concerned Court during the pendency of the proceedings.

29. The bail applications are disposed of in the above terms.

30. Copy of the order be communicated to the concerned Jail Superintendent electronically for information.

31. Copy of the order be uploaded on the website forthwith.

32. Needless to state that this Court has not expressed any opinion on the merits of the case and has made the observations only with regard to present bail applications and nothing observed hereinabove shall amount to an expression on the merits of the case and shall not have a bearing on the trial of the case as the same has been expressed only for the purpose of the disposal of the present bail applications.

Result :- The bail applications disposed of.

ABC 2025(I) 132 ALL
ACQUITTAL & BAIL CASES
ALLAHABAD HIGH COURT

(Manju Rani Chauhan, J.)

Application U/S 482 No. - 24124 of 2021

Decided On: 19 December 2024

RAM SHARAN SINGH ***– Appellant(s)***

Versus

STATE OF U.P. AND ANOTHER **– Respondent(s)**

Law Covered:-(A) Negotiable Instruments Act, 1881 – Section 138 & 139 – Legally Enforceable Debt – Dispute Over – Contention of the accused, the cheque was issued as part of a contingent agreement, which failed due to non-fulfilment of stipulated conditions – Held, complainant has not approached the Court with clean hands – Considering the conduct of the complainant & absence of legally enforceable debt, the summoning order & criminal proceedings quashed– Criminal Procedure Code, 1973 – Section 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528) – Quashing of proceedings. (Paras 6, 10, 25, 96, 97)

(B) Criminal Procedure Code, 1973 – Section 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528) – Inherent Powers of High Court– Scope of– The High Court's inherent powers are meant to secure the ends of justice, prevent abuse of process, or enforce legal orders – Power must be exercised judiciously to strike a balance between statutory obligations of investigation & the rights of affected parties. (Paras 75, 78, 88)

(C) Criminal Procedure Code, 1973 – Section 482 (Bharatiya

Nagarik Suraksha Sanhita, 2023 – Section 528) – FIR & charge sheet – Quashing– Principles of– FIR & charge sheet can be quashed if allegations & evidence fail to establish the commission of an offense – Duty of the Courts – Held, Courts must examine whether the prosecution is manifestly attended by mala fide intent or is instituted with ulterior motives. (Paras 86, 89, 90)

(D) Criminal Procedure Code, 1973 – Section 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528) – Abuse of Process of Law – Registration of cases for personal grudges, particularly with concealment of critical relationships, constitutes an abuse of legal process – Held, quashing is necessary to prevent unwarranted harassment. (Paras 80, 89, 94)

(E) Criminal Procedure Code, 1973 – Section 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528) – High Court's Duty – Courts must ensure proceedings are not reduced to tools of persecution or harassment – In cases involving unclean hands or baseless accusations, quashing is justified to protect individual liberty & reputation. (Paras 91, 94, 96)

(F) Evidence Act, 1872 – Section 57 (Bharatiya Sakshya Adhiniyam, 2023 – Section 52)– Judicial Notice – Courts may take judicial notice of relevant facts to deliver substantial justice, ensuring no prejudice to any party while balancing statutory & constitutional obligations. (Para 77)

(G) Criminal Jurisprudence – Quashing of Complaints – Judicial Caution in – Held, Courts must evaluate the entirety of circumstances, including the conduct of complainants & their failure to disclose critical facts, before proceeding to quash a complaint. (Paras 80, 94)

(H) Criminal Procedure Code, 1973 – Section 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528) – False Complaints– Observations on– Courts must be vigilant to curb frivolous complaints filed with malicious intent under the garb of statutory obligations – Power to quash extends to prevent such misuse. (Paras 78, 92, 93)

(I) Constitution of India – Article 21 – Criminal Prosecution vis-à-vis Personal liberty –Criminal prosecution is a serious matter, it effects the liberty of a person– no greater damage can be done to the reputation of a person than dragging him in a criminal case– continuance of prosecution would be nothing but an abuse of the process of law & will be a mental trauma to the applicants– Criminal Procedure Code, 1973 – Section 482 (Bharatiya Nagarik Suraksha Sanhita, 2023 – Section 528). (Para 94)

Facts*:-The case involves allegations of dishonour of a cheque issued by the accused under the provisions of the Negotiable Instruments Act, 1881. The complainant, a business associate, presented the cheque for payment, but it was dishonoured due to insufficient funds. Following the dishonour, statutory notice was served to the accused, demanding repayment within the stipulated period. However, the accused failed to make the payment, prompting the complainant to initiate legal proceedings under Section 138 of the Act.*

The accused argued that the cheque was issued as a security instrument rather than for discharging a legally enforceable debt. This defense raised questions about the applicability of Section 138 and whether a presumption of guilt could be sustained in such circumstances.

The Honourable Court examined the provisions of the Negotiable Instruments Act, emphasizing the presumption under Section 139 that every cheque is issued for the discharge of a legally enforceable debt unless proven otherwise. It reiterated that the burden of proof lies on the accused to rebut this presumption with credible evidence.The Honourable Court highlighted the significance of compliance with procedural safeguards, including the issuance of statutory notice and adherence to timelines under the Act. It clarified that while a cheque issued as security may not typically attract liability under Section 138, the specific facts and context of the transaction must be scrutinized to determine enforceability.Citing key precedents, the Honourable Court held that the accused failed to provide sufficient evidence to rebut the statutory presumption. It affirmed the principle that dishonour of a cheque undermines financial discipline and trust in commercial transactions, necessitating strict adherence to the law.

The Honourable Court upheld the findings of the lower courts, affirming the conviction of the accused under Section 138 of the Negotiable Instruments Act. It underscored the importance of statutory compliance and the presumption of liability in maintaining the integrity of financial instruments.

***Law of Relief*:- Concealment of critical facts and malicious intent in initiating proceedings constitutes an abuse of the legal process.**

***Counsel* :-** **For Appellant(s):** *Mr.Ashok Kumar Singh& Mr. Sanjeev Singh, Adv.*

For Respondent(s): *Mr. Vikas Singh, Adv.*

***Cases Referred*:-**

1. *Indus Airways Pvt. Ltd. And Others Vs. Magnum Aviation Pvt. Ltd. And Another, 2014 (12) SCC 539.*
2. *Sunil Todi and Others vs. State of Gujarat and Another, (2022) 16 SCC 762.*

3. *Indian Bank Association and Others vs. Union of India and Others (2014) 5 SCC 590.*
4. *K. Ramesh vs. K. Konthandaraman, (2024) SCC OnLine SC 531.*
5. *Dasharathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578.*
6. *Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458.*
7. *Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638.*
8. *Abhijir Pawar v. Hemant Madhukar Nimbalkar and another, (2017) 2 SCC 528.*
9. *Kali Ram v. State of Himachal Pradesh, reported in (1973) 2 SCC 808.*
10. *Bharat Barrel & Drum Manufacturing Company v. Amin Chand Pyarelal, (1999) 3 SCC 35,*
11. *M.S. Narayana Menon Alias Mani v. State of Kerala and another, (2006) 6 SCC 39,*
12. *Union of India v. Pramod Gupta, (2005) 12 SCC 1,*
13. *Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54,*
14. *Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513,*
15. *Rangappa v. Sri Mohan, (2010) 11 SCC 441,*
16. *West Bengal State Electricity Board v. Dilip Kumar Ray AIR 2007 SC 976.*
17. *(i) R.P. Kapur v. State of Punjab; AIR 1960 SC 866,*
18. *(ii) State of Haryana and others v. Ch. Bhajan Lal and others;1992 Supp. (1) SCC 335,*
19. *(iii) State of Bihar and another v. P.P. Sharma and another; 1992 Supp (1) SCC 222,*
20. *(iv) Zandu Pharmaceuticals Works Ltd. and others v. Mohammad Shariful Haque and another; 2005 (1) SCC 122, and*
21. *(v) M.N. Ojha v. Alok Kumar Srivastava; 2009 (9) SCC 682.*
22. *State of Bihar v J.A.C. Saldhana and others, [1980] 2 SCR 16,*
23. *State of Haryana and others v. Ch. Bhajan Lal and others, JT 1990 (4) SC 650,*
24. *Janata Dal v. H.S. Chowdhary (1992 (4) SCC 305),*
25. *Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686),*
26. *State of Bihar v. P.P. Sharma (AIR 1996 SC 309),*
27. *Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995 (6) SCC 194),*
28. *State of Kerala v. O.C. Kuttan (AIR 1999 SC 1044),*
29. *State of U.P. v. O.P. Sharma (1996 (7) SCC 705),*
30. *Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397),*
31. *Satvinder Kaur v. State (Government of NCT of Delhi) (AIR 1996 SC 2983)*
32. *Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259.*

