is a catena of decisions which has settled the legal proposition that unless the statute clearly excludes mens rea in the commission of an offence, the same must be treated as essential ingredient of the criminal act to become punishable. It was further held that there is no question of accused No. 12, the Company to have had the mens rea even if any terrorist was allowed to occupy the rooms in its hotel. It was pointed out that the Company is not a natural person. The Supreme Court observed:-

> "We are aware that in many recent penal statutes, companies or corporations are deemed to be offenders on the strength of the acts committed by persons responsible for the management or affairs of such company or corporations e.g. Essential Commodities Act, Prevention of Food Adulteration Act, etc.. But there is no such provision in TADA which makes the Company liable for the acts of its officers. Hence, there is no scope whatsoever to prosecute a company for the offence under Section 3(4) of TADA."

12. Both the abovementioned decisions were relied upon by the Calcutta High Court in its subsequent decision in Zee Telefilms Ltd., v. Sahara India Co. Corporation Ltd. 2001 (3) Recent Criminal Reports (Criminal) 292 wherein it dismissed the complaint filed against a company under Section 500 of the I.P. Code, alleging that the said company had telecast a programme based on falsehood and thereby defamed the complainant. It was held that in the offence of defamation, mens rea is one of the essential ingredients and that a Company cannot have the requisite mens rea.

13.As against these decisions, Shri Rohatgi, the learned Counsel for respondent No. 3 relied upon M.V. Javali v. Mahajan Borewell and Co. 1998 Company Cases (Vol. 91) Supreme Court 708. In that case the appellant had filed a complaint against the respondent company, alleging commission of offence under Section 276B r.w.s. 278B of the Income Tax Act, 1961. The respondent company after being served with summons filed an application for its discharge on the ground that sanction for prosecution granted by the sanctioning authority was bad. The Magistrate allowed that application and discharged the respondent Company. When the said order was challenged before the High Court it did not deal with that ground that prosecution of the respondent company under Section 276B was not maintainable for if ultimately the Special Court found it guilty, the Court could not legally impose a substantive sentence upon the Company which was mandatory under that section. The matter was carried to the Supreme Court and the question posed before it was whether a company being a juristic per on and thus incapable of being sentenced to imprisonment, can be prosecuted and for that matter be convicted. The Supreme Court referred to the provisions of Section 278B which are as under:-

> "278B(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against an punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
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> (2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the

> part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purposes of this section,-

> (a) company means a body corporate, and includes-
>
> (i) a firm; and
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> (ii) an association of persons or a body of individuals whether incorporated or not; and
>
> (b) director, in relation to-
>
> (i) a firm, means a partner in the firm;
>
> (ii) any association of persons or a body of individuals, means any member controlling the affairs thereof."

(emphasis* supplied).

It was held that the words "as well as the company" appearing in the section also make it unmistakably clear that the company alone can be prosecuted and punished even if the persons mentioned in the categories (ii) and (iii) who are for all intents and purposes vicariously liable for the offence, are not arraigned, for it is the company which is primarily guilty of the offence. As regards the question of mandatory sentence of imprisonment provided for the said offence, the Supreme Court referred to the recommendations of the Law Commission and the principles of interpretation of statutes and observed that the only harmonious construction that can be given to Section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely, on persons coming under categories (ii) & (iii) above but where it cannot be imposed, namely, on a company, fine will be the only punishment. In Zee Telefilms Ltd., (supra) reference is made to M.V. Javali's case and pointed out that mens rea is not one of the essential ingredients of an offence under Section 278B of the Income Tax Act. It was observed:

> "Section 278B(1) of Income Tax Act clearly provides that where an offence under that Act is committed by a company, every person who, at the time the offence was committed, was incharge of, and was responsible to the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Therefore, by this provision statute expressly provided that a company can be prosecuted for committing offences under the Income Tax Act. This decision cannot have any application in the present case as under the Penal Code, there is no such similar provision that a company is also liable to be prosecuted even when statute creating such offence of defamation clearly lays down that mens rea is one of

> the essential ingredients".

In this context the observations made by the Supreme Court in Kalpanath Rai's case (cited supra) are relevant and material. The Indian Penal Code does not contain any provision similar to that in the Income Tax Act, which specifically states that a company, being a person within the meaning of the word as defined in Section 11 can be punished even for offences involving mens rea as an essential ingredient. The Income Tax Act, The Essential Commodities Act, The Prevention of Food Adulteration Act etc. do contain specific provisions to deal with offences by companies. Therefore, reliance upon M.V. Javali's case by Shri Rohatgi is not proper and correct and it cannot sustain prosecution against the petitioner company which being a juridical person is in a sense doli incapax and it cannot commit an offence of cheating within the meaning of Section 415, which positively involves criminal intention to deceive others. The same is also true in respect of the offence of conspiracy which involves guilty mind to do an illegal thing. Therefore, although a person who is victim of deception can be a company, the perpetrator of deception cannot be a corporate body like a company or association. It can only be a natural person who is capable of having mens rea to commit the offence. Consequently, the word "whoever" occurring at the beginning of Section 415 and 120B cannot include in its sweep juridical person like a company. In view of this position the objection raised on behalf of the petitioner to the maintainability of the complaint will have to be upheld.

