

Propertymen Realty Pvt. Ltd vs The State Of Jharkhand & Ors on 14 September, 2023

Author: Sanjay Kumar Dwivedi

Bench: Sanjay Kumar Dwivedi

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W.P.(Cr.) No. 402 of 2023

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr.) No. 402 of 2023

1. Propertymen Realty Pvt. Ltd. (wrongly spelt as Property Realty Pvt. Ltd.) through its Director Souvik Banerjee.	
2. Souvik Banerjee (wrongly spelt as Sovik Banarji)	
3. Pitam Dutta (wrongly spelt as Pritam Datta)	
4. Suman Mukherjee (wrongly spelt as Suman Kukherjee) Petitioners
Versus	
The State of Jharkhand & Ors. Respondents

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioners : Mr. Indrajit Sinha, Advocate.

	:	Mr. Ajay Kumar Sah, Advocate.
	:	Mr. Rishav Kumar, Advocate.
For the State	:	Mr. Binit Chandra, A.C. to A.A.G.-III.
For the Resp. No. 5	:	Mr. Nilesh Kumar, Advocate.
	:	Mr. Amit Kumar Sinha, Advocate.
	:	Ms Sonal Sodhani, Advocate.
For the UOI	:	Mr. N. Parth Sarthi, A.C. to A.S.G.I.

05/ 14.09.2023 Heard Mr. Indrajit Sinha, learned counsel appearing for the petitioners, Mr. Binit Chandra, learned A.C. to G.A.-III appearing for the State and Mr. Nilesh Kumar, learned counsel appearing for the respondent No. 5.

2. It appears that the petitioners have approached the Hon'ble Supreme Court under Article 32 of the Constitution of India directly in W.P. (Crl.) No. 275 of 2023, which was permitted to be withdrawn with the liberty to the petitioners to approach the High Court, having the territorial jurisdiction and certain interim protection was provided for a week by the Hon'ble Supreme Court and the said interim order was further extended by another order of the Hon'ble Supreme Court and

thereafter the present writ petition was filed on behalf of the petitioners and on their mention, the matter was taken up and on the first day i.e. on 11.07.2023, the following order was passed, which is reproduced hereinbelow:-

"The petitioner moved before the Hon'ble Supreme Court in W.P. (Criminal) No.275/2023 and on 03.07.2023, the said writ petition was dismissed as withdrawn observing therein as under:

"Learned senior counsel appearing for the petitioners state that they may be permitted to withdraw the petition with a liberty to approach the High Court having jurisdiction. They have pressed for some interim protection in view the antecedents and further threat of being arrested.

Considering the submissions and material placed on record we only provide that for a period of one week, the petitioner may not be arrested in connection with FIR No.0097 dated 10.05.2023 registered at P.S. Bankmore, District Dhanbad.

It is further provided that in case the petitioners approach the jurisdictional High Court, they would be at liberty to make a request before the Hon'ble the Chief Justice for taking up their matter urgently either on the same day or within next 24 hours of filing subject to removal of all objections and petition being in order. The writ petition is dismissed as withdrawn with liberty as prayed for."

2. Pursuant to that, this matter was mentioned before Hon'ble the Chief Justice yesterday by the learned counsel appearing for the petitioners and that is how, this matter has been directed to be listed today.

3. Mr. Indrajit Sinha, learned counsel for the petitioners submits that it was brought to the knowledge of the Hon'ble Supreme Court yesterday that the matter has been listed before the High Court for today and in view of that, the Hon'ble Supreme Court has further passed following order on 10.07.2023:

"1. Upon mention being made by Mr. Siddharth Bhatnagar, learned Senior Counsel for the petitioners expressing urgency, this application has been taken on board.

2. The interim protection provided in the order dated 03-07-2023 is extended for a further period of one week from today.

3. Upon instructions, learned Senior Counsel has informed that his mentioning before the High Court has been accepted and the writ petition is now kept for tomorrow for hearing.