33. *State of Karnataka v. M. Devendrappa and another (2002 (3) SCC 89)*
34. *M.N. Ojha v. Alok Kumar Srivastava, 2009 (9) SCC 682,*
35. *Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others, (1998)5 SCC 749,*
36. *Prashant Bharti Vs. State of NCT of Delhi (2013) 9 SCC 293*
37. *Parbatbhai Ahir Vs. State of Gujarat (2017) 9 SCC 641,*
38. *Monica Kumar (Dr.) Anr. Vs State of U.P. (2008) 8 SCC 781*
39. *Anand Kumar Mohatta Vs. State (Govt. of NCT of Delhi), (AIR) 2019 SC 210: 2018 SCC Online SC 2447.*
40. *State of Karnataka v. L. Muniswamy (1977) 2 SCC 699,*
41. *Indian Oil Corporation Vs. NEPC India Ltd. And Ors. (2006) 6 SCC 736,*
42. *Karnataka Emta Coal Mines Limited and Ors. vs. Central Bureau of Investigating, 2024 SCC Online SC 2250.*

JUDGMENT

MRS. MANJU RANI CHAUHAN, J. :- 1. Heard Mr. Sanjeev Singh assisted by Mr. Ramesh Kumar Singh and Mr. Ashok Kumar Singh, learned counsels for the applicant, Mr. Ram Sharan Singh/ applicant appearing in person, Mr. Vikas Singh, learned counsel for opposite party no.2 as well as Mr. Amit Singh Chauhan and Mr. Mayank Awasthi, learned counsels for the State.

2. This application u/s 482 has been filed by the applicant with the prayer to quash the entire proceedings of Complaint Case No.1738/2020, under Section 138 of Negotiable Instrument Act (Alok Singh Niranjan vs. Ram Sharan Singh) as well as quash the summoning order dated 13.01.2021 issued by the Chief Judicial Magistrate, Jalaun, Police Station- Kotwali Orai, District- Jalaun, pending in the Court of Judicial Magistrate, Jalaun.

3. Brief facts of the case are that the opposite party no.2 filed a complaint under Section 138 Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) on 03.08.2020 against the applicant stating therein that the opposite party no.2 is working as Assistant Teacher at Janta Vidya Mandir Inter College, Orai-Jalaun. The Manager of the aforesaid is Dilip Kumar Singh, who is real brother-in -law (Saadhu Bhai) of the applicant. Due to the good relations between the two, they used to have money transactions with each other. It has been further alleged that on 25th September, 2016, the applicant requested for 10 to 15 lakh rupees from opposite party no.2 as he wanted to purchase a plot at Allahabad. The applicant requested the opposite party no.2 to make arrangements for the money, for which he was ready to pay interest also. It has been

further alleged that as relations between the two were good and they had maintained honest relationship of money transactions with each other, therefore, opposite party no.2 requested the applicant to come to his house to take the money on 02.10.2016, hence the applicant on the same date i.e. 02.10.2016, reached the residence of opposite party no.2 at about 4:00 pm and took the money. Rs.12,25,000/- were paid to the applicant in the presence of one Vinod Kumar Srivastava son of Shiv Shankar Srivastava and one Hamir Singh son of Sri Ratan Singh both residents of Jalaun. The applicant had promised to return the amount in January, 2017 but he did not do so, taking an excuse that he could not purchase the plot due to demonetization (note bandi) on 08.11.2016. Since then, the applicant is taking some or the other excuse for not returning the money. When the opposite party no.2 exerted pressure by stating that he will take legal recourse in case the applicant did not return the money, the applicant promised to make some arrangements to return the money.

4. On 19.03.2020, the applicant reached the residence of opposite party no.2 and gave a cheque bearing "Cheque No.390917" issued from SBI, Branch High Court Allahabad at Allahabad of Rs.11,00,000/- which was presented by the opposite party no.2 at Allahabad Bank, Orai to be deposited in the Account No.00000020222722742. The aforesaid cheque was returned with an information "insufficient fund" on 21.04.2020.

5. After coming to know about the dishonour of the aforesaid cheque, the applicant informed the opposite party no.2 that he will return the money after lockdown due to COVID-19 and requested him to present the cheque on 15.06.2020. As requested by the applicant, the opposite party no.2 presented the cheque on 15.06.2020 and the same was again returned on 16.06.2020 with an information that there was "insufficient fund". The applicant was well aware of the fact that there was insufficient fund in his account, however he had asked the opposite party no.2 to present the cheque again with a planned manner having no intention to return the money.

6. A legal notice was sent through registered post on 24.06.2020 and the same was received by the applicant on 08.07.2020, however no money was returned, therefore, the present complaint was filed. The affidavit in the aforesaid complaint was filed on 07.09.2020 and the applicant has been summoned on 13.01.2021.

7. The following contentions have been raised by learned counsel for the applicant :-

(i) The complaint has been filed with malicious

intention which is clear from the fact as the opposite party no.2 has concealed his relationship of being client of the applicant as well as the fact that the relations between opposite party no.2 and applicant were due to one Dilip Kumar Singh who happens to be brother-in-law of the applicant and was Manager of the Institution in which the opposite party no.2 was working as Assistant Teacher at the relevant point of time, whereas the real fact is that in the year 1997 Mr. Narendra Pal Singh was the Manager of the said Institution whereas at the time of filing the complaint Sri Dilip Kumar Singh was the Manager.

(ii) The opposite party no.2 had approached the applicant to engage him as a counsel in Writ Petition No.4926 of 1997 (Alok Singh Niranjan vs. District Inspectors of Schools and Others) filed by opposite party no.2 before this Court. The aforesaid writ petition was disposed of vide order dated 29.11.2001 directing the respondents to pay the salary for the period the petitioner discharged his duty in the Institution. After the aforesaid order, the applicant and the opposite party no.2 were not in contact from 2002 till January, 2017.

(iii) The opposite party no.2 again approached the applicant to file Writ No.11135 of 2018 (Alok Singh Niranjan vs. State of U.P. and Others) for regularization of his service. The same was disposed of vide order dated 03.05.2018 with a direction to the concerned respondent to consider the petitioner's claim for regularization, in accordance with law within a period of three months. As the claim of the petitioner was rejected by the concerned respondent, therefore, opposite party no.2 requested the applicant to file Writ Petition No.1250 of 2020 (Alok Singh Niranjan vs. State of U.P. and Others) which is still pending before this Court. Thus, from the aforesaid, it is clear that the opposite party no.2 has deliberately and maliciously concealed his relations of client and lawyer which clearly shows his mala fide intention of framing the applicant in a false case.

(iv) The opposite party no.2 had come to applicant's house in February, 2020 to inquire about his matter which was still pending and the applicant had expressed that he wants to purchase a car, on which the opposite party no.2 informed the applicant that he intends to sell his car (Innova Crysta, 2019 model) which had run 10,000 kms only. The opposite party no.2 stated that he had incurred huge expenses in the past four years for his daughter's and son's marriages, repair and renovation work of his house as well as

purchase of the aforesaid car. He was in strong need of money in order to pay back his debts, therefore, he wanted to sell his Innova Crysta car. The pictures and videos of the said car were shown to the applicant and a demand of Rs.15,00,000/- for the vehicle was raised. The applicant stated that he would only pay Rs.12,00,000/- for the vehicle on which the opposite party no.2 requested for time to think on the offer as made by the applicant for purchase of the car in Rs.12,00,000/-.

(v) After one month, the applicant and opposite party no.2 agreed on the amount of Rs.12,25,000/- as price for the Innova car. On 20.03.2020, the opposite party no.2 along with his colleague Vinod Kumar Srivastava, Assistant Teacher at Janta Vidya Mandir Inter College, Orai came to the house of the applicant in relation to some work. The opposite party no.2 requested for the payment for purchase of the car on which cash of Rs.1,25,000/- was paid and a cheque of Rs.11,00,000/- bearing Cheque No.390917 was given to the opposite party no.2 by the applicant requesting that the same may be presented to the bank only when the car loan, as to be applied by the applicant, was sanctioned and the money accordingly dispersed in his account. In so many words, the applicant had indicated the opposite party no.2 to present the cheque only when the loan is sanctioned and information regarding this was to be given by the applicant to opposite party no.2. The aforesaid was possible due to the client-lawyer trust relationship as built between the applicant and the opposite party no.2. Thus, the cheque was issued as an advance payment for purchase of Innova car.

(vi) It was agreed between the parties that the possession of the Innova Crysta car will be given to the applicant only when full amount is received by the opposite party no.2.

(vii) In this regard, a consent/agreement letter was prepared on 20.03.2020 which was signed by applicant as well as opposite party no.2 in the presence of Vinod Kumar Srivastava son of Sri Shivshankar Srivastava as well as Mr. Vimlendra Kumar son of Sri Chhabiram Pal resident of District Moradabad who was also a client of the applicant.

(viii) The agreement between the applicant and the opposite party no.2 was a contingent contract under Section 31 of the Indian Contract Act, 1872 and as the condition of grant of car loan in favour of applicant was not fulfilled, therefore, such contract became void as per Section 32 of the Indian Contract Act, 1872 (hereinafter referred to as I.C.A.).

(ix) Learned counsel for the applicant further submits that as per Section 65 of the I.C.A., it was the obligation of the opposite party no.2 to return the cash amount of Rs.1,25,000/- as well as the cheque of Rs.11,00,000/- which he had received from the applicant on 20.03.2020 as the consideration in the said agreement had now turned void.

(x) When the applicant asked the opposite party no.2 for returning him the cash amount of Rs.1,25,000/- along with his cheque bearing Cheque No.390917, he assured that he will return the same after the lock down when the pandemic of COVID 19 comes to an end. The opposite party no.2 instead of returning the cash and the cheque, started pressurizing the applicant to get the case of regularization, which is pending, decided.

(xi) In order to exert pressure upon the applicant, the opposite party no.2 instead of returning the cheque, presented the same in the bank on 21.04.2020 and then on 15.06.2020 but the same was returned due to insufficient funds.

(xii) The opposite party no.2 sent a notice under Section 138 N.I. Act on 24.06.2020 based on a false and concocted story. In the said notice it was mentioned that the brother-in-law of the applicant was Manager of the Institution in 1997 where the opposite party no.2 was working as Assistant Teacher which was the basis of relation which was formed between the applicant and the opposite party no.2 but as already stated, the reality was that in the year 1997 one Narendra Pal Singh was the Manager of the said Institution. The aforesaid fact shows the conduct of the opposite party no.2 and falsifies the entire story as narrated in the complaint.

(xiii) In the complaint, wrong facts have been mentioned about Rs.12,25,000/- being given by opposite party no.2 in cash to the applicant on 02.10.2016 in the house of opposite party no.2 in the presence of Vinod Kumar Srivastava and Sri Hamir Singh. It is relevant to mention that Vinod Kumar Srivastava who is working as Assistant Teacher in the same Institution has also signed the consent letter dated 20.03.2020 and Hamir Singh is brother-in-law of opposite party no.2.

(xiv) Presuming that the opposite party no.2 has stated that he arranged the cash of Rs.12,25,000/- within five working days creates suspicion and doubt as to how and from where such huge amount could be managed, thus falsifying the entire version of the complaint.

(xv) In the complaint as well as the notice, it has been

mentioned that the applicant and the opposite party no.2 had long history of money transactions. However, except the fees as paid by opposite party no.2 as client to his lawyer/applicant, there is no other transaction between the two. The fact of client-lawyer relationship has been deliberately concealed by the applicant hence the complaint has not been filed with clean intention.

(xvi) Learned counsel for the applicant further submits that the story as narrated in the complaint also appears to be doubtful as at the time of demonetization, how could such a huge amount be arranged by the opposite party no.2 has also not been disclosed. The applicant does not have any plot nor is a property dealer, therefore, it cannot be said that any amount has been received by him from opposite party no.2 for purchasing a plot.

(xvii) Learned counsel for the applicant further submits that as per the complaint, the applicant is alleged to have taken Rs.12,25,000/- from opposite party no.2 for purchase of some plot but there is no averment with respect to Rs.1,25,000/- which is the excess amount other than that mentioned in the complaint nor in the notice or statement of the opposite party no.2 as recorded under Section 200 Cr.P.C. which raises suspicion and goes to prove the fact of false complaint being lodged by opposite party no.2 on the basis of concocted story.

(xviii) The online complaint has been filed on 03.08.2020 without any affidavit whereas the affidavit has been filed on 07.09.2020. In paragraph no.14 of the said affidavit, it has been stated that the contents of paragraph no.1 to 12 of the affidavit are true to the knowledge of opposite party no.2, however, the opposite party no.2 has not mentioned the paragraphs in the complaint case/ application filed by him under Section 138 of N.I. Act before C.J.M., District- Jalaun in his affidavit. This is a legal irregularity and thus the complaint case/application is not maintainable in the eyes of law.

(xix) It has been alleged in the complaint that the cheque was returned due to insufficient funds and a notice in this regard was given on 24.06.2020 which was served upon the applicant on 08.07.2020 and the complaint has been filed on 03.08.2020 without the affidavit. From the aforesaid, it can be said that the alleged complaint is simply a miscellaneous application as it does not satisfy the ingredients of a complaint, hence should not have been entertained. The affidavit being of 07.09.2020 is not maintainable as it is beyond the period of one month as required under law.

(xx) The opposite party no.2 has given an affidavit on

24.12.2020 with a prayer to treat the same as statement under Section 200 Cr.P.C. The aforesaid affidavit cannot be considered as statement under Section 200 Cr.P.C.

(xxi) Though, a list of witnesses has been submitted by the opposite party no.2 but the learned C.J.M. has without calling the witnesses to record their statements under Section 202 of Cr.P.C. has passed the impugned summoning order on 13.01.2021 which is against the mandatory provisions of law. It is also to be noted that the date of filing of list of witnesses before the said court and the date of issuance of summoning order is the same, which is again a legal irregularity played on the part of the court concerned.

8. Learned counsel for the applicant submits that for purposes of Section 138 N.I. Act, the cheque should be issued for legally enforceable debt or other liability. Relying upon a judgment passed by Hon'ble Apex Court in the case of Indus Airways Pvt. Ltd. and Others vs. Magnum Aviation Pvt. Ltd. and Another, reported in 2014 (12) SCC 539 the Court in paragraph no.9 has opined that the explanation appended to Section 138 explains the meaning of the expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be a legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of an existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in considered view of the Apex Court, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.

9. In paragraph no.15 of the aforesaid judgment, the Apex Court has held that if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, the cheque cannot be said to have

been drawn for an existing debt or liability.

10. In the light of the aforementioned judgment, coupled with the facts of this case, the cheque which was issued by the applicant as an advance payment for the purchase of the vehicle, cannot be said to be issued in discharge of an existing liability and therefore the same creates no legally enforceable debt as against the applicant.

11. The term legally enforceable debt has also been explained in the case of Sunil Todi and Others vs. State of Gujarat and Another, reported in (2022) 16 SCC 762 wherein the Court has opined that the term "debt" also includes a sum of money. Learned counsel for the applicant thus emphasizes that the cheque was not issued for payment of legally enforceable debt or other liability as it was for the purposes of advance payment towards purchase of Innova car.

12. Learned counsel for the applicant further submits that the inquiry as required under Section 202 Cr.P.C. is mandatory in cases where the accused resides beyond the territorial jurisdiction of the concerned Magistrate before whom the complaint is made. Placing reliance upon the judgment in the case of Suo Moto Writ Petition (Crl.) No.2 of 2020, the Apex Court has stated that the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. It has been recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused.

13. Learned counsel for the applicant thus submits that in view of the aforementioned, it is necessary for the Magistrate to conduct an inquiry on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused in cases where the accused resides beyond the territorial jurisdiction of the Magistrate Court.

14. Learned counsel for the opposite party no.2 submits that the complaint as filed by the opposite party no.2 under Section 138 of N.I. Act fulfills the ingredients as required i.e. :-

(i) drawing of cheque.

(ii) presentation of cheque to the bank.

(iii) return of cheque unpaid by the drawee bank.

(iv) giving notice in writing to the drawer of the cheque demanding payment of a cheque

(v) failure of the drawer to make payment within 15 days of receipt of notice.

15. Once cheque has been signed and issued in favour of the holder of the cheque then there is a statutory presumption under Section 139 of N.I Act that the cheque was issued in discharge of a legally enforceable debt or liability hence, there is sufficient material on record to show that the prosecution under Section 138 of N.I. Act has been validly instituted by the opposite party no.2.

16. He further submits that no such agreement was entered into between the applicant and the opposite party no.2 but instead the applicant who was his lawyer had taken his signatures on blank papers and the same has been used to procure the agreement on which the applicant has placed reliance, thus the agreement is a manufactured document. One of the alleged witnesses namely Vinod Kumar Srivastava had also engaged the applicant as lawyer, therefore, the applicant had blank papers bearing his signature which has been used for manufacturing the alleged agreement.

17. He further submits that the opposite party no.2 has given money to the applicant as the relations between the two were cordial because opposite party no.2 knew the applicant's Saadhu Bhai-Dilip Kumar Singh who was the Manager of the Institution where opposite no.2 was working as Assistant Teacher and there is no mala fide intention on his part in filing the present complaint. The provisions of I.C.A. do not apply in the present case as the agreement as alleged to have been entered into between the applicant and opposite party no.2 is a manipulated one. The opposite party no.2 does not own any Innova car, therefore, there is no question of entering into any such agreement of selling Innova car.

18. Learned counsel for the opposite party no.2 further submits that there is no illegality in summoning the applicant as the complaint under Section 138 of N.I. Act when presented before the court concerned shall be scrutinized by the concerned court and if the complaint is accompanied by an affidavit and the affidavit and the documents, if any, are found to be in order, the court concerned shall proceed to take cognizance and direct for issuance of summons. The complaint so filed by the applicant fulfils all the ingredients of Section 138 N.I. Act, therefore, the same was scrutinized and the applicant has been summoned. In support of his submissions, he has relied upon a judgement passed by the Hon'ble Apex Court in the case of Indian Bank Association and Others vs. Union of India and Others reported in (2014) 5 SCC 590.

19. Learned counsel for the opposite party no.2 further submits that the applicant has not denied the fact that he has handed

over the aforesaid cheque to the opposite party no.2 nor has denied his signatures on the same, hence, in view of the judgment passed by the Hon'ble Apex Court in the case of K. Ramesh vs. K. Konthandaraman reported in (2024) SCC OnLine SC 531, even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment, it would attract the presumption under Section 139 of N.I. Act and in the absence of any cogent evidence to show that the cheque was not issued in discharge of debt, the presumption would hold good.

20. Relying upon a judgment of Sunil Todi and Others vs. State of Gujarat & Another reported in (2022) 16 SCC 762, learned counsel for the opposite party no.2 submits that the evidence of complainant can be given by him on an affidavit. The Court has no reason for insisting on the evidence of witnesses to be taken on oath. Consequently in the aforesaid decision, it has been held that Section 202 (2) Cr.P.C. is inapplicable to complaints under Section 138 N.I. Act in respect of the examination of witnesses on oath. The Court further held that evidence of witnesses on behalf of complainant can be permitted on oath. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine the witnesses and in suitable cases the Magistrate can examine the documents to satisfy that there was sufficient grounds for proceeding under Section 202 Cr.P.C.

21. Relying upon a judgment of Ripudaman Singh vs. Balakrishna reported in (2019) 4 SCC 767, the learned counsel for opposite party no.2 submits that the present application is not maintainable to test allegations with regard to correctness of an agreement to sell which can only be tested in trial when evidence is adduced in this regard. In view of the above, the present application deserves to be dismissed.

22. Heard learned counsel for the parties and perused the record.

(i) From the records as well as submissions of the learned counsel for the parties, this Court finds that the fact regarding lawyer-client relationship has not been disclosed by the opposite party no.2 in the complaint, thus the opposite party no.2 while filing the complaint has not approached the court concerned with clean hands.

(ii) Learned counsel for the opposite party no.2 has admitted about the long standing relationship between him and the applicant, due to relative of applicant being Manager of the Institution where opposite party no.2 was working as an Assistant

Teacher. However, the aforesaid fact has been denied by the applicant as at the relevant point of time when the opposite party no.2 had approached the applicant for engaging him as counsel in his matters, the applicant's relative was not the Manager of the said Institution. Be that as it may, the fact of non-discloser of lawyer-client relationship itself proves that the complaint has been filed with mala fide intention and hence should not have been entertained.

(iii) Learned counsel for the opposite party no.2 has denied the alleged agreement between the parties, however, in this regard no statements of the witnesses mentioned in the agreement have been recorded nor they have been examined on oath to prove the same. It is for the first time in the counter affidavit a stand has been taken of engaging the applicant as a lawyer in few cases by the opposite party no.2 as well as alleged witness of the agreement-Vinod Kumar Srivastava from whom the applicant had taken blank papers. This Court finds it difficult to believe the opposite party no.2 as he had not disclosed about this relationship in the complaint, therefore, he cannot turn around and take the aforesaid stand at this juncture.

(iv) The averment about using blank papers for purposes of agreement also cannot be taken as correct as signatures of witnesses are there on the same alleged blank paper, which cannot be possible in case it is believed that blank paper was used.

(v) It is settled preposition of law that if a person admits his signature on some document then the onus shifts on the person who admits his signatures on a document to prove that it was obtained on blank papers or was taken under undue influence or under pressure. The aforesaid fact has been held in the case of Surjit Singh vs. Nanak Singh, RSA No.3124 of 2004 decided on 25.09.2008 by the High Court of Punjab and Haryana At Chandigarh.

(vi) In the facts of the present case, the opposite party no.2 has for the first time spoken about signatures on blank papers being taken by the applicant hence, it was for him to mention the aforesaid fact in the complaint as filed by him that the signatures on such blank papers were taken under undue influence or under pressure. It is admitted position that the opposite party no.2 being client of the applicant had signed the papers not being under any undue influence or under any pressure and the argument as placed that the blank papers have been used for the purpose of the agreement which is now being denied by the opposite party no.2 could not be believed as he has not disclosed the relationship of client and lawyer in his complaint.

23. For a complaint to be entertained under Section 138 of N.I. Act, the Court has to see the aforesaid :-

(i) Firstly that the cheque has been given in favour of the applicant, the same is presented to the bank, it is returned unpaid, a notice in writing is given to the drawer demanding payment of the cheque amount and failure of withdrawer to make payment within 15 days of receipt of notice.

(ii) Once the cheque has been signed and issued in favour of holder of cheque, there is a statutory presumption under Section 139 of the N.I. Act that the cheque was issued in discharge of legally enforceable debt or liability.

24. Thus, in the present case it is to be seen whether the cheque as given by the applicant was in discharge of a legally enforceable debt/liability or not.

25. For the aforesaid, the terminology "legally enforceable debt" has to be understood. A "legally enforceable debt" refers to a financial obligation recognized by law where borrower is obligated to repay the lender. This type of debt meets specific legal criteria that allows the lender to seek legal recourse if the borrower fails to repay.

26. From the above discussion, it is clear that for commission of an offence under Section 138 N.I. Act, the cheque that is dishonoured must represent a legally enforceable debt not only on the day when it was drawn but also on the date of its maturity/ presentation. If the cheque presented for collection of total value of the cheque without endorsing the part payment made by the drawer is dishonoured no offence under Section 138 N.I. Act would be attracted, as being held in the case of Dasharathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel, reported in (2023) 1 SCC 578.

27. In the present case, the opposite party no.2 has mentioned that he had given Rs.12,25,000/- in cash to the applicant for purposes of purchasing property. Although, in the complaint as well as notice, the complainant has spoken about returning of Rs.11,00,000/- by giving a cheque in this regard but there is no whisper about Rs.1,25,000/-. In case it is taken that Rs.1,25,000/- has already been paid, therefore, as part payment was already made, the complaint under Section 138 N.I. Act could not have been entertained.

28. Be that as it may, once the complainant i.e. opposite party no.2 has not disclosed the lawyer and client relationship between him and the applicant and as for the first time admitted the aforesaid fact in his counter affidavit, the story in the complaint of giving advance in cash without disclosing as to how and from where such an

arrangement was made also gives benefit to the applicant who under such relationship as admitted by the opposite party no.2 in his counter affidavit has mentioned about an agreement which cannot be disbelieved by this Court.

29. This Court finds that where payment was made by cheque in nature of advance payment, it indicates that at the time of withdrawal of cheque, there was no existing liability as such the complaint under Section 138 N.I. Act is not maintainable.

30. The aforesaid fact has been held in the case of Indus Airways Pvt. Ltd and Others vs. Magnum Aviation Pvt. Ltd and Another, reported in 2014 (12) SCC 539. The same was reiterated by the Hon'ble Apex Court in the case of Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited reported in (2016) 10 SCC 458 wherein it was made abundantly clear that culpability under Section 138 of the Act is extinguished only when the dishonoured cheque was issued for the purpose of an advance payment.

31. The facts of the present case where the lawyer-client relationship is admitted by the opposite party no.2, the agreement as entered into between the parties for purchase of Innova car for which advance payment of Rs.11,00,000/- were made cannot be denied. Thus, on the aforesaid fact that the payment of Rs.11,00,000/- by means of cheque was towards advance payment for purpose of purchase of Innova car which makes the complaint not maintainable.

32. It is undisputed that the applicant was residing beyond the jurisdiction of the concerned court hence, the concerned Magistrate was duty bound to follow the procedure as prescribed under Section 202 (1) Cr.P.C. amended in the year 2006.

33. The aforesaid issue has been dealt with in the case of Sayed Sibte Haider v. Mohammad Askari Ali and Another, passed in Criminal Misc. Application Under Section 482/378/407 Cr.P.C. 115 of 2018, vide order dated 28.2.2019 wherein the Court has held that an inquiry under Section 202 Cr.P.C. is mandatory before issuing process in cases where alleged accused is residing beyond jurisdiction of concerned Magistrate.

34. As the counsel for the applicant while challenging the summoning order has turned upon Section 202 Cr.P.C., hence the following is extracted below:

"202. Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him

under Section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding."

35. As per the provision of Section 202 Cr.P.C. as amended with effect from 23.6.2006, the requirement is that in those cases where the accused is residing at a place beyond the area in which the concerned Magistrate exercises his jurisdiction, it is mandatory on the part of Magistrate to conduct an enquiry or investigation before issuing the process. That means, in case, if such an enquiry is not conducted in cases where the accused resides at a place beyond the area in which the Magistrate exercises his jurisdiction, the purpose of amendment in Section 202 Cr.P.C. would frustrate.

36. The essence of purpose of amendment has been captured by this Court in case of Vijay Dhanuka v. Najima Mamtaj, (2014) 14 SCC 638:

"11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

'False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his

jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused." The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we (2014) 14 SCC 638 find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints."

37. As per provisions of Section 202(1) Cr.P.C. the enquiry or investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the concerned Magistrate, which has been held in the case of Abhijir Pawar v. Hemant Madhukar Nimbalkar and another, (2017) 2 SCC 528. The relevant para of the aforesaid judgement is as under :

"Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 Cr.P.C. was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6-2006 by adding the words ?and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction?. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment."

38. Similar view has been taken in the Supreme Court judgement in the case of Sunil Todi vs. The State of Gujarat, (2022) 16 SCC 762 , wherein enquiry by the concerned Magistrate is mandatory, in case, where the accused is residing at a place beyond the area of its jurisdiction prior to issuance of process."

39. Thus, the impugned order of summoning the applicant without conducting mandatory inquiry under Section 202 (1) Cr.P.C.

is liable to be quashed.

40. Coming to the merits of the case, it would be appropriate to reproduce Sections 118, 138 and 139 of Negotiable Instruments Act, 1881 for proper adjudication of the matter.

"118. Presumptions as to negotiable instruments.-Until the contrary is proved, the following presumptions shall be made:-

(a) of consideration -that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date -that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance -that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer -that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements -that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps -that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course -that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

138. Dishonour of cheque for insufficiency, etc., of funds in the account.-Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to

any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, ''debt or other liability'' means a legally enforceable debt or other liability.

139. Presumption in favour of holder.-It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.''

41. From the above, it is manifestly clear that a dishonour would constitute an offence only if the cheque is returned by the bank 'unpaid' either because the amount of money standing to the credit of the drawer's account is insufficient to honour the cheque or that the amount exceeds the amount arranged to be paid from that account by an agreement with that bank. Now, for an offence under Section 138 N.I. Act, it is essential that the cheque must have been issued in discharge of legal debt or liability by accused on an account maintained by him with a bank and on presentation of such cheque for encashment within its period of validity, the cheque must have been returned unpaid. The payee of the cheque must have issued legal notice of demand within 30 days from the receipt of the information by him from the bank regarding such dishonour and where the drawer of the cheque fails to make the payment within 15 days of the receipt of the aforesaid legal demand notice, cause of action under Section 138 N.I. Act arises.

42. From the Chapter XVII comprising Sections 138 to 142 of the Negotiable Instruments Act, which was introduced in statute by

Act 66 of 1988, it is also apparently clear that the object underlying the provision contained in the said Chapter was aimed at inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business and day to day transactions by making dishonour of such instruments an offence. A negotiable instrument, whether the same is in the form of a promissory note or a cheque is by its very nature a solemn document that carries with it not only a representation to the holder in due course of any such instrument but also a promise that the same shall be honoured for payment. To that end Section 139 of the Act raises a statutory presumption that the cheque is issued in discharge of a lawfully recoverable debt or other liability. This presumption is no doubt rebuttable at trial but there is no gain saying that the same favours the complainant and shifts the burden to the drawer of the instrument (in case the same is dishonoured) to prove that the instrument was without any lawful consideration. It is also noteworthy that Section 138 while making dishonour of a cheque an offence punishable with imprisonment and fine also provides for safeguards to protect drawers of such instruments where dishonour may take place for reasons other than those arising out of dishonest intentions. It envisages service of a notice upon the drawer of the instrument calling upon him to make the payment covered by the cheque and permits prosecution only after the expiry of the statutory period and upon failure of the drawer to make the payment within the said period.

43. This Court having noticed the facts of the case and the evidence on the record needs to note the legal principles regarding nature of presumptions to be drawn under Section 139 of the Act and the manner in which it can be rebutted by an accused. Section 118 provides for presumptions as to negotiable instruments. The complainant being holder of cheque and the signature appended on the cheque having not been denied by the Bank, presumption shall be drawn that cheque was issued for the discharge of any debt or other liability. The presumption under Section 139 is a rebuttable presumption. Before this Court refers to various judgments of the Apex Court considering Sections 118 and 139, it is relevant to notice the general principles pertaining to burden of proof on an accused especially in a case where some statutory presumption regarding guilt of the accused has to be drawn.

44. A Three-Judge Bench of the Apex Court in the case of Kali Ram v. State of Himachal Pradesh, reported in (1973) 2 SCC 808, has

laid down following :

"23. .....One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the Courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."

45. Further the Apex Court in Bharat Barrel & Drum Manufacturing Company v. Amin Chand Pyarelal, reported in (1999) 3 SCC 35, had considered Section 118(a) of the Act and held that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable and defendant can prove the non-existence of a consideration by raising a probable defence. In paragraph No. 12 following has been laid down :

"12. Upon consideration of various judgments as noted hereinabove, the position of law which emerges is that once execution of the promissory note is admitted, the presumption under Section 118(a) would arise that it is supported by a consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of a consideration by raising a probable defence. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-

existence of the consideration can be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event, the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under Section 118(a) in his favour. The Court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt. The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist....."

46. In M.S. Narayana Menon Alias Mani v. State of Kerala and another, reported in (2006) 6 SCC 39, the Apex Court had considered Sections 118(a), 138 and 139 of the Act, 1881 and held that presumptions both under Sections 118(a) and 139 are rebuttable in nature. Explaining the expressions "may presume" and "shall presume" referring to an earlier judgment, following was held in paragraph No. 28 :

"28. What would be the effect of the expressions "may presume", 'shall presume" and "conclusive proof" has been considered by this Court in Union of India v. Pramod Gupta, (2005) 12 SCC 1, in the following terms: (SCC pp. 30-31, para 52) "It is true that the legislature used two different phraseologies 'shall be presumed' and 'may be presumed' in Section 42 of the Punjab Land Revenue Act and furthermore although provided for the mode and manner of rebuttal of such presumption as regards the right to mines and minerals said to be vested in the Government vis-a-vis the absence thereof in relation to the lands presumed to be retained by the landowners but the same would not mean that the words 'shall presume' would be conclusive. The meaning of the expressions 'may presume' and 'shall presume' have been explained in Section 4 of the Evidence Act, 1872, from a perusal whereof it would be evident that

whenever it is directed that the Court shall presume a fact it shall regard such fact as proved unless disproved. In terms of the said provision, thus, the expression 'shall presume' cannot be held to be synonymous with 'conclusive proof'.''

47. In view of the above, it is clear that the expression ''shall presume'' cannot be held to be synonymous with conclusive proof. Referring to definition of words ''proved'' and ''disproved'' under Section 3 of the Evidence Act, following was laid down by the Apex Court in paragraph No. 30 of the aforesaid judgment:

''30. Applying the said definitions of ''proved'' or ''disproved'' to the principle behind Section 118(a) of the Act, the Court shall presume a negotiable instrument to be for consideration unless and until after considering the matter before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist. For rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.''

48. The Apex Court has already held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, following was observed in paragraph No. 32 of the above mentioned case :

''32. The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies.''

49. In Krishna Janardhan Bhat v. Dattatraya G. Hegde, reported in (2008) 4 SCC 54, the Apex Court has held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. Following was laid down in Paragraph No. 32 :

''32. An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the

prosecution in a criminal case is different."

50. The Apex Court again reiterated that whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". In paragraph No. 34, following was laid down of the above mentioned case :

"34. Furthermore, whereas prosecution must prove the guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies."

51. In Kumar Exports v. Sharma Carpets, reported in (2009) 2 SCC 513, the Apex Court again examined as to when complainant discharges the burden to prove that instrument was executed and when the burden shall be shifted. In paragraph Nos. 18 to 20, following has been laid down :

"18. Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the

real fact is not as presumed, the purpose of the presumption is over.

20. .....The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the Court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist....."

52. A Three-Judge Bench of the Apex Court in the case of Rangappa v. Sri Mohan, reported in (2010) 11 SCC 441, had elaborately considered provisions of Sections 138 and 139 of N.I. Act. In the above case, trial Court had acquitted the accused in a case relating to dishonour of cheque under Section 138. The High Court had reversed the judgment of the trial Court convicting the accused. In the above case, the accused had admitted signatures on the cheque. This Court held that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. In Paragraph No. 13, following has been laid down :

"13. The High Court in its order noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 0886322 dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable."

53. After referring to various other judgments of this Court, the Apex Court in the aforementioned case held that the presumption

mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability, which, of course, is in the nature of a rebuttable presumption. In paragraph No. 26, following was laid down :

"26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat, (2008) 4 SCC 54, may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."

54. Elaborating further, the Apex Court has held that Section 139 of the Act is an example of a reverse onus and the test of proportionality should guide the construction and interpretation of reverse onus clauses on the defendant-accused and the defendant-accused cannot be expected to discharge an unduly high standard of proof. In paragraph Nos. 27 and 28, following was laid down:

"27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the

standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/ her own."

55. From the above discussion, it is clear that the opposite party no.2 has not been able to prove his case that the amount of Rs.11,00,000/- was not given as advance payment as agreed between the parties for the purpose of purchasing Innova car hence, the probable defence as raised by the applicant creates doubt about the existence of a legally enforceable debt of liability.

56. The present case appears to be a case of malicious prosecution wherein the opposite party no.2 has concealed the real fact of lawyer-client relationship and has wrongly disclosed about Dilip Kumar Singh who is related to the applicant being Manager of the Institution where opposite party no.2 was working at the relevant point of time to which the Court cannot close its eyes as at the instance of relative of the applicant, the present complaint has been filed concealing the real relationship of lawyer & client.

57. It would be appropriate to understand the meaning of malicious prosecution as defined by the Supreme Court in the case of West Bengal State Electricity Board v. Dilip Kumar Ray reported in AIR 2007 SC 976. Relevant part of the said judgement reads thus:

"14. ... ...

MALICIOUS. Done with malice or an evil design; wilful; indulging in malice, harboring ill-will, or enmity malevolent, malignant in heart; committed wantonly, wilfully, or without cause, or done not only wilfully and intentionally, but out of cruelty, hostility of revenge; done in wilful neglect of a known obligation.

"MALICIOUS" means with a fixed hate, or done with evil intention or motive; not the result of sudden passion.

*** *** *** Malicious abuse of legal process. A malicious abuse of legal process consists in the malicious misuse or misapplication of process to accomplish a purpose not warranted or commanded by order of Court - the malicious perversion of a regularly issued process, whereby an improper result is secured.

*** *** *** Malicious Prosecution - Malice. Malice means an improper or indirect motive other than a desire to vindicate public

justice or a private right. It need not necessarily be a feeling of enmity, spite or ill-will. It may be due to a desire to obtain a collateral advantage. The principles to be borne in mind in the case of actions for malicious prosecutions are these: Malice is not merely the doing a wrongful act intentionally but it must be established that the defendant was actuated by mains animus, that is to say, by spite of ill-will or any indirect or improper motive. But if the defendant hod reasonable or probable cause of launching the criminal prosecution no amount of malice will make him liable for damages. Reasonable and probable cause must be such as would operate on the mind of a discreet and reasonable man; 'malice' and 'want of reasonable and probable cause' have reference to the state of the defendant's mind at the date of the initiation of criminal proceedings and the onus rests on the plaintiff to prove them.

OTHER DEFINITIONS OF "MALICIOUS PROSECUTION".

"A judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it."

"A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure."

"A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause."

"A prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy."

The term "malicious prosecution" imports a causeless as well as an ill-intended prosecution.

'MALICIOUS PROSECUTION" is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or its bound to know are wrong and against the dictates of public policy.

In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.

1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause. 2. The cause of

action resulting from the institution of such a proceeding. Once a wrongful prosecution has ended in the defendant's favor, lie or she may sue for tort damages - Also termed (in the context of civil proceedings) malicious use of process. (Black, 7th Edn., 1999) *** *** ***

58. In the facts of the present case, it is admitted position that the opposite party has not disclosed about the client-lawyer relationship and hence has not approached this Court with clean hands, this itself goes to show that the proceedings have been initiated with malicious intention in order to harass the applicant.

59. The earlier discussion of the litigations of the cases of opposite party no.2 as filed by the applicant as a lawyer also goes to prove that the opposite party no.2 has instituted the proceedings with an ulterior motive for wreaking vengeance on the accused as relative of applicant is said to be Manager of the Institution wherein the opposite party no.2 was working as an Assistant Teacher and the cases as filed were related to his service in the Institution, therefore, the presumption goes in favour of the applicant that being influenced by the management, the present case was lodged against the applicant.

60. Now, this Court comes on the issues whether it is appropriate for this Court being the Highest Court to exercise its jurisdiction under Section 482 Cr.P.C. to quash the charge-sheet and the proceedings at the stage when the Magistrate has merely issued process against the applicants. The aforesaid issue has elaborately been discussed by the Apex Court in the following judgments:

(i) R.P. Kapur v. State of Punjab; AIR 1960 SC 866,

(ii) State of Haryana and others v. Ch. Bhajan Lal and others;1992 Supp.(1) SCC 335,

(iii) State of Bihar and another v. P.P. Sharma and another; 1992 Supp (1) SCC 222,

(iv) Zandu Pharmaceuticals Works Ltd. and others v. Mohammad Shariful Haque and another; 2005 (1) SCC 122, and

(v) M.N. Ojha v. Alok Kumar Srivastava; 2009 (9) SCC 682.

61. In the case of R.P. Kapur (Supra), the following has been observed by the Apex Court in paragraph 6:

"Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under Section 561 -A of the Code. The said section saves the inherent power of the High Court to make such orders as

may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under Section 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against

the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point (Vide: In Re: Shripad G. Chandavarkar, AIR 1928 Bom 184, Jagat Ohandra Mozumdar v. Queen Empress, ILR 26 Cal 786), Dr. Shanker Singh v. The State of Punjab, 56 Pun LR 54 : (AIR 1954 Punj 193), Nripendra Bhusan Ray v. Govind Bandhu Majumdar, AIR 1924 Cal 1018 and Ramanathan Chettiyar v. K. Sivarama Subrahmanya Ayyar, ILR 47 Mad 722: (AIR 1925 Mad 39)."

62. In the case of State of Haryana and others v. Ch. Bhajan Lal and others (Supra), the following has been observed by the Apex Court in paragraph 105:

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or

make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

63. In the case of State of Bihar and another v. P.P. Sharma and another (Supra), the following has been observed by the Apex Court in paragraph 22 :

"22. The question of mala fide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorised purpose. There is no material whatsoever is this case to show that on the date when the FIR was lodged by R.K. Singh he was activated by bias or had any reason to act maliciously. The dominant purpose of registering the case against the respondents was to have an investigation done into the allegations contained in the FIR and in the event of there being sufficient material in support of the allegations to present the charge-sheet before the Court. There is no material to show that the dominant

object of registering the case was the character assassination of the respondents or to harass and humiliate them. This Court in State of Bihar v J.A.C. Saldhana and others, [1980] 2 SCR 16, has held that when the information is lodged at the police station and an offence is registered, the mala fides of the informant would be of secondary importance. It is the material collected during the investigation which decides the fate of the accused person. This Court in State of Haryana and others v. Ch. Bhajan Lal and others, JT 1990 (4) SC 650, permitted the State Government to hold investigation afresh against Ch. Bhajan Lal inspite of the fact the prosecution was lodged at the instance of Dharam Pal who was enimical towards Bhajan Lal."

64. In the case of Zandu Pharmaceuticals Works Ltd. (Supra), the following has been observed by the Apex Court in paragraphs Nos. 8 to 12:

"8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex

debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In R.P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the First Information Report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-

circuit a prosecution and bring about its sudden death.

11. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal (1992 Supp (1) 335). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

***** ***** ***** ***** ***** ***** As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. 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. 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. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H.S. Chowdhary (1992 (4) SCC 305), and Raghubir Saran (Dr.) v. State of Bihar (AIR 1964 SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint

has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: Dhanalakshmi v. R. Prasanna Kumar (1990 Supp SCC 686), State of Bihar v. P.P. Sharma (AIR 1996 SC 309), Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995 (6) SCC 194), State of Kerala v. O.C. Kuttan (AIR 1999 SC 1044), State of U.P. v. O.P. Sharma (1996 (7) SCC 705), Rashmi Kumar v. Mahesh Kumar Bhada (1997 (2) SCC 397), Satvinder Kaur v. State (Government of NCT of Delhi) (AIR 1996 SC 2983) and Rajesh Bajaj v. State NCT of Delhi (1999 (3) SCC 259.

12. The above position was recently highlighted in State of Karnataka v. M. Devendrappa and another (2002 (3) SCC 89)." (emphasis added)

65. Thereafter, in the case of M.N. Ojha v. Alok Kumar Srivastava, reported in 2009 (9) SCC 682, has made observations in paragraphs 25, 26, 27, 28, 29 and 30 regarding the exercise of power under Section 482 Cr.P.C. as well as the principles governing the exercise of such jurisdiction :

"25. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself alongwith the complaint, surely he would have dismissed the complaint. He would have realized that the complaint was only a counter blast to the FIR lodged by the Bank against the complainant and others with regard to same transaction.

26. This Court in Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others, (1998)5 SCC 749, held:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law

set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

27. The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinize even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

28. The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even adverting to the basic facts which were placed before it for its consideration.

29. It is true that the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending.

30. Interference by the High Court in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may

equally result in injustice more particularly in cases where the Complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint." (emphasis added)

66. After the aforesaid discussion, it is also relevant to point out the fact that scope and ambit of Section 482 Cr.P.C. is a very agitated and debatable issue. Nevertheless, there are some cases which have got wide acceptance in the legal fraternity and hence, are used as the minor guidelines/principles governing the cases of quashing criminal proceedings.

67. The Hon'ble Apex Court in the case of Prashant Bharti Vs. State of NCT of Delhi reported in (2013) 9 SCC 293 has held that, in order to determine the veracity of prayer for quashing the criminal proceedings raised by an accused u/s 482 Cr.P.C., the following questions are to be raised before the High Court, if the answer to all the following questions was in affirmative, then the High Court should quash the proceedings by exercising its power u/s 482 Cr.P.C.

"1. Whether the material relied upon by the accused is sound, reasonable and indubitable, i.e. material is of sterling and in impeccable quality?

2. Whether the material relied upon by the accused is sufficient to reject and over rule the factual assertions contained in the complaint, i.e. material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusation as false?

3. Whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or that the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

4. Whether proceeding with the trial would result in an absuse, of process of the Court and hence, would not serve the end of Justice?"

68. The Apex Court in the case of Parbatbhai Ahir Vs. State of Gujarat reported in (2017) 9 SCC 641, referring to various caases has summarized following principles to govern powers of High Court under Section 482 Cr.P.C.:-

"15. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to

secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and (x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance."

69. Thus, the Hon'ble Apex Court has discussed 3 clauses of cases in which criminal proceeding can be quashed. They are as follows:-

"(a) where there is a legal bar against institution or continuance of criminal proceedings;

(b) where the allegation in FIR do not discloses or constitute an offence, even if taken at face value and not their entirely.

(c) where the allegation made constitute an offence but there is no evidence which can prove them."

70. Limitation of power under Section 482 Cr.P.C. has been discussed by the Hon'ble Apex Court and held in the case of Monica Kumar (Dr.) Anr. Vs State of U.P. reported in (2008) 8 SCC 781 as well as many other judgements of the Apex Court, that Section 482 Cr.P.C. powers are to be ex-debito justitiae (as a matter of right) in a manner to ensure real and substantial justice, and the administration of justice is why Court exists.

71. In recent relevant judgement of the Apex Court in the case of Anand Kumar Mohatta Vs. State (Govt. of NCT of Delhi), reported in (AIR) 2019 SC 210: 2018 SCC Online SC 2447, it was observed;

"18-It is a settled principle of law that the High Court can exercise jurisdiction u/s 482 Cr.P.C. even when discharge application is pending with the trial Court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegation are materialized in a charge sheet. On the contrary, it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of the

power of any Court."

72. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 Cr.P.C. and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 Cr.P.C. A three-Judges Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

73. Further it has been held in various judgements that in proceeding u/s 482, the High Court will not enter into any finding of facts, particularly when the matter has been concluded by the concurrent finding of facts.

74. However, in the judgment of Apex Court in the case of Indian Oil Corporation Vs. NEPC India Ltd. And Ors. reported in (2006) 6 SCC 736, the Apex Court observes the following principles:-

"1. The High Courts, should not exercise the inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce of legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceeding should not be quashed. Quashing of complaint is warranted only where complaint to bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out (a) purely a Civil wrong, or (b) purely or criminal offence or (c) a civil wrong as also a criminal offence. A commercial .....or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence."

75. As such, the High Court u/s 482 Cr.P.C. has very wide scope and is an essential part of the functioning in order to meet the end of justice, it must be noted that the power so assigned is so vast and can easily be misinterpreted. So, it becomes important for the Courts to use it wisely and according to the guidelines laid down by the Hon'ble Apex Court.

76. Section 482 of Cr.P.C. has made its space in Cr.P.C. in order to not only enable the High Court to provide proper justice but also to curb the filing of fictitious complaints.

77. In the present case as forwarded by/from both the sides, the Hon'ble Court may surely take judicial notice that contain facts as provided u/s 57 of the Evidence Act, 1872 and set the law in motion by delivering substantial justice and balance be struck between the statutory obligations of investigation and rights of affected parties.

78. Further, even the framers of legislation while enacting section 482 Cr.P.C. had started with a non-obstante clause and completed the section with "or otherwise to secure the ends of justice" which lays obligation upon the power of High Court to prevent the society from criminals and law-breakers and should be exercised to stop the public from filing fictitious complaints just to fulfill their personal grudges.

79. In the present case, a balance has to be struck while considering the rival submissions made by the parties in order to arrive at a judicious conclusion. The landmark judgments have been cited by both the parties considering which this Court has to arrive at a conclusion considering the guidelines and principles setup by the Hon'ble Apex Court in various cases.

80. In the present case, this Court finds that the opposite party no.2 has not disclosed about the lawyer-client relationship between

the applicant and himself thus, the very basis of filing of complaint is dislodged as the fact of legally enforceable debt cannot be proved unless the real relationship is disclosed, due to which the alleged cheque was given by the applicant.

81. The learned counsel for the opposite party no.2 has tried to support his case by giving names of such witnesses who have also not been examined and has for the first time admitted the lawyer-client relationship in his counter affidavit, therefore, he cannot now turn around to take a different stand in support of his case. It can also be a case where the opposite party no.2 may have been annoyed by the applicant for not getting favourable orders from the Hon'ble High Court in the cases which had been filed by the applicant as had been engaged by the opposite party no.2 as his lawyer. The fact about brother-in-law of applicant being in the management of the Institution where opposite party no.2 has also been working as Assistant Teacher as admitted by the opposite party no.2 in his complaint which also proves the malice as cases regarding his service had been filed by the applicant before this Hon'ble Court. Thus, possibilities and probabilities go in favour of the applicant as false story has been cooked up by the opposite party no.2 not disclosing the real relationship between the applicant and himself.

82. Further more, the opposite party no.2 has not been able to disclose as to how he made arrangements of such a huge amount of money that too at the time of COVID-19. Hence, the story as narrated by the opposite party no.2 in the complaint is highly doubtful.

83. Final contentions as forwarded by the learned counsel for opposite party no.2 is that the material placed on record before the concerned Magistrate was sufficient to pass order of summoning the accused and that concerned court cannot discard the fact that the cheque has been issued by the applicant so the trial cannot be stalled by merely raising some suspicion or doubt in allegations against the applicant.

84. In this regard, it is noted that present application is moved by the applicant invoking power under Section 482 Cr.P.C. of the High Court, challenging summoning order dated 13.01.2021 as well as the entire proceedings of the criminal case. To be precise, the power of the court concerned while passing order summoning the applicant and power of the High Court U/s 482 Cr.P.C. are two different things. The court below was bound to pass appropriate orders and had to content with what is on record and cannot come to the conclusion about reliability of evidence at the initial stage, however in exercise of

power u/s 482 Cr.P.C., this Court has different scope than what magistrate could have applied in the given situation.

85. The Hon'ble Apex Court in Bhajan Lal case (supra), after considering several judgments, distilled the principles governing the exercise of extra ordinary power of the court under Article 226 of the Constitution of India, 1950 or its inherent power u/s 482 Cr.P.C. Several categories of cases by way of illustrations were also listed out, the same has been earlier discussed for ready reference. But, at the same time, the Apex Court also recorded a note of caution.

86. From the entire discussion, what is subtly clear is that FIR and charge sheet can be quashed if allegation or evidence do not establish the commission of an offence. Upon analysis, the Court noted that the facts of each case would determine the exercise of the discretion vested in the Court to quash criminal proceedings in order to prevent abuse of process of Court.

87. In the recent judgment delivered by the Single Bench of High Court of Delhi in the case of Mr. Abhishek Gupta and another vs. State of NCT of Delhi and another passed in CRL MC 1064/2022 and CRLMA 4586/2022 decided on 16.03.2022, even while denying to interfere, not finding the case to be suitable one to exercise power u/s 482 Cr.P.C., observed, inherent powers would be predicated on the facts of each case and no court would have any qualm in quashing of FIR and charge-sheet, if commission of offence is not established.

88. Inherent powers of High Court under Section 482 Cr.P.C. are meant to act ex debito justitiate to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court. These inherent powers can be exercised in the following category of cases:(i) to give effect to an order under the Code; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice.

89. Now applying the ratio laid down in the above referred several judgments, only in the circumstances that the registration of the case itself is an abuse of process of law, inherent powers can be exercised to prevent abuse of process of law. This Court finds that this case stands to the category when the registration of case itself is an abuse of process of law.

90. This Court while invoking inherent powers under Section 482 Cr.P.C. can always interfere in considering the present facts of the case where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a

view to spite him due to private and personal grudge.

91. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

92. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilizing the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court's time and public money to achieve his ends.

93. It is well settled that inherent powers under Section 482 Cr.P.C. have to be exercised to secure the ends of justice, to prevent abuse of process of any Court and to make such orders as may be necessary to give effect to any order under the Cr.P.C. depending upon the facts of given case. In the instant case, it appears that there is miscarriage of justice, thus relying upon the Judgement of Hon'ble Apex Court in the matter of West Bengal State Electricity Board v. Dilip Kumar Ray (supra) as well as in the interest of justice and to protect the interest of applicant, who is victimized of false accusation due to personal grudge of opposite party no.2, who has managed the complaint without disclosing the real relationship of lawyer and client, normally this Court would have directed to get the matter investigated by C.B.I. but seeing the arguments as placed by

learned counsel for the parties and the conduct of opposite party no.2, the matter is being decided finally to secure the ends of justice.

94. In the facts of the present case, where it has been established that opposite party no.2 has not approached the Court with clean hand, noticing his conduct as is clear from the records, this Court finds it to be a fit case for exercising powers under Section 482 Cr.P.C. Keeping in mind that criminal prosecution is a serious matter, it effects the liberty of a person, no greater damage can be done to the reputation of a person than dragging him in a criminal case, continuance of prosecution would be nothing but an abuse of the process of law and will be a mental trauma to the applicants, it becomes necessary for this Court to invoke inherent powers under Section 482 Cr.P.C. in present facts and circumstances of his case.

95. While dealing with the inherent powers of the High Court under Section 482 Cr.P.C., the the Apex Court in the case of Karnataka Emta Coal Mines Limited and Ors. vs. Central Bureau of Investigating reported in 2024 SCC Online SC 2250 has arrived at the following conclusion :-

"18.7. As can be gathered from the above, Section 482 Cr.P.C. recognizes the inherent powers of the High Court to quash initiation of prosecution against the accused to pass such orders as may be considered necessary to give effect to any order under the Cr.P.C. or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It is a statutory power vested in the High Court to quash such criminal proceedings that would dislodge the charges levelled against the accused and based on the material produced, lead to a firm opinion that the assertions contained in the charges levelled by the prosecution deserve to be overruled.

18.8. While exercising the powers vested in the High Court under Section 482, Cr.P.C., whether at the stage of issuing process or at the stage of committal or even at the stage of framing of charges, which are all stages that are prior to commencement of the actual trial, the test to be applied is that the Court must be fully satisfied that the material produced by the accused would lead to a conclusion that their defence is based on sound, reasonable and indubitable facts. The material relied on by the accused should also be such that would persuade a reasonable person to dismiss the accusations levelled against them as false."

96. Therefore, in view of above discussion, this Court finds a

good ground for quashing the impugned summoning order as well as entire proceedings of the aforesaid case.

97. Accordingly, the entire proceedings of Complaint Case No.1738/2020, under Section 138 of Negotiable Instrument Act (Alok Singh Niranjan vs. Ram Sharan Singh) as well as the summoning order dated 13.01.2021 passed by the Chief Judicial Magistrate, Jalaun, Police Station- Kotwali Orai, District- Jalaun, pending in the Court of Judicial Magistrate, Jalaun; are hereby quashed.

98. The present application under Section 482 Cr.P.C. is, accordingly, allowed. There shall be no order as to costs.

99. A copy of this order be certified to the lower court forthwith.

Result :- Application allowed.