

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.7524 OF 2021



BETWEEN:

SHRI M.R.SEETHARAM

... PETITIONER

(BY SRI. P.PRASANNA KUMAR, ADVOCATE)

AND:

- 1 . STATE BY ANTI CORRUPTION BUREAU
BENGALURU CITY DIVISION
NO.49, KHANIJA BHAVAN
RACE COURSE ROAD, BENGALURU
KARNATAKA – 560 001.
REP. BY ITS SPECIAL PUBLIC PROSECUTOR.
- 2 . SHRI. PRASHANTH R.VARNI

3. KARNATAKA LOKAYUKTHA
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
M.S.BUILDING, DR.AMBEDKAR VEEDHI
BENGALURU – 560 001.

NOTE: R3 IMPEADED VIDE ORDER DATED 05.09.2022.

... RESPONDENTS

(BY SRI. B.B.PATIL, SPL. P.P)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 27.04.2021 PASSED BY THE LEARNED XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE, BENGALURU URBAN DISTRICT, BENGALURU THEREBY TAKING COGNIZANCE FOR OFFENCE P/U/S.13(1)(d),13(1)(e) R/W SEC.13(2) OF PREVENTION OF CORRUPTION ACT AND SEC.109 OF IPC AND REGISTERING A CRIMINAL CASE IN SPL.C.C.NO.656/2021 AS AGAINST THE PETITIONER/ACCUSED NO.3 IS CONCERNED (PRODUCED VIDE ANNEXURE-A) AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS IN SPL.C.C.NO.656/2021 PENDING ON THE FILE OF THE LEARNED XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE, BENGALURU URBAN DISTRICT, BENGALURU IN SO FAR AS PETITIONER/ACCUSED NO.3 IS CONCERNED.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/accused No.3 has knocked at the doors of this Court calling in question order dated 27-04-2021 passed by the

XXIII Additional City Civil Sessions Judge and Special Judge for Prevention of Corruption Act, Bengaluru City in Special C.C.No.656 of 2021 taking cognizance of offences punishable under Sections 13(1)(d) and 13(1)(e) r/w. 13(2) of the Prevention of Corruption Act, 1988 ('the Act' for short) and Section 109 of the IPC.

2. Facts adumbrated, are as follows:-

The petitioner claims to be a prominent member of the Ramaiah Education Society, Vice-President of the Gokula Education Foundation, Director of M.S.Ramaiah Institute of Technology and several M.S. Ramaiah Institutions. He further claims to be a philanthropist engaged in several charitable activities. The petitioner was also an elected representative from the Malleshwaram Constituency, Bengaluru. Proceedings come to be initiated against one T.N. Chikkarayappa, accused No.1 in the year 2021 for offences punishable under the provisions of the Act. Accused No.1 is said to have amassed wealth and acquired property in his name and the name of the family to the tune of ₹3,58,30,212.13/-. The investigation against accused No.1 leads the petitioner - accused No.3, in the subject petition.

3. It is the case of the prosecution *qua* the present petitioner, that on 02-04-2012, M.S.Ramaiah Education Society issued a cheque drawn on Karnataka Bank for a sum of ₹50,00,000/- in favour of M.S. Ramaiah Medical College. On 05.12.2016, a crime comes to be registered in Crime No.26 of 2016 alleging offences punishable under Sections 13(1)(d), 13(1)(e) r/w. 13(2) of the Act and investigation was taken up against accused No.1. The payment was made by M.S. Ramaiah Education Society to M.S. Ramaiah Medical College in favour of the daughter of accused No.1 in a sum of ₹50,00,000/- as afore-quoted. It is then, the Lokayukta issued notice to M.S.Ramaiah Education Society to provide details regarding the payment of ₹50/- lakhs, on 13.04.2018. The Society submits a reply on 26.04.2018, to the said notice contending that it was an interest free loan that was granted to the daughter of accused No.1 for her studies as she was not eligible for any scholarship. Another notice comes to be issued by the Lokayukta on 27.04.2018 to furnish complete details as to how the amount was paid as interest free loan to the daughter of accused No.1. The reply of the petitioner then was that the Society had become

defunct and therefore, no records could be traced. The Lokayukta then completes the investigation and files a charge sheet in the concerned Court in Special C.C.No.656 of 2021. The learned Special Judge takes cognizance of the offences against accused Nos.1 to 5, which included the petitioner as accused No.3.