4. The interim protection provided today will abide by the orders that may be passed by the High Court.

5. Interlocutory Application stands disposed of.

6. Miscellaneous Application also stands disposed of."

4. Mr. Indrajit Sinha, learned counsel for the petitioners submits that the informant and Pratik Kothari are Directors of Sat Guru Distributors Pvt. Ltd. and is entrusted to invest in property at Kolkata. In January, 2010, Souvik Banerjee introduced himself as Director of Propertymen Realty Pvt. Ltd and subsequently Souvik Banerjee introduced Mr. Pitam Dutta, Suman Mukherjee as a person who are also engaged with the construction work of a building in the name and style of Breathe at Thakurpur, South 24 Parganas. He further submits that a proposal was given for purchase of 9 numbers of flat at total consideration amount of Rs.1,93,22,250/-. The FIR has been lodged on the ground that the construction of the project namely Breathe is very slow. He also submits that five cheques of Rs.10 Lakhs each have been issued by the accused persons, which have been dishonoured for which, the complaint case under Section 138 of the Negotiable Instrument Act has been filed. He further submits that in the present case, it has been alleged that the petitioners have produced mortgaged loan which is forged. He submits that the FIR has been lodged on 10.05.2023 and since regarding forgery of cheque, the petitioners have filed criminal case at Calcutta on 03.03.2023, in which, the learned court at Calcutta has taken cognizance vide order dated 06.03.2023 and they have appeared in that case through lawyer and thereafter, the present FIR has been lodged. He submits that two of the petitioners have come to Dhanbad for obtaining bail in Section 138 of Negotiable Instrument Act case and after taking bail, when they were coming out of the court premises, four persons in civil dress had picked up petitioner nos. 2 and 3 and taken them to Bankmore Police Station where they have been tortured and they have been forced to sign the agreement for withdrawal of the cases and they have been compelled to handover the cheques to the informant. He further submits that the police has acted as a recovery agent of the informant. He submits that in view of Section 41-A of Cr.P.C., notice has not been served upon the petitioners and in this way, the police has acted and has taken away Right to Human Dignity, Right to Life and Liberty and Right to inviolability of his or her body of the petitioners. He also submits that the police is hand in glove with the informant and they have acted arbitrarily without following the due process of law and in violation of the law laid down by the Hon'ble Supreme Court in Arnesht Kumar v. State of Bihar; [(2014) 8 SCC 273].

He further submits that on the liberty of the citizen, there are other judgments of the Hon'ble Supreme Court, which will be placed at the final hearing of this writ petition.

5. Looking into the observation of the Hon'ble Supreme Court as well as annexures made herein, prima facie it appears that the high handedness of Dhanbad Police. This is not the first instance of arbitrariness of Dhanbad Police. This Court has noticed, at least about two times, the high handedness of Dhanbad Police and directed to release the petitioners of those cases under Article 226 of the Constitution of India in W.P. (Cr.) No.279 of 2021 and W.P. (Cr.) No.323 of 2022, which have been affirmed upto the Hon'ble Supreme Court.

6. It has been disclosed in the petition that on the force of the police, the petitioners have been compelled to issue 20 numbers of cheque in favour of the informant and other persons and it has

been stated on affidavit in the writ petition that the said agreement has been forced to be entered by the petitioners by Dhanbad Police, wherein, it has been stated that all the cases between the parties will be withdrawn, except the present case.

7. If at the hand of the police, this has brought to the knowledge of the Court, the Court cannot be a mute spectator and it requires to be interfered by the Court.

8. Issue notice upon the respondents. Mr. Gaurav Raj, learned counsel appearing for the State waives notice on behalf of respondent nos. 1 to 4.

9. Issue notice upon respondent no.5 by ordinary process as well as registered post with A/D, for which, requisites etc. must be filed within a week.

10. Seeing the conduct of Dhanbad Police, as have been noted hereinabove, the petitioners shall array the Central Bureau of Investigation (CBI) as respondent no.6 in this petition, in course of the day.

11. Mr. Indrajit Sinha, learned counsel for the petitioners shall serve two copies of the petition upon Mr. Anil Kumar, learned A.S.G.I., who usually appears for the CBI, in course of the day.

12. Mr. Indrajit Sinha, learned counsel for the petitioners will correct the designation of respondent no.4 in the petition, in course of the day.

13. Considering the averment made in the writ petition and also considering that the said agreement has been forced to be entered by Dhanbad Police between the parties, the cheques issued by the petitioners shall not be deposited by respondent no.5 before the concerned Bank.

14. Seeing the arbitrariness of Dhanbad Police, the Court directs respondent nos. 3 and 4 to file their personal affidavits.

15. The Director General of Police, Jharkhand, Ranchi (respondent no.3) is directed to preserve CCTV footage of Bankmore Police Station, District- Dhanbad from 31.05.2023 to 01.06.2023 and CCTV footage shall be produced before this Court in sealed cover by respondent no.3 before the next date of listing.

16. Let this matter appear on 21.08.2023.

17. Till the next date, no coercive steps shall be taken against the petitioners in connection with Bankmore P.S. Case No.97 of 2023, dated 10.05.2023 pending in the court of the learned Chief Judicial Magistrate, Dhanbad."

3. Pursuant to the above order, the Director General of Police, Jharkhand has filed his personal affidavit. The Deputy Superintendent of Police, Dhanbad has also filed the counter affidavit. Mr. Nilesh Kumar has appeared on behalf of respondent No. 5 (informant) and he submits that the

respondent No. 5 has also filed the counter affidavit in the matter.

4. This petition has been filed for quashing of the entire criminal proceedings including the First Information Report arising out of Bankmore P.S. Case No. 97 of 2023 dated 10.05.2023 registered for the offence under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code, pending in the court of learned Chief Judicial Magistrate, Dhanbad. Prayer is further made to prohibit the respondent No. 5 not to give effect to two agreements signed on 01.06.2023 at Bankmore Police Station. Prayer is also made for a direction upon the respondent No. 5 to return 20 signed cheques to the petitioners.

5. The FIR was registered alleging therein:-

(a) The informant and Pratik Kothari are Directors of Sat Guru Distributors Pvt. Ltd. and is entrusted to invest in property at Kolkata.

(b) In January, 2010, Souvik Banerjee introduced himself as Director of Propertymen Realty Pvt. Ltd. and subsequently Souvik Banerjee introduced Mr. Pritam Dutta, Suman Mukherjee, as a person who are also engaged with the construction work and currently the company is engaged in construction work of a building in the and style of 'Breathe' at Thakurpur, South 24 Parganas.

(c) The accused person had offered to sale 09 flats at lower price and further the complainant requested them to come down at Dhanbad and explain the project in detail.

(d) In January, 2020, all accused persons came at the office of the informant situated at Dhanbad and explained everything in detail and proposed that they are ready to give 09 nos. of flat at total consideration amount of Rs.1,93,22,250/- with a proviso that apart from the advance amount, a corporate loan of Rs. 50 Lakh @ 3.75% per month may be provided. The said proposal was accepted and later on one mortgage loan agreement was prepared on 01.12.2020.

(e) During the global pandemic situation of COVID- 19, the accused person had demanded money from the complainant on the pretext that work is not stopped in Kolkata. On the date of encashment of the cheques provided to the accused person, the accused requested the complainant not to deposit the cheque given in lieu of principal amount, as he will return the amount with some more interest.

(f) On surprised visit to Kolkata, the complainant found that the construction of the project namely 'Breathe' is comparatively very slow as per the agreement between the parties and, therefore, requested to cancel the booking and requested the accused to return the amount with interest and after much persuasion, the accused are ready to return the amount of Rs. 1,20,00,000/- (Rs.75,000/- including principal amount).

(g) On 03.11.2022, the accused had issued 05 cheques of Rs.10,00,000/- having Cheque Nos. 000252, 000253, 000254, 000255 and 000256 all dated 03.11.2022 and requested the complainant to deposit the cheque for encasement in the month of January, 2023, and with a further assurance that rest amount will be refunded in the month of January, 2023.

(h) All the aforesaid cheques were deposited in the State Bank of India, SME Branch, Bankmore, Dhanbad, for its encashment, but, the same got dishonoured and thereafter legal notice was issued and subsequently legal steps were taken for dishonour of cheques.

6. Mr. Indrajit Sinha, learned counsel appearing for the petitioners submits that the petitioners are innocent and have been falsely implicated in the case. He submits that respondent No. 5 approached the petitioners to purchase nine flats at Premises No. 71, Srijani, Thakurpukur, Kolkata-700104 at the first floor of the said premises at a concessional rate of Rs. 2750/- per sq. feet with three car parking space at the rate of Rs. 3 lacs each for total consideration of Rs. 1,93,22,250/- and thereafter offered to give loan of Rs. 50 lacs by a separate agreement to the petitioner No. 1. He further submits that the Memorandum of Understanding (MoU) to that effect dated 01.02.2020 was signed between the petitioners and the respondent No. 5.

7. Mr. Indrajit Sinha, learned counsel appearing for the petitioners further submits that the petitioners have lodged the case, being complaint case on 03.03.2023 before the Chief Metropolitan Magistrate at Kolkata against the informant-respondent No. 5 and others of M/s Sadguru Distributors Pvt. Ltd, which is numbered as CS 15835 of 2023. He submits that on 06.03.2023, the said learned court has been pleased to take cognizance against the accused persons. He further submits that thereafter the matter was posted before the Kolkata Court on 31.03.2023 for appearance. He submits that on 31.03.2023, counsel on behalf of the accused persons has appeared and took time. He further submits that thereafter the present FIR has been lodged at Dhanbad on 10.05.2023, suppressing the fact of filing of the complaint case by the petitioners at Kolkata. He draws the attention of the court to mortgage loan agreement, which is part of the FIR at page-71 of the writ petition and submits that the number of stamp is disclosed as 44AB836239. By way of referring last page of the said agreement, he submits that there is no signature of the petitioners, as such, this is not a case of forgery, in view of the fact that two stamp papers have been purchased and another was numbered as 44AB836238 and the stamp paper number 44AB836238 is with the petitioners and contents of both the stamp papers are similar and there is no manipulation of the content. He further submits that even assuming that the said document is forged, no benefit is derived or the petitioners will be benefitted and if such a situation is there, no case of creating a false document is made out. To buttress his argument, he relied in the case of Parminder Kaur Versus State of Uttar Pradesh & Anr., reported in (2010) 1 SCC 322, where in paras-31 to 33, the Hon'ble Supreme Court held as follows:-

"31. The next section is Section 468 IPC which reads as under:

"468. Forgery for purpose of cheating.-- Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to

seven years, and shall also be liable to fine."

This is the aggravated form of forgery which is punishable under Section 465 and is defined under Section 464 IPC.

32. Section 464 speaks of making a false document. The section reads as under:

"464. Making a false document.--A person is said to make a false document or false electronic record--

First.--Who dishonestly or fraudulently--

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of a document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

33. The first clause suggests that a person makes a false document if he--

(1) dishonestly or fraudulently makes, signs, seals or executes a document, or part of a document, or makes any mark denoting the execution of a document; and (2) does as above with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed,

(a) by or by the authority of a person by whom or by whose authority it was not so made, signed, sealed or executed, or

(b) at a time at which he knows that it was not made, signed, sealed or executed;

It is not the case here. To attract the second clause of Section 464 there has to be alteration of document dishonestly and fraudulently. So in order to attract clause "Secondly" if the document is to be altered it has to be for some gain or with such objective on the part of the accused. Merely changing a document does not make it a false document. Therefore, presuming that the figure "1" was added as was done in this case, it cannot be said that the document became false for the simple reason that the appellant had nothing to gain from the same. She was not going to save the bar of limitation."

8. Learned counsel appearing for the petitioners further refers to letter dated 22.02.2021, issued by the authorized distributor of informant-respondent No. 5 to the petitioners' company and submits that by way of this document, the respondent No. 5 has tried to make out a case of issuing the cheque is not correct. He further submits that the petitioner Nos. 2 and 3 have gone to Dhanbad for obtaining the bail in a case initiated by the informant under Section 138 of the Negotiable Instruments Act and while they were coming out after obtaining the bail, the Dhanbad Police have detained them and on coercion, the MoU contained at Page-111 of the writ petition was signed by the petitioners. He further submits that the Dhanbad Police on coercion has taken the signature of the petitioners, as the police have connived with the respondent No. 5, who is informant of the case. He further submits that if such a situation is there and the such fact is brought before the High Court, the High Court is required to read it with due care and circumspection and is required to read in between the lines. He submits that this aspect of the matter has recently been considered by the Hon'ble Apex Court in the case of Mahmood Ali & Ors. Versus State of U.P. & Ors., reported in (2023) SCC OnLine SC 950, where in para-13 it has been held as under:-

"13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article

226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

9. Learned counsel further submits that the Dhanbad Police has not filed a correct affidavit. He submits that by order dated 11.07.2023, this court directed the Director General of Police to file his personal affidavit and to preserve the CCTV footage of Bankmore Police Station with effect from 31.05.2023 to 01.06.2023 and produce the same before this Court. He submits that the respondent No.3-the Director General of Police, Jharkhand has filed his personal affidavit, wherein it has been disclosed that the CCTV footage of Bankmore Police Station with effect from 31.05.2023 to 01.06.2023 is not available, as only the capacity of the camera is preserving the same for only ten days. He submits that the same is not in accordance with the mandates of the Hon'ble Supreme Court, as the footage is an important part and to buttress his argument, he relied in the case of Paramvir Singh Saini Versus Baljit Singh & Ors., reported in (2021) 1 SCC 184. Paras-14 to 17 and 21 of the said judgment read as under:-

"14. The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to immediately report to the DLOC any fault with the equipment or malfunctioning of CCTVs. If the CCTVs are not functioning in a particular police station, the SHO concerned shall inform the DLOC of the arrest/interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the SHO concerned has reported malfunctioning or non-functioning of CCTVs of a particular police station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.

15. The Director General/Inspector General of Police of each State and Union Territory should issue directions to the person in charge of a police station to entrust the SHO of the police station concerned with the responsibility of assessing the working condition of the CCTV cameras installed in the police station and also to take corrective action to restore the functioning of all non-functional CCTV cameras. The SHO should also be made responsible for CCTV data maintenance, backup of data, fault rectification, etc.

16. The State and Union Territory Governments should ensure that CCTV cameras are installed in each and every police station functioning in the respective State and/or Union Territory. Further, in order to ensure that no part of a police station is left uncovered, it is imperative to ensure that CCTV cameras are installed at all entry and exit points; main gate of the police station; all lock-ups; all corridors; lobby/the

reception area; all verandahs/outhouses, Inspector's room; Sub-Inspector's room; areas outside the lock-up room; station hall; in front of the police station compound; outside (not inside) washrooms/toilets; Duty Officer's room; back part of the police station, etc.

17. CCTV systems that have to be installed must be equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

21. The SLOC and the COB (where applicable) shall give directions to all police stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/offices of investigative/ enforcement agencies about the coverage of the premises concerned by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights."

10. Learned counsel appearing for the petitioners submits that the notice under Section 41-A Cr.P.C. dated 31.05.2023 was handed over to the petitioners by the police to cover up the incident of 01.06.2023. On these ground, he submits that the case is not made out and the petitioners have been falsely made accused, as such, the entire criminal proceeding may kindly be quashed.

11. Mr. Binit Chandra, learned A.C. to A.A.G.-III appearing for the State by way of referring Annexure-8 of the writ petition, which is a letter dated 07.05.2023 addressed to the authorities at Kolkata about the incident of 31.05.2023 and 01.06.2023 at Dhanbad and a copy to the other

authorities at Dhanbad submits that this was filed after six days of the alleged occurrence, which itself suggests that it was an after- thought. He submits that the petitioners moved before the Hon'ble Supreme Court, wherein the order was passed by the Hon'ble Supreme Court on 14.06.2023 and for further six days, they have done nothing and they again obtained the further order from the Hon'ble Supreme Court on 03.07.2023. He refers to para-25 of the counter affidavit of respondent Nos. 3 and 4 and submits that even the Notary Public, before whom, both the parties signed the MoU was examined by the police and he has admitted that both of parties appeared before him and thereafter the said MoU was affidavited. He further submits that so far as CCTVs are concerned, that is an admitted position that for 31.05.2023 and 01.06.2023, the footage was not available and also for the other vicinity, the footage was not there. He further submits that no case of interference is made out.

12. Mr. Nilesh Kumar, learned counsel appearing for the respondent No. 5 submits that the petitioners are only trying to make out a case of interference by this court. He submits that the huge amount of respondent No. 5 has taken by the petitioners. He further submits that there were two transactions, one was with regard to the purchase of flat, for which, the respondent No. 5 has already paid a sum of Rs. 75 lacs and another was with regard to loan, which was Rs. 50 lacs. He submits that the loan amount was repaid, however, the amount with regard to the flat was not returned and there is no progress of the construction of the said flat. He refers to complaint petition filed by the petitioners at Kolkata and submits that in para-8, they have admitted about the issuance of cheque and in that very paragraph itself, it has been disclosed that an information was received on 21.05.2023 that the cheque has already been deposited and thereafter only to make out a case, they have filed the complaint case at Kolkata after filing of the case under Section 138 of the NI Act by the informant-respondent No. 5. He further submits that the mortgage loan agreement, in the stamp paper No. 44AB836238, the signature of both the sides are there, however, for the same loan agreement, in the stamp paper No. 44AB836239, the signature of petitioners are not there, which suggest that only to manipulate the things and to make out a case, the case has been filed. He also submits that letter dated 22.02.2021 was also issued with ulterior motive and in that the amount of Rs. 75 lacs is lacking. He submits that the false statement is made in the writ petition that the petitioners/accused Nos. 2 and 3 have come to the court at Dhanbad for obtaining the bail in the case registered under Section 138 of the NI Act, whereas the accused No. 3 is not the accused and only accused No. 2 has come to Dhanbad Court. He refers to the contents of the MoU signed between the parties at Dhanbad and submits that in para-8, the word false has been deleted, however, in paras-8 and 9, it was stated that the in terms of the compromise, the petitioners will withdraw the case at Kolkata and the respondent No. 5 has also agreed of withdrawing of the cases with regard to 138 of NI Act. He further submits that on a false pretext, they have moved before the Hon'ble Supreme Court under Article 32 of the Constitution of India. He refers to Annexure-5/2 of the counter affidavit, filed by the respondent No. 5, which is the minutes of meeting for realization of money of Rs. 1.2 crores. He submits that in paras-10 and 11 of the writ petition, the admission is there with regard to that amount.

13. In view of the above background, Mr. Nilesh Kumar, learned counsel submits that this is not a case of interference by this court when there are allegations and things are hazy and only the FIR is under challenge. He relied in the case of Dineshbhai Chandubhai Patel Versus State of Gujarat &

Ors, reported in (2018) 3 SCC 104, where in paras-25 to 33, the Hon'ble Supreme Court has held as follows:-

"25. The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly well settled.

26. This Court in *State of W.B. v. Swapan Kumar Guha* [*State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for three-Judge Bench laid down the following principle: (SCC pp. 576-77 & 598, paras 21 & 66) "21. ... the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. ... The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. ... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."

27. Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted 89 pages judgment (see paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

28. In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realising that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

29 [Ed.: Paras 29 and 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2018 dated 31-1-2018.] . The High Court, in our view, failed to see the extent of its jurisdiction, which it

possesses to exercise while examining the legality of any FIR complaining commission of several cognizable offences by the accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30 [Ed.: Paras 29 and 30 corrected vide Official Corrigendum No. F.3/Ed.B.J./2/2018 dated 31-1-2018.] . At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the complainants and vice versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine the questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

31. In our considered opinion, once the court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

32. The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part led us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.

33. The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here."

14. Relying on this judgment, learned counsel appearing for the respondent No. 5 submits that this court may not interfere in the matter at this stage.

15. He further submits that once the cheque is issued in favor of any of the parties, it will be presumed that the debt is there and to buttress his argument, he relied in the case of Rajeshbhai Muljibhai Patel & Ors. Versus State of Gujarat & Ors., reported in (2020) 3 SCC 794, where in para-22, the Hon'ble Supreme Court has held as follows:-

"22. The High Court, in our view, erred in quashing the criminal case in C.C.No.367/2016 filed by appellant No.3-Hasmukhbhai under Section 138 of N.I. Act. As pointed out earlier, Yogeshbhai has admitted the issuance of cheques. When once the issuance of cheque is admitted/established, the presumption would arise under Section 139 of the N.I. Act in favour of the holder of cheque that is the

complainant- appellant No.3. The nature of presumptions under Section 139 of the N.I. Act and Section 118(a) of the Indian Evidence Act are rebuttable. Yogeshbhai has of course, raised the defence that there is no illegally enforceable debt and he issued the cheques to help appellant No.3-Hasmukhbhai for purchase of lands. The burden lies upon the accused to rebut the presumption by adducing evidence. The High Court did not keep in view that until the accused discharges his burden, the presumption under Section 139 of N.I. Act will continue to remain. It is for Yogeshbhai to adduce evidence to rebut the statutory presumption. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by the High Court by taking recourse to Section 482 Cr.P.C. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the N.I. Act on the legal issues like limitation, etc. Criminal complaint filed under Section 138 of the N.I. Act against Yogeshbhai ought not have been quashed merely on the ground that there are inter se dispute between appellant No.3 and respondent No.2. Without keeping in view the statutory presumption raised under Section 139 of the N.I. Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in C.C.No.367/2016 filed under Section 138 of N.I. Act."

16. He further submits that in the identical situation, this court has not interfered in the case of Satish Singh Versus State of Jharkhand & Anr. reported in 2023 SCC OnLine Jhar 1337 and in the case of Jamshedpur Mineral Wool Manufacturing Company Private Limited, represented by Rajesh Ganjoo & Ors. Versus State of Jharkhand & Anr. reported in 2022 SCC OnLine Jhar 1018 as well as in the case of Dharmendra Prasad Sahi Versus the State of Jharkhand in Cr.M.P. No. 2270 of 2021, which was decided by order dated 09.02.2022.

17. On the above grounds and relying on the aforesaid judgments, learned counsel appearing for the petitioners submits that this is not a case of interference, as only the FIR is under challenge and there is dispute between the parties and this can only be the subject matter of trial.

18. Mr. Indrajit Sinha, learned counsel appearing for the petitioners by way of reply again refers to the contents of the complaint petition and submits that the case is not made out. He submits that if a suppression is there that will amount an abuse of the process of law, as has been decided by the Hon'ble Supreme Court in the case of Krishna Lal Chawla & Ors. Versus State of Uttar Pradesh & Anr., reported in (2021) 5 SCC 435. He further submits that even the criminal antecedent is there, that is not a ground of not interfering and it has been recently held by the Hon'ble Supreme Court in the case of Mohammad Wajid & Anr. Versus State of U.P. & Ors., reported in (2023) SCC OnLine SC 951.

19. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the contents of the FIR as well as all the materials available on record. It is an admitted position and it has been admitted in para-10 and 11 of the writ petition, filed by the petitioners that the petitioners have received in between 09.02.2020 to 28.05.2020 a sum of Rs. 75 lacs. In the said paras it has further been disclosed that the respondent No. 5 in between 28.05.2020 to 08.06.2020,

paid Rs. 50 lakhs to the petitioner No. 1 as loan with interest @ 34.20% per annum. The petitioner No. 1 repaid the principal loan amount of Rs. 50 lakhs between 14.07.2021 to 08.11.2021, which is disclosed in para-11 of the writ petition. The dispute is with regard to two transactions one is with regard to purchase of flat and one is of advancing the loan to respondent No. 5. In the contents of the complaint, which is the subject matter, this fact has not been suppressed by the respondent No. 5 about receiving of a sum of Rs. 50 lakhs, however, the creation of documents with regard to the stamp paper being number 44AB836238 and also stamp number 44AB836239, the allegations are there. Even in the argument of Mr. Indrajit Sinha, learned counsel appearing for the petitioners is accepted that the non- signing in one of the copy of the agreement, the petitioners are not benefitted, that can only be a subject matter of trial, as there are two stamp papers i.e. 44AB836238 and 44AB836239 and one was with the respondent No. 5 and another was along with the petitioners, which document is correct one, that cannot be a subject matter of writ petition under Article 226 of the Constitution of India.

20. So far as the allegation of entering into the MoU on coercion in connivance with the Dhanbad Police is concerned, the court finds that in the counter affidavit filed by respondent Nos. 3 and 4, statements have been made that the Notary Public namely Deepak Kumar Ambastha was examined and he has disclosed that both the parties have appeared before him and thereafter the said MoU was entered into and if such a situation is there, the question remains that how that can be a subject matter of writ jurisdiction under Article 226 of the Constitution of India. Admittedly, the C.P. Cases with regard to dishonor of cheques were filed earlier and admittedly, the notice with regard to dishonor of the cheques has been received by the petitioners on 28.01.2023, which is disclosed in page-90 of the writ petition and however, the complaint case filed at Kolkata has been filed on 03.03.2023, which further suggests that only to evade the such proceeding as a safeguard, the complaint case has been filed at Kolkata by the petitioners. By way of filing supplementary counter affidavit by respondent No. 5, wherein it has been disclosed that these petitioners are also having another cases with other parties and in view of that it has been stated that they used to file and contest the cases by way of filing the cases.

21. In view of the above, the court finds that there are disputed question of facts involved in the present case and only the FIR is under challenge and the High Court under Article 226 of the Constitution of India as well as Section 482 Cr.P.C. is having the very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution and such a situation is there, the High Court, being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. However, there is no hard-and-fast rule with regard to exercising such power, which depends upon the facts and circumstances of the each case. The complaint has to be read as a whole and if on consideration of the allegations in the light of the statements made on oath or in the FIR and the ingredients of the offence or offences are disclosed and there is no material to show that the FIR is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

22. It is also not in dispute that where criminality is made out and the matter is also civil in nature, both the cases can go simultaneously. Reference may be made to the case of M/s Medchl Chemicals & Pharma P. Ltd. Versus M/s. Biological E. Ltd. & Ors., reported in (2000) 3 SCC 269, wherein the Hon'ble Supreme Court in paras-14 and 15 held as follows:-

"14. Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear *ex facie* on the complaint. The observations in *Nagawwa v. Veeranna Shivalingappa Konjalgi* lend support to the above statement of law:

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused; (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

15. In the matter under consideration, if we try to analyse the guidelines as specified in *Shivalingappa* case can it be said that the allegations in the complaint do not make out any case against the accused nor do they disclose the ingredients of an offence alleged against the accused or the allegations are patently absurd and inherently improbable so that no prudent person can ever reach to such a conclusion that there is sufficient ground for proceeding against the accused? In the present case, the complaint as noticed above does not, however, lend credence to the questions posed. It is now well settled and one need not dilate on this score, neither do we intend to do so presently that the allegations in the complaint will have to be accepted on the face of it and the truth or falsity of which would not be gone into by the Court at this earliest stage as noticed above: whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial and the observations on this score in the case of *Nagpur Steel & Alloys (P) Ltd. v. P. Radhakrishna* ought to be noticed. In para 3 of the Report this Court observed:

"3. We have perused the complaint carefully. In our opinion it cannot be said that the complaint did not disclose the commission of an offence. Merely because the offence was committed during the course of a commercial transaction, would not be sufficient to hold that the complaint did not warrant a trial. Whether or not the allegations in the complaint were true was to be decided on the basis of evidence to be led at the trial in the complaint case. It certainly was not a case in which the criminal trial should have been cut short. The quashing of the complaint has resulted in grave miscarriage of justice. We, therefore, without expressing any opinion on the merits of the case, allow this appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of it in accordance with law expeditiously."

23. The judgments relied by Mr. Sinha, learned counsel appearing for the petitioners are not in dispute. The judgments are to be considered in light of the facts, which may vary case to case. In the case in hand, the allegations are there and only F.I.R. is under challenge and thus based on judgments, relied by the petitioners, the quashing of the FIR of present case is not made out, in view of the above discussions as prima facie case is made out against the petitioners.

24. In view of the above discussions made hereinabove, the court comes to a conclusion that this is not a case of exercising the power under Article 226 of the Constitution of India, when such strong allegations are there. No case of interference is made out. Accordingly, this petition is dismissed.

25. Interim order, granted earlier, stands vacated. Pending I.A., if any, stands dismissed.

26. Before parting with this order, the court finds that by order dated 11.07.2023, the Director General of Police, Jharkhand was directed to preserve the CCTV footage of Bankmore Police Station with effect from 31.05.2023 to 01.06.2023 and produce before this court in a sealed cover. Pursuant to that personal affidavit of the Director General of Police, Jharkhand has been filed, wherein he has stated that there are 12 CCTV cameras at Bankmore Police Station, which was analyzed by the CCTNs operator and the local CCTV camera operator, wherein it has been found that CCTV footage of the 12 cameras of 31.05.2023 and 01.06.2023 was not available in the memory of the DVR, as it has been the capacity to store video footage only for 10 days. Hence no CCTV footage could be procured for 31.05.2023 and 01.06.2023. This has been also tried to be fortified by the counter affidavit filed on behalf of respondent Nos. 3 and 4 by way of making statement in para-9. Not only that, even in the counter affidavit filed by the Director General of Police, Jharkhand at page-29, it has been stated that even the vicinity of the said area, the CCTV footage of said date, have not been obtained by the police, however, in the said case, the CCTV footage alleged to be there, however, only for two dates, it has been said that it has not been available. However, learned counsel appearing for the State submits that for the said dates, the said CCTV footage are not there.

27. It is strange that how the CCTV footage of only two dates were not found by the police, further question remains that in a place like Dhanbad in the State of Jharkhand, where the crime rate is very high, why such action is not taken by the Head of the Police Department as well as the Government of Jharkhand so that proper CCTV maintenance should be there. The direction to this

effect has already been issued by the Hon'ble Supreme court to all the States as well as the Union Territory Governments, as has been referred hereinabove in the case of Paramvir Singh Saini (Supra) and that order is of the year 2021, in spite of that no action has been taken to comply the said direction of the Hon'ble Supreme Court by the State of Jharkhand as yet.

28. In view of the above, the State of Jharkhand and the Director General of Police, Jharkhand are directed to ensure that CCTV cameras are installed in each and every police station. It shall be also ensured that no part of a Police Station is left uncovered and it must be installed at all entry and exit points, main gate of the police station, all lock-ups; all corridors; lobby / the reception area, all verandas / outhouses, Inspector's room, Sub- Inspector's room, areas outside the lock-up room; station hall, in front of the police station compound, outside (not inside) washrooms/toilets, Duty Officer's room, back part of the police station etc. and this shall be complied within three months from the date of receipt / production of a copy of this order. The State of Jharkhand and the Director General of Police, Jharkhand shall ensure that equipment installed must be able to store data for 18 months.

29. Let this order be communicated to the Secretary Home, Government of Jharkhand and Director General of Police, Jharkhand for the compliance.

(Sanjay Kumar Dwivedi, J.) Amitesh/-

[A.F.R.]