14. The next contention of the petitioner is that the dispute in question is of civil nature and that the process of criminal court is being abused. It is pointed out that the relevant contracts provide for methods for resolution of the dispute. It is alleged that respondent No. 3 is trying to bypass the dispute resolution method provided for in the contracts and by alleging fraud. In Trisun Chemical Industry v. Rajesh Agarwal , it was held -

> "The provision incorporated in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement."

It is also emphasised by the petitioner that the dispute arises out of a commercial transaction wherein respondent No. 3 did not get the anticipated profits. Reliance is also placed on the decision of a Division Bench of this Court in Bomanji Kavasji v. Mehernosh 1982 Bom. C.R. 503, wherein it was held that there is no justice at all to criminally proceed against the accused where the dispute is essentially of civil nature and that a criminal action in such a case would be abuse of criminal process. State of Haryana v. Bhajanlal 1992 S.C.C. (Cri) 426 gives seven categories of cases by way of illustration wherein the exercise of inherent powers under Section 482 of the Cr.P.Code by the High Court would be necessary and two of such categories are where the allegations made in the complaint or F.I.R., even if they are taken at their face value and accepted in their entirity, do not prima facie constitute any offence or make out a case against the accused and where the uncontroverted allegations made in the complaint or F.I.R. and the evidence collected in support of

the same do not disclose the commission of any offence or make out a case against the accused. A dispute which is basically and essentially of civil nature falls under these categories. It would not however, be proper to say that the dispute is exclusively of civil nature as it arises out of a commercial transaction or contract. As observed in Rajesh Bajaj v. State merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. It was further observed that there is hardly a reason to hold that the offence of cheating would elude from a commercial or money transaction because many a cheating were committed in the course of commercial and also money transactions. Therefore, what is necessary is first to ascertain whether the dispute is really civil or criminal. For this purpose, the complaint in its entirety will have to be examined on the basis of the allegations made therein. But the High Court has no authority or jurisdiction to go into the matter or examine its correctness. The allegations in the complaint will have to be accepted on the face of it and the truth or falsity cannot be gone into by the court at this stage. (Vide Medchl Chemicals and Pharma Ltd. v. Biological E. Ltd., (2002) 3 S.C.C. 269).

15. The factual matrix of the dispute in brief is that the Iridium System was conceived by the petitioner in 1987 and it was intended to be a wireless communication system through a constellation of 66 satellites in low orbit to provide digital service to mobile phones and other subscriber equipment globally. The Iridium Inc., a company wholly owned by the petitioner was incorporated in 1991 to construct, own and operate the Iridium System. In 1992 the petitioner issued Private Placement Memorandum (1992 PPM) inviting qualified investors on world wide basis to invest in this project. The 1992 PPM did set out the risk factors of the Iridium System. Respondent No. 3 company was incorporated on 24.10.1994 and prior to its incorporation an aggregate investment of 25 million U.S. dollars was made in Iridium Inc. by the Industrial Development Bank of India (IDBI). Infrastructure Leasing and Financial Services Ltd., (ILFS), State Bank of India and other banks known as ICICI and EXIMP. Consequent upon the incorporation of respondent No. 3, the investments made by these banks were transferred in favour of respondent No. 3. It appears that thereafter, during the period from April, 1994 to March, 1996, respondent No. 3 made further investment of 45 million US dollars in the said project. According to respondent No. 3, the 1992 PPM contained certain representations with respect of technical and commercial viability of the Iridium System upon which it (respondent No. 3) Banks and other financial institutions in good faith placed complete reliance and made investments but later on it was discovered that the Iridium System was a complete failure and that all material representations were totally false, dishonest and deceitful to the knowledge of the petitioner. The alleged representations made to and the actual realities found by respondent No. 3 can be summarised as under:

Alleged (mis)-representations.

Actual -realities.

i) The Iridium System would provide a subscriber link on a global basis and this link would be accessible virtually anywhere on the earth's surface except where severe and unusual conditions prevent reception of (SIC).

(i) The said system could not generate signals strong enough to be picked up by satellite phones inside buildings or automobiles. It became necessary for an (SIC)(SIC) to install an additional antenna which was required to be open to sky directly in line with the satellite.

ii) The Iridium system would offer a very high quality of voice and\or data and\or fax reception.

(ii) None of these service were made available.

iii) The Iridium phones would be compact, small size, hand held phones comparable to cellular phones

(iii) The phones were extremely bulky with a monstrous antenna and were un-weildy to handle and operate.

iv) The Iridium System was tested and proven and had been successfully applied in a number of other operational systems including the systems of NASA

(iv) The Iridium System was found to be inferior to terrestrial\land based systems of wrieless communication.

v) The iridium system would require 14 Gateways to operate. Investing in the project would facilitate allotment of a gateway which would prove to be extremely remunerative.

(v) The investment of Rs. 116.42 crores in the Indian Gateway was a total loss as the system did net work.

vi) The Iridium System would prove to be an excellent investment offering an exceeding high financial return.

(vi) The system was a failure resulting in heavy loss to respondent NO. 3.

16. Respondent No. 3 stated in its complaint that the object of all these representations was to induce the Banks, Companies and other financial institutions to believe that Iridium was a company worth investing. It was also alleged that the petitioner was fully aware of the fact that there were serious technical shortcomings and it would not meet the promised capability and performance. Yet the petitioner cancealed the short comings and/or technical unsuitability of the system. The system was at the time of representations still under development and untested. Respondent No. 3 has pointed out that the Board of Directors of the petitioner itself rejected a proposal in 1990 that the petitioner itself should fund billions of dollars needed to develop the Iridium System. The petitioner is said to have admitted in the 1995 PPM that it had grave reservations about the viability of the system. It is further stated that the original representations, assurances and warranties were

substantially watered down in the 1995 PPM but a copy thereof was not supplied to respondent No. 3. In para 21 of the complaint it is alleged that right from the inception the intention of the petitioner was to induce unwary subscribers to buy the shares of Iridium Inc. by making false representations with the intention of cheating respondent No. 3 and causing it a wrongful loss of about Rs. 301 crores. It is on the basis of these facts that the alleged offence of cheating is said to have been committed by the petitioner in conspiracy with other accused.

17. The main ingredient of the offence of cheating as defined in Section 415 is deception of any person. The words "by deceiving any person" in Section 415 mean causing to believe that is false; or misleading as to a matter of fact or leading into an error. (Vide Law of Crimes by Ratanlal) According to respondent No. 3, deception was practised by the petitioner through the representations and statements made in its 1992 PPM. It is in the nature of a prospectus or a brochure of Iridium Inc., giving all technical information in respect of the Iridium System alongwith the information relating various other connected issues such as market forecast, competition, financial information, space system, contracts, petitioner's role and conflict of interest, spectrum and other regulatory matters, management, terms of the offers etc. It is an exhaustive document running into about 400 pages. What is most important to be noted is the caution given to the prospective investors about certain risk factors involved in the investment. The very first page of 1992 PPM contains the following caution in bold capital type:

> "AN INVESTMENT IN IRIDIUM INVOLVES CERTAIN RISKS, MANY OF WHICH RELATE TO THE FACTORS AND DEVELOPMENTS LISTED ABOVE. PROSPECTIVE INVESTORS SHOULD CAREFULLY CONSIDER THE DISCLOSURES SET FORTH ELSEWHERE IN THIS MEMORANDUM, INCLUDING THOSE UNDER THE CAPTION "RISK FACTORS" (1992 PPM PG.5).
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> The 1992 PPM contains a separate chapter entitled "Risk Factors" and below the heading there is following caution printed in bold capital letters:
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> "INVESTMENT IN SHARES ARE SUBJECT TO A NUMBER OF RISKS. PROSPECTIVE INVESTORS SHOULD CONSIDER, AMONG OTHER THINGS, THE FOLLOWING BUSINESS AND INVESTMENT RISKS ALONG WITH THE RISKS DESCRIBED IN OTHER SECTIONS OF THIS MEMORANDUM INCLUDING IN PARTICULAR THOSE DESCRIBED IN 'SPECTRUM AND OTHER REGULATORY MATTERS", "MOTOROLA'S ROLE AND CONFLICT OF INTEREST", "SPACE SYSTEM CONTRACTS AND RELATED ISSUES" AND "MARKET FORECAST AND COMPETITION". (1992 PPM PG.72).
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> Below this caution, are mentioned several risk factors, but the most important risk factors which are relevant vis-a-vis the alleged deceptive representations are stated in the following words:-
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> "New Regulated Business Venture. The company is a new business venture of global scope that will require substantial licensing and authorizations from numerous

sovereign nations before its business can be conducted in the manner contemplated by its current business plan. Therefore, in deciding whether to invest in Shares, prospective investors must evaluate among other things, the potential feasibility and future performance of the Company based on its business plan without the benefit of any operating history, and prior to application for an receipt of such licensing and authorizations. No assurance can be given that any of the necessary licenses and authorizations will be obtained in a timely manner or at all (1992 PPM Pg.72).

Market and Timing Risk. The projections contained in this Memorandum are based on certain assumptions with respect to the amount of IRIDIUM services the Company will sell in each of the years prior to and including 2013. The Company has made assumptions with respect to market acceptance of the IRIDIUM system, the elasticity of demand for IRIDIUM services, traffic patterns and related power requirements. Such assumptions are based in part on market surveys and analysis of analogous system, e.g. terrestrial cellular systems, and are also based in part on judgments concerning company proposals. However, because no existing system has all of the features and functions of the IRIDIUM system, investors must evaluate these assumptions without the benefit of directly comparable systems. These assumptions are critical because the Company expects that almost all of its costs will be fixed. Thus, while the Company believes its projections are reasonable, the Company is unlikely to achieve its projected financial results if these assumptions prove to be optimistic.

Financial Requirements. The Company presently expects to require total capital of approximately $ 4.0 billion. This is made up of approximately $3.37 billion to purchase the initial IRIDIUM constellation of satellites and system control facilities under the Space System Contract, approximately $0.46 billion for estimated payments of interest, and approximately $0.19 billion for estimated net start-up and operating expenses through 1998. The Company proposes to raise 40 percent of such amount, or approximately $1.6 billion, in this and subsequent equity offerings and the remaining 60 percent through debt financing, certain of which may require credit enhancements supported by the Company's stockholders. The company has not received any commitments with respect to any financing. Moreover, there can be no assurance that currently anticipated capital requirements will be sufficient to complete the IRIDIUM system in the manner contemplated by the business plan, or that the anticipated proportion of equity and debt will be obtainable. If the company is unable to raise enough capital to complete and operate the IRIDIUM system, investors may receive little or no return on their investments in Shares.

Technological Risks and Potential for Delays. To build the IRIDIUM system, the Company and its suppliers must integrate a number of complex technologies. The integration of this large array of diverse technologies is a complex task that has not been attempted prior to the IRIDIUM system. This integration project is further complicated by the fact that most of the hardware components associated with the

IRIDIUM system will be in space. Errors requiring changes to hardware components in space may require premature satellite deorbiting, with attendant costs and revenue loss. Operation of the IRIDIUM system is also significantly dependent on software. However, the satellites are designed such that the software that operates in the satellites could generally be modified by transmitting new versions of such software to the satellites through the constellation's crosslink network. (1992 PPM Pg.73).

Assumptions have also been made as to how much power or link margin is required to maintain the communications link between the satellites and the portable subscriber units. Although the Company believes that sufficient link margin will exist to maintain such communications, there will be times when the communications link cannot be maintained.

The financial projections set forth in this Memorandum are based on the assumption that the IRIDIUM system will become operational as currently designed. Though the satellite design has begun, not all technical issues have been resolved." (1992 PPM Pg.73). (Emphasis provided).

18. It was further pointed out that on 19.7.1993 there was a Stock Purchase Agreement entered into by IL & FS with Iridium Inc. whereunder the IL & FS agreed to purchase 40,000 shares of Iridium Inc. The shares were purchased by IL & FS in consultation with IDBI, ICICI, SBI, EXIM banks and these financial institutions had the technical advice and expertise of VSNL. Clause 6 of the agreement refers to the representations, warranties, covenants of the Company. It does not contain any warranty or assurance about the technical and financial viability of the project. Clause 7 of the agreement mentions representations, warranties, acknowledgements and agreements of the investors. Sub-clauses (a)-(v)(vii) and (b)(ii) are relevant and they read as under:

(a) Investor Representations and Warranties :- As a material inducement to the Company to enter into this Agreement, each Investors, with respect to itself only, hereby represents and warrants that as of the closing:

(v) Such Investor is capable of evaluating the merits and risks of the purchase of the Shares. Such Investor is acquiring the shares hereunder for its own account, as principal for investment and not with a view to the direct or indirect resale or distribution of all or any part of or any interest in such shares.

(vii) In purchasing shares, such Investors has relied only on the advice of such Investor's own advisors, the representations and warranties of the company contained herein and the information contained in the Private Placement Memorandum.

(b)(ii) Such Investor (1) has received and read copy of the Space System Contract and the J&M Contract, (2) has had full access to such other information concerning the Space System Contract and O&M Contract as such Investor has requested, (3)

understands that the Company is bound by the provisions of the Space System Contract and the O & M Contract and hereby ratifies the Company's execution of the Space System Contract and the O & M Contract and (4) agrees to the terms of the Space System Contract and the O & M Contract and will not take any action in contravention of the enforcement of and the Company's full compliance with the terms thereof."

19. On 15.9.1994 a similar Stock Purchase Agreement was entered into by the same parties under which the IL & FS agreed to purchase additional 30,000 shares of Iridium Inc. and the same also contains similar warranties by the investors. On 20.11.1995 there was another PPM issued by the Iridium Inc. which contained similar representations, warranties and information like those given in the 1992 PPM. Respondent No. 3 has alleged in para 16(h) of his complaint that the petitioner had grave reservations about the viability of the Iridium System and therefore, the representations, and warranties given in the 1992 PPM were substantially watered down. Shri Rohatgi drew my attention to the following recitals in the 1995 PPM, pages 26, 27 and 28.

The ISUs for the IRIDIUM System are still under development. Motorola has informed the Company that the portable, hand-held ISU Motorola will develop is expected to be significantly larger and heavier than today's smallest and lightest pocket-seized, hand-held cellular telephones and is expected to have a significantly longer and thicker antenna than hand-held cellular telephones. Motorola has informed the Company that while some relatively minor reductions in size and weight may be possible over time, it is likely that the actual portable, hand-held ISU will be approximately the size and configuration of nonworking models of the IRIDIUM ISUs produced by Motorola to date. Motorola has informed the Company that the pager Motorola will develop is expected to be somewhat larger than today's standard alphanumeric belt-worn pagers."

Voice-

As with any wireless communications system, and particularly and satellite-based wireless service, there will be certain service limitations or degradation due to the interference or attention imposed by natural or man-made obstructions between the satellites and the subscriber equipment. Such limitations will vary, sometimes significantly, as actual situations and conditions vary and as the satellites in the IRIDIUM System move across the sky. Based upon current testing and simulations, it is expected that such limitations will also vary according to the particular subscriber equipment being employed, with smaller units using integral antennas, such as portable, hand- held ISUs, being generally more susceptible to limitations than units having accessory antennas such as automobile antennas.

The degradation that may be experienced on a satellite-based communications system like the IRIDIUM System includes: inability to initiate or receive calls; interruptions of service ranging from brief (no major disruption of communications) to moderate (possibly requiring repetition of words, phrases and sentences by the speaker) to complete (an ongoing transmission is terminated involuntarily); and spuriuous noises. Generally these limitations will be more severe than the limitations that would be experienced in comparable environments in mature cellular systems due

in part to the generally lower link margins in the IRIDIUM system than those prevailing in mature cellular systems. Some limitations can be reduced or eliminated by the subscriber moving to an area in which a sufficiently clear view of the satellite can be obtained.

IRIDIUM subscribers using portable, hand-held ISUs should expect almost no limitations is service in areas where an unobstructed view from the ISU to the satellites is maintained. Minor degradation in service quality and availability can be anticipated to occur as widely spaced obstructions, such as trees, buildings and other natural and man-made obstacles are positioned between the satellite and the user. Larger and more densely spaced obstacles should be anticipated to introduce more significant limitations. Severe degradation of services quality and availability would be expected from time to time in densely- packed urban environments. Service availability inside buildings is expected to be limited and will vary with building construction and other relevant factors. Only extremely limited voice service, or no voice service, is expected to be available inside buildings with steel construction and metal coated glass typical of urban high rise buildings (including, in particular, in most hotels and professional buildings.)"

> Market The potential market for IRIDIUM services is the worldwide market for global personal voice, paging and data communications. However, because IRIDIUM services will generally be priced higher than terrestrial landline and wireless services where they are available, and will offer more limited service quality and signal penetration than mature cellular and paging systems, the Company's strategy is not based upon direct competition with such terrestrial system". (Emphasis provided) The case of respondent No. 3 about the alleged cheating is however not based on the 1995 PPM. Further it is relevant to note that on respondent No. 3's own saying it made same investments even after the 1995 PPM (Vide para 14(d) of the complaint. Therefore, there is no reason for respondent No. 3 to make any grievance about the 1995 PPM.

20. It will thus be seen that the petitioner did not keep its investors in dark about the Iridium System and gave them all necessary information in respect of various aspects of the system. Not only that but it also forewarned them about the risk factors involved in the project and advised them to consider them before investing. The statements/ representations made in the 1992 PPM cannot be read in isolation and have to be considered subject to the caution given. There would have been much substance in the grievance if the 1992 PPM had been reticent about the risk factors involved in the project. But as seen above thereis no suppression of the risks involved in the investment. It despite the caution given, the investors ignore the same and invest their money in the project, they do it at their own risk and it cannot be said that they were misled, misrepresented or deceived. It is pertinent to note that the 1992 PPM nowhere gives absolute warranty about technical viability and feasibility. There is no doubt that the petitioner was interested in raising capital for its project and that it did solicit investments but in the light of the abovementioned facts it cannot be said that there was any fraudulent or dishonest inducement by the petitioner of respondent No. 3. Nor could it be said that there was intentional inducement by the petitioner of respondent No. 3 to invest and thereby cause loss or damage to respondent No. 3.

21. It was pointed out on behalf of the petitioner that there were 24 directors of Iridium Inc. of which 4 were nominated by the petitioner and the remaining 20 by the other strategic investors and Gateway operators including one Mr. S.H. Khan & who was nominated by respondent No. 3. IITL (Iridium India Telcom Limited). He was Chairman and Managing Director of IDBI and he was appointed as a director of the Iridium Inc., member of the Finance Committee and Related Party Contracts Committee of Iridium Inc. as the representative of IL & FS. The Iridium Inc. issued Form S-1 after the approval by the Board of Directors which included Mr. Khan. Form S-1 contains identical statements which are made in 1995 IPM. Therefore, there is no substance in the grievance of respondent No. 3 that it was not furnished any copy of the 1995 PPM which appears to have been issued to all the existing investors.

22. Shri Rohatgi argued that the petitioner suppressed certain material facts and painted a rosy picture about its project. He submitted that the risk factors do not include the working of the system. This however, does not appear to be correct. The successful working of the system was dependent upon several factors and the 1992 PPM clearly mentions to all the relevant factors including the technological risks. Shri Rohatgi further accused the petitioner of making dishonest concealments and pointed out that a dishonest concealment of facts is a deception within the meaning of Section 415 in view of the Explanation. IN this respect he drew my attention to para 16(d) of the complaint which enumerates the facts which the petitioner allegedly concealed and which establish that the system would fail. It reads:-

> "(d) The 1st Accused had full knowledge about the un-viability of the Iridium system. This can be best gauged fro the fact that the board of directors of the 1st Accused had, in the early 1990's rejected a proposal that the 1st Accused itself fund the billions of dollars needed to develop the Iridium system. Obviously, therefore, the 1st Accused had no qualms about inducing other to invest their money where it itself was loathe to do".

Shri Rohatgi pointed out that in the petition there is no answer to the said para though it contains parawise remarks of the petitioner to other allegations made in the complaint. Non disclosure of the fact that the board of director of the petitioner had rejected the proposal to invest in the Iridium System is not a fact which the petitioner was expected to disclose to the prospective investors. It is an extraneous fact which did not form part and parcel of the Iridium System nor the success or failure of the system was concerned with or dependent on it. The prospective investors were supposed to take decision whether to invest or not to invest on the merits and demerits of the system keeping in view all the risk factors brought to their notice. Therefore, even assuming that there was any such non-disclosure on the part of the petitioner, it does not amount to deception within the meaning of Section 415.

Shri Ashok Desai, the learned counsel for the petitioner submitted that respondent No. 3 suppressed some material documents from the learned Magistrate at the time of seeking order of issue of process. There appears to be much substance in this grievance. A bare perusal of the complaint shows that there is no reference to the Stock Purchase Agreements of 1993 and 1994. In fact these two important documents contain acknowledgements of the investors about their capability of

evaluating the merits and risks of the purchase of the shares and their relying only upon their own advisors. The shares of Iridium Inc. which were initially purchased by IL & FS came to be transferred to respondent No. 3, as stated in para 14(c) of the complaint. Therefore, respondent No. 3 assumed all the rights and obligations of IL & FS under the Stock Purchase Agreements of 1993 and 1994. It was pointed out that respondent No. 3 itself executed such agreement with Iridium Inc. in 1995. This was not controverted before me. In short, the Stock Purchase Agreements are very relevant and material documents which take out the very basis of the contention of respondent No. 3 that it was dishonestly or fraudulently induced to believe in the representations made in the PPM. But this relevant material was suppressed from the learned Magistrate. This court in exercise of its inherent powers which are far wider than its revisional powers can certainly look into it and rely upon it (Vide N.C. Nagpal v. The State 1979 CR. L.J. 998 Calcutta and Satish Mehra v. Delhi Administration). In Bomanji Kasavji v. Mahernosh (Supra) the complaint was for the offences under Sections 13 and 14 of the Maharashtra Ownership Flats Act and Sessions 420/114 I.P.Code against the trustees and members of a sponsoring committee who had allegedly refused to register a housing society. The complainant, however, suppressed one important letter of the trustees which pre-eminently showed their readiness and willingness to register the society. The court observed in that connection : "significantly enough, it is precisely this letter that was suppressed by the complainant for motives not difficult to fathom. Had it been disclosed, even the learned trial Magistrate would have dismissed the complaint refusing to issue process thereon."

24. In Haridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 S.C.C. 168 it was observed:

> "In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise of criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure the promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

Reading the averments in the complaint in the light of the risk factors stated in the PPMs and the acknowledgements given by respondent No. 3 in the Stock Purchase Agreement, it cannot be said even prima facie that there was such a culpable intention on the part of the petitioner when the representations were made to the investors. Even giving those averments, in the complaint their face value, it is not possible to come to a conclusion that there existed sufficient grounds for proceedings against the petitioner. To my mind the facts disclosed by the complaint show that the dispute between the parties is really of civil nature though it has been tried to be projected as of criminal nature by attributing dishonest or fraudulent intention to the petitioner. It appears that respondent No. 3 had high hopes of the project turning into financially resourceful but all his hopes have proved to be false. In Muhmmad Ibrahim v. T.C.H. Naughton (28) AIR 1941 Sind 198, the complainant on

the representations held out by the Managing Director of a business entered into partnership with him and invested a large sum of money. He had access to the business books and also participated in the management of the business which ultimately ended in loss. On the charge of cheating made by the complainant, it was held that no offence of cheating was committed. It was observed:

> "After all the essence of the charge of cheating is that the complainant should have been deceived. I do not think the complainant is the sort of a person who would be deceived by the accused at all. It may be that the high hopes of profit from this business held out by accused 1, were falsified by events, but merely because a man holds out high hopes of a business of which he is a managing director, "puffs his wares," as the saying goes, and his high hopes are not fulfilled by events, it does not thereby follow that he had any criminal intent or that he was anything more than a mistaken optimist".

In view of the above discussion, I am of the opinion that this is a case of civil dispute and it does not disclose any cheating by the petitioner.

25. Coming to the fourth contention which relates to jurisdiction, it may be noted that the complaint is filed in the court of judicial Magistrate F.C., Khadki, Pune. It is stated in para 25 thereof that the misrepresentations of the accused which constitute the offence of cheating have resulted in the complainant suffering immense monetary loss, a large portion of which has arisen on account of the expenditure of Rs. 103.66 crores + Rs. 22.43 crores made for setting up the gateway which is totally useless and unnecessary. The said gate way is set up at Dighi near Pune and it is located in the territorial jurisdiction of the Khadki court. It is further averred that the said loss or damage has been suffered by the complainant within the local jurisdiction of the Khadki Court and therefore, the said court has jurisdiction to entertain the complaint. It is however, contended on behalf of the petitioner that the Court of J.M.F.C. at Khadki cannot have jurisdiction to entertain and try the case. Section 177 of the Cr.P.Code states that every offence shall ordinarily be inquired into and tried by a Court within whose jurisdiction it was committed. The respondent company (complainant) has its registered office at Mumbai and the alleged representations amounting to deceitful inducement appear to have been made at Mumbai. Section 179 of the Cr.P.Code, however, states that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired not or tried by a court within whose local jurisdiction such things has been done or such consequence has ensued. Shri Chinoy the learned counsel for the petitioner pointed out that admittedly the alleged act of cheating did not take place at Khadki or Pune. As regards, the consequences of the alleged cheating he submitted that it is not part of the offence and therefore, Section 179 has no application to this case. Setting up of a gateway at Dighi, Pune may be a consequence of the alleged mis-representations by the accused but it does not form part of the offence. Parting of property (money) and/or suffering loss or damage which is the consequence of cheating and there is nothing in the complaint to indicate that any of the two had taken place in the local limits of the Khadki Court.

26. The submission of Shri Chinoy is based on a full bench decision of this Court in Re Jivandas A.I.R. 1930 Bombay 490, wherein it was held that when a person is accused of the commission of

any offence by reason of two things; first of anything which has been done and secondly of any consequence which has ensued, then jurisdiction is conferred on the court where the act has been done or the consequence has ensued. It was further observed that in such a case the consequence must be part of the offence alleged. A consequence which does not form part of the offence does not attract jurisdiction under Section 179. Shri Rohatgi on the other hand replied upon the decision in K. Satwant Singh v. State of Punjab but that does not help him at all because in that case the cheating by misrepresentation had taken place at Simla and as the consequence thereof money was paid at Lahore. It was therefore, held that the accused could be tried either at Lahore or Simla.

27. Shri Rohatgi however, submitted that jurisdiction is not critical issue at this stage as there is no initial territorial bar to take cognizance. Referring to the provisions of Section 190 Cr.P.Code he submitted that the said section empowers any Magistrate of the first class to take cognizance any offence subject of course of Section 191 to 199. In this respect he relied upon the decision in Trisun Chemical Industry v. Rajesh Agarwal , wherein it was held that it is erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. It was further observed:-

> "The jurisdiction aspect becomes relevant only when the question of enquiry or trial arises. It is, therefore, a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier."

In the said case a complaint was lodged before the Magistrate at Gandhidham in Gujarat alleging certain offences including the offence of cheating against another company located at Indore in Madhya Pradesh. What the Magistrate did, was that he forwarded the complaint to police for investigation under Section 156(3) of the Cr.P.Code. The accused challenged that order -inter alia that the Magistrate at Gandhidham had no jurisdiction to entertain the complaint. The challenge was upheld by the High Court but the Supreme Court set aside the High Courts order by making the above observations. In the instant case, however, the learned Magistrate at Khadki not only took cognizance of the alleged offences but also issued process against the accused. But it will be too much to expect the Magistrate to examine the question of his jurisdiction closely at the initial stage when the accused have not yet made their appearance before the Court. More-over in some case, as in this case, the question of territorial jurisdiction of the court is somewhat complicated, which can be decided by bilateral hearing only. What is expected to him is the prima facie satisfaction about his having jurisdiction. Shri Rohatgi is therefore, right when he submitted that the High Court should not decide that issue in this petition and leave the same to be decided by the Court in which the complaint is filed. The same is the ratio of the decision in Trisun's case. At any rate, the complaint does not become bad and cannot be quashed by the High Court in the exercise of its inherent powers which are to be used sparingly in exceptional cases to prevent abuse of the process of court or to otherwise secure the ends of justice. Consequently, the objection raised by the petitioner with regard to the territorial jurisdiction of the Khadki court will have to be rejected.

28. Coming to the question regarding the exercise of its inherent powers by this court, extensive submissions were made, with reference to various decisions, on behalf of both the parties. Shri Aspi Cony and Shri Ashok Desai contended that this being a civil dispute disclosing no cheating as alleged cannot be allowed to continue on the forum of a criminal court. They also pointed out that as respondent No. 3 is guilty of suppressing the relevant material before the learned Magistrate, the order of process, deserves to be recalled. Shri Rohatgi on the other hand submitted that there is no absurdity or improbability in the case of respondent and that it is in the interest of justice that the case should be allowed to proceed further. He further submitted that the matter involves loss of a huge amount of nationalized banks and public financial institutions, needs to be inquired into further. He also pointed out that the learned Magistrate has decided nothing except proceedings further in the matter and therefore, no interference by this court at that initial stage is warranted.

29. The law regarding the exercise of the High Court's inherent powers under Section 482 of the Cr.P.Code is very well settled by a series of decisions by the Supreme Court and various High Courts. Section 482 does not confer on the High Court any new powers but saves its inherent powers to make such orders as may be necessary to give effect to any order under the code or to prevent abuse of process of any court or otherwise to secure the ends of justice. It has been consistently held that the powers under Section 482 are of exceptional nature and that they are to be used sparingly in exceptional cases or rarest of rare cases to prevent abuse of process of any court or to otherwise secure the ends of justice. Right form the case of R.P. Kapur v. State of Punjab , the Supreme Court has been illustrating the categories of cases where inherent powers could and should be exercised to quash a criminal proceeding. Nagawwa v. Veeranna , State of Karnataka v. L. Munniswami, , Madhu Limaye v. State of Maharashtra ; State of Haryana v. Bhajanlal 1992 S.C.C. (Cri.) 426 have all tried to illustrate the categories of cases wherein the exercise of inherent powers can be made. Two of such categories of cases mentioned in Bhajanlal's case are i) where the allegations made in the F.I.R. or complaint, even if they are taken at their face value and accepted in their entirity do not prima facie constitute offence or make out any case against the accused and ii) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose commission of any offence or make out a case against the accused. As stated by me earlier, a dispute which is basically and essentially of civil nature falls under these categories. In Sharadchandra v. Gurushant a learned single judge after referring to the categories of cases illustrated in R.P. Kapur's case (supra) observed:

> "There could be cases where patently false statements may be made or where true facts available from the record have been either inadvertently or intentionally suppressed in the complaint and they are brought to the notice of this Court. Such true facts may be of grave consequence to the very maintainability of the complaint or the allegations against a particular accused. I am sure that in such a situation also if the court finds that suppression of material fact would result in abuse of process of court and needless harassment to a particular accused, this court can exercise its inherent power to meet the ends of justice at an appropriate time".

30. In Bomanji v. Mehernosh (supra) a division bench of this court held that mechanical use and insertion in the complaint of words that constitute the offence cannot convert an essentially civil

dispute into a criminal offence. It was further observed that the exercise of inherent powers is necessary to prevent criminal courts being utilized as weapons of harassment for settling disputes of civil nature. In State of Karnataka v. M. Davendrappa , while cautioning for careful and sparing use of the inherent powers, it was observed that these powers are to be exercised ex-debito justitiate t do real and substantial justice for the administration of which alone the courts exists. In Pepsi Food Ltd. v. Special Judicial Magistrate , it was observed that summoning of an accused person in a criminal case is a serious matter and that criminal law cannot be set into motion as a matter of course. Having regard to the facts and circumstances of the case and the weight of ratio laid down by the aforementioned decisions. I am of the opinion, that this is a fit case which calls for exercise of its inherent powers by this court to present the abuse of the process of criminal court to settle the civil dispute.

31. A grievance is made by the petitioner that there has been no proper and valid service of summons to it and other accused in accordance with the provisions of Section 105 of the Cr.P.Code. Both the learned counsel made submissions in this respect and also some decisions. But I think that it is really unnecessary for me to decide this question. Firstly because it has nothing to do with the crucial question involved in this case. Assuming that there is no proper service of summons to the accused, that does not affect the order of issue of process which cannot be faulted and quashed on that ground. Service of summons is a matter of procedure. Secondly, the remaining accused are not before me since they are not parties to this petition. Therefore, it is unnecessary for me to consider whether they have been properly served with summonses of the trial court. The third and most relevant reason is that the question about service of summons to the accused becomes only academic since I propose to quash the order of issue of process made by the learned Magistrate.

32. What remains to be considered is the effect of the proposed order on the other accused who are not before this court as parties to this petition. The Hon'ble Supreme Court while disposing of SLP No. 2993/2003 has requested this court also to decide whether its decision will bind those parties who have not approached this court for challenging the summonses issued by the trial court to them. It is obvious that the Supreme Court contemplated an eventuality of this petition being dismissed and whether in that event the decision of this court will bind the other accused or whether they will be entitled to challenge the order of issue of process in so far as it relates to them. The above stated eventuality does not arise since the petition is being allowed and the order of issuance of process is being quashed. The question which, therefore, arises whether the other accused can get benefit of this order or it is to be restricted to the petitioner only. Since I have held that the dispute in question is essentially of civil nature, there is no reason to restrict the application of this finding to the petitioner alone. In Bomanji v. Mehernosh (supra) the order or process was quashed not only against the petitioner but also against other accused who were respondents. It was observed that the complaint against all accused being based on circumstances similar and identical as against the petitioners, it would not be just to permit the same to proceed against the respondents as the impugned process deserved to be quashed as a whole. In Ashok Chaturvedi v. Shital H. Chanchani , the Supreme Court quashed the process against all the 9 officials of a Company, who were accused, though only 7 of them had preferred the SLP. It was held that in view of the conclusion that the allegations in the complaint that he allegations in the complaint do not make out any offence against any of the officers of the Company, it would be futile to allow continuance of the criminal

proceedings as against the remaining two accused. In the instant case, since I hold that the dispute is of civil nature, I think that the order of process deserves to be quashed as a whole and it would not be proper to allow the complaint to proceed against the remaining accused.

33. In the result, the petition is allowed. The impugned order dated 6.11.2001 passed by the Judicial Magistrate, F.C., Khadki, Pune in C.C. No. 181 of 2001 is hereby quashed and set aside as against the petitioner company (original accused No. 1) and against all the remaining accused Nos. 2 to 7 as well.

34. Rule is made absolute accordingly.

C. c. expedited.

An ordinary copy of this order duly authenticated by the Sheristedar/ P.A. is allowed.