4. This Court only exempted the petitioner from personal appearance before the Special Court and had not granted any interim order of stay of further proceedings before the concerned Court. It is the taking of cognizance and the entire proceedings that drives the petitioner to this Court in the subject petition.

5. Heard Sri P. Prasanna Kumar, learned counsel appearing for the petitioner and Sri B.B. Patil, learned Special Public Prosecutor for the respondents.

6. The learned counsel for the petitioner would vehemently contend that the petitioner has no doubt signed the cheque as President of the Society. It is the Society that was responsible for issuance of cheque in favour of the daughter of accused No.1 to the Medical College. Therefore, no fault can be found with the

petitioner as it is by way of cheque that the amount is transferred and it is not a case where cash was disbursed. It is his contention that the Society had by the time the 2nd notice came about become defunct and therefore, no records with regard to the transaction could be traced pursuant to the second notice issued by the Lokayukta. He would seek quashment of entire proceedings against the petitioner.

7. The learned counsel representing the respondents takes this Court through the averments in the statement of objections and would vehemently refute the submissions to contend that the daughter of accused No.1 is said to have applied for a postgraduate course in M.D. Paediatrics in the college run by the Society of which, the petitioner was the President. ₹50/- lakhs goes from the account of the Society to the account of the College and the cheque is signed by the petitioner. Nowhere in the books of accounts this amount of ₹50/- lakhs is reflected. If it is interest free loan that was granted to the daughter of accused No.1, there should have been a mention in any of the returns filed by the Society that educational loan with interest free was granted to the daughter of

accused No.1. No documents are produced and when notice is issued, an evasive reply comes about stating that the Society itself has become defunct and, therefore, no documents are available. He would submit that these are seriously disputed questions of facts and it is a matter of trial. It is the emphatic allegation of the learned counsel that accused has routed the money through the Society and the petitioner has abetted such routing of money of ₹50/- lakhs unaccounted.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. They require to be reiterated with certain elaboration. It is alleged that accused No.1, one T.N. Chikkarayappa who at the relevant point of time was working as Managing Director at the Cauvery Neeravari Nigam Limited and had served the State as a public servant from 02-11-1987 till 05-12-2016. The date 05-12-2016 is quoted for the reason that a crime comes to be registered against accused No.1 for amassing wealth disproportionate to his known sources of

income punishable under Section 13(1)(d), 13(1)(e) r/w. 13(2) of the Act. The petitioner was not named then. A crime in Crime No.26 of 2016 was registered and investigation was conducted. During the course of investigation and scrutiny of documents, it was noticed that ₹50/-lakhs was paid towards tuition fee of the daughter of accused No.1. The payment was routed from the Society to the Medical College. The then Anti-Corruption Bureau ('the ACB' for short) communicates to the Society to provide details and documents on 13-04-2018. The communication reads as follows:

"To,
*M.S.Ramaiah Education Society,
Kanakapura Road, Bengaluru.*

Sir,

Sub: Request for providing details and certified documents reg.

***Ref: ACB, Bangalore City P.S, Cr.No.26/2016,
u/s13(1)(e), 13(1)(d) R/W 13(2) P.C
Act-1988. Dated 05.12.2016.***

* * * *

Adverting to the subject and reference mentioned above, a case has been registered against Sri.T.N.Chikkarayappa, MD, Kaveri Neeravari Nigama, Bangalore and is under investigation.

During the Course of investigatin it is found that a sum of Rs.50,00,000/- has been paid towards tuition fees for Anisha Roy D/o Sri.T.N.Chikkarayappa for her M.D. Course at M.S.Ramaiah Medical College from your A/C

No.0632000100318201, maintained at Karnataka Bank, Nehru Nagar Branch Vide Cheque No.439276, dated 02.04.2012.

For the purpose of investigation kindly provide the following information along with relevant documents.

- 1. Reason for payment of fees of Rs.50,00,000/- towards tuition fees for Anisha Roy by the M.S.Ramaiah Education Society.**
- 2. Details of donations/financial contribution made to the society or any other institution affiliated to the society by Sri. T.N.Chikkarayappa or any other person on behalf of Sri.T.N.Chikkarayappa or Anisha Roy.**
- 3. Copies of IT returns filed by the society to the Department of Income Tax from 2010-11 to 2016-17 duly attested by your Chartered Accountant/Auditor along with the statement of accounts.**
- 4. Documents regarding registration of M.S.Ramaiah Education Society with concerned authorities.**
- 5. Name and designation of the official/person providing the information along with contact number.**

Matter may be treated as the most urgent.

Thanking you,"

(Emphasis added)

This is replied to by the Society on 26-04-2018. The reply reads as follows:

"To

*The Deputy Superintendent of Police – 3
Anti-Corruption Bureau
Bangalore City Police station
Khanija Bhavan, Race Course road
Bengaluru – 01.*

Respected Sir,

*Ref: Your Letter #ACB/BCity/Cr no 26/2016/u/s
13(1),13(1)(d)-RW 13(2)PC.ACT 1988/
13.04.2018.*

With reference to above we would like to place before you the following facts and request you to take it on record:

- ***M.S.Ramaiah Education Society is a society registered under Karnataka Co-operative society Act vide registration #433/2001-2002 (copy of registration certificate enclosed) on 24.08.2001.***
- ***The Executive committee members of the society are about 8 people and we are here with enclosing the list of such members.***
- ***As could be seen from the Memorandum of Association of the society among other things, the object of the society is to facilitate the promotion of the student community and promote higher education.***
- *The society had established B.Ed college – offering 2 year TCH Course and 1 year B.Ed Programme. But later during FY 2011-12, we sold the land and building and income earned there from was offered to tax We are here with enclosing ITR of the society filed for the AY 2012-13, vide Ack no 502773260290912/dated 29.09.2012 declaring a total income of Rs.1,89,11,041/- (Profit on sale of land) and we have paid a sum of Rs.39,34,630/- as income tax. Subsequent year return of income was*

not filed since the society did not had any taxable income.

- ***However, the society with in its available funds was carrying out the activities of fulfilling the object of promoting student community by providing them fees, scholarships, and payment of fees etc.... Now subsequent to sale of college land and building the society is non-operational and is closed. We have initiated the process of closure of the society. college land and building the society is non-operational and is closed. We have initiated the process of closure of the society.***
- ***Reverting back to your notice above referred- we would like to state the Mr.T.N.Chikkarayappa approached our society for financial assistance to his daughter's education in M.S.Ramaiah Medical/Engineering College. However since the request was for higher amount the society in its committee meeting rejected the payment of such large sums as scholarship to one single student and instead unanimously agreed to give it as a education loan (interest free) – considering the merit of the student and accordingly the same was paid by Karnataka bank ltd-Nehrunagar branch Cheque No.439276 dated 02/04/2012 of Rs.50 lakhs.***
- ***The said sum of Rs.50 Lakhs is still appearing in our books as Education loan paid (interest free) to T.N.Chikkarayappa.***
- ***We have not received any donation/financial contribution to society or any other institution affiliate to the society by Sri.T.N.Chikkarayappa or by any other person on behalf of Sri.T.N.Chikkarayappa or Anisharoy.***

- *The Contact details of the office bearers are as follow:
Raghavendra L. V.
No.2/4 M.S. Ramaiah Ind Estate
MSRIT Campus, Near vijaya Bank
Mathikere, Bangalore – 560 054.
Mob- 9980443777.”*

(Emphasis added)

The Income Tax details of the Society are quoted and insofar as the seat that was allotted to the daughter of accused No.1 is concerned, it is stated that accused No.1 approached the Society for financial assistance to his daughter's education. Since the request was for higher amount, the Society in its committee meeting rejected the payment of large sums as scholarship to one single student and instead unanimously agreed to give it as educational loan, interest free considering the merit of the student. Therefore, ₹50/- lakhs was paid. It is contended that ₹50/- is appearing in the books of the Society as educational loan paid to T.N. Chikkarayappa, accused No.1. When this reply was submitted by the Society, the then ACB immediately corresponds seeking details of the loan. The second correspondence reads as follows:

"To,

*The Secretary,
M.S.Ramaiah Education Society,*

Kanakapura Road, Bengaluru.

Sir,

Sub: Request for providing details and certified documents red.

Ref: 1. ACB, Bangalore City P.S., Cr.No.26/2016, u/s 13(1)(e),13(1)(d)R/W 13(2) P.C. Act-1988. Dt.05/12/2016.

* * * *

Further to your reply dated 26-04-2018 you are hereby directed to provide the following documents and details.

- 1. Original letter of request made by Sri.T.N.Chikkarayappa requesting M.S.Ramaiah Education Society for financial assistance for his daughter's education at M.S.Ramaiah Medical College.**
- 2. Original proceedings of the Committee meeting / Minutes Book of the General Body meeting or the Special Body meeting of the Society.**
- 3. Efforts made by M.S.Ramaiah Education Society to recover the loan from T.N.Chikkarayappa / Anisha Roy.**
- 4. Details of all the students to whom M.S.Ramaiah Education Society has provided financial assistance/ interest free education loan in the following format.**

Sl.no.	Name and address of the student	Course pursued	Academic year	Amount of Financial/ Education loan provided

5. *Copies of request letter by the student or parents/ guardians of the student requesting for such education loan/financial aid.*
6. *All Audit reports of M.S.Ramaiah Education Society duly attested by the auditor.*

Thanking you,"

(Emphasis added)

Since in the first reply it was stated that the Society had unanimously resolved to grant educational loan/financial assistance to the daughter of accused No.1, the then ACB sought resolution of the meeting of the committee and all other documents pertaining to the reply given by the Society. A strange and shocking reply springs from the Society. The reply reads as follows:

*"To,
The Deputy Superintendent of Police – 3
Anti-Corruption Bureau
Bangalore City Police Station
Khanija Bhavan, Race Course road
Bengaluru-01*

Respected Sir,

*Ref: Your letter no ACB/b CITY/Cr no
26/2016/dt.27.04.2018-requesting us to
provide information – in respect of payment
made by the society to T.N.Chikkarayappa.*

We are in receipt of your letter dt. 27th April 2018, in response to our submission made on 26th April 2018.

In this regard we regret to state that we are not able to provide any information due to the fact that – now the society is defunct and we have sold the running college along with site during 2011-12 financial year and we are not running any regular office and have any staff members. Hence we are unable to trace the old records.

We have co – operated with the department enquiry by submitting the information available with us and we are not in possession of any other additional information, other than whatever is submitted.

We kindly request you to acknowledge the receipt of letter and oblige.

Thanking you,

Yours faithfully.”

(Emphasis added)

Now, the reply is that they do not have any document as the Society itself has become defunct and they have sold the running college along with the site and they are not running any regular office. When the first reply of the Society as quoted hereinabove dated 26-04-2018 was so emphatic that the daughter of accused No.1 was given interest free educational loan pursuant to a resolution passed in a general body meeting, within a week's time the records could not have vanished. The defence was never that the Society had become defunct when the reply was submitted on 26-04-2018 but when all the details were sought, a *new swan song*

is sought to be sung, by the Society of which the petitioner was the President. The cheque for ₹50/- lakhs which is appended to the petition is drawn in the name of the College with the signature of the petitioner, being the President of the Society. It is, therefore, the ingredients of Section 109 of the IPC would point at the petitioner. The Police after investigation file a charge sheet, when the evasive replies were given by the Society, of which, the petitioner is/was the President. The allegation in the charge sheet insofar as the petitioner is concerned reads as follows:

"ಎ3 ಆರೋಪಿ ಎಂ.ಆರ್.ಸೀತಾರಾಮ್ ಬಿನ್ ಲೇಟ್.ಎಂ.ಎಸ್.ರಾಮಯ್ಯ, 61 ವರ್ಷ, ವಾಸ ನಂ.8, ಗೋಕುಲ ಹೌಸ್, ಎಂ.ಎಸ್.ಆರ್.ರೋಡ್, ಗೋಕುಲ ಎಕ್ಸ್‌ಟೆನ್ಷನ್, ಬೆಂಗಳೂರು - 560 054.

ಕೆಂ 109 ಐಪಿಸಿ:-

ಎ3 ಆರೋಪಿ ಎಂ.ಆರ್.ಸೀತಾರಾಮ್ ಇವರು ಆರೋಪಿ ಟಿ.ಎನ್.ಚಿಕ್ಕರಾಯಪ್ಪ ರವರಿಗೆ ಪರಿಚಯದವರಾಗಿದ್ದು ಎಂ.ಎಸ್.ರಾಮಯ್ಯ ಎಜುಕೇಷನ್ ಸೊಸೈಟಿಯ ಅಧ್ಯಕ್ಷರಾಗಿರುತ್ತಾರೆ. ಆರೋಪಿ ಟಿ.ಎನ್.ಚಿಕ್ಕರಾಯಪ್ಪ ರವರು ಸಂಪಾದಿಸಿದ ಅಕ್ರಮ ಆದಾಯವನ್ನು ಸಕ್ರಮಗೊಳಿಸುವ ಉದ್ದೇಶದಿಂದ, ಸದರಿ ಅಕ್ರಮ ಹಣವನ್ನು ಆರೋಪಿತರ ಮಗಳಾದ ಡಾ//. ಅನಿಷರಾಯ್ ಸಿ. ರವರ ಎಂ.ಡಿ.(ಪಿಡಿಯಾಟ್ರಿಕ್ಸ್) ಕೋರ್ಸ್ ವ್ಯಾಸಂಗದ ಸಲುವಾಗಿ ಎಂ.ಎಸ್.ರಾಮಯ್ಯ ಮೆಡಿಕಲ್ ಕಾಲೇಜಿಗೆ 50 ಲಕ್ಷ ರೂಗಳನ್ನು ಅವರು ಅಧ್ಯಕ್ಷರಾಗಿದ್ದ ಎಂ.ಎಸ್.ರಾಮಯ್ಯ ಎಜುಕೇಷನ್ ಸೊಸೈಟಿ ಹೆಸರಿನಲ್ಲಿ ಕಾಲೇಜಿಗೆ ಪಾವತಿಸುವ ಮೂಲಕ ಆರೋಪಿತರಿಗೆ ಸಾಲ ನೀಡಿದಂತೆ ಮಾಡಿ ಆರೋಪಿತರಿಗೆ ಖರ್ಚನ್ನು ವಿನಿಯೋಗಿಸುವಲ್ಲಿ ಕುಮ್ಮಕ್ಕು ಮತ್ತು ಪ್ರಚೋದನೆ ನೀಡಿ ಈ ಮೂಲಕ ಆರೋಪಿತರ ಭ್ರಷ್ಟಾಚಾರಕ್ಕೆ ಸಹಕರಿಸಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ."

(Emphasis added)

What is alleged against the petitioner is offence under Section 109 of the IPC for abetment. The contents of the allegation are amassing of wealth by accused No.1. The reply submitted by the petitioner or the contentions advanced in the petition would all necessarily require a trial.

10. The submission of the learned counsel for the petitioner that the Society is an independent entity; it has now become defunct and all these actions are attributable to the Society and not to the petitioner as an individual would all require evidence before the concerned Court. The signature in the cheque for ₹50/- lakhs is that of the petitioner. If he is the signatory as President of the Society, how an amount of ₹50/- lakhs was routed; why ₹50/- lakhs was routed and as a special case only the daughter of accused No.1 was chosen to grant educational loan interest free, no satisfactory explanation is furnished. All this would be in the realm of disputed questions of fact. In a given case, if such a case is shrouded with seriously disputed questions of fact, this Court would not interfere in its jurisdiction under Section 482 of the Cr.P.C. In the circumstances it becomes apposite to refer to the judgment of the

Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**¹, wherein the Apex Court holds as follows:

"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of

¹ (2021) 9 SCC 35

the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in *Dineshbhai Chandubhai Patel [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683]* in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

9.2. In *Dhruvaram Murlidhar Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191: (2020) 3 SCC (Cri) 672]* after considering the decisions of this Court in *Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]*, it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. **It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.** Similar view has been expressed by this Court in *Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94]*, *Managipet [State of*

Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed

to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."

(Emphasis supplied)

The Apex Court holds that Courts exercising jurisdiction under Section 482 of the Cr.P.C. should adopt a judicial hands off if the case revolves around disputed questions of fact as the Court would not become a fact finding authority at the stage of crime or analysis of the charge sheet.

11. The other submission of the learned counsel for the petitioner is that, the order taking cognizance by the learned Special Judge dated 27-04-2021 suffers from non-application of mind, is to be rejected as it is a detailed order of taking of cognizance and against the petitioner it is the facts narrated hereinabove that led to taking of cognizance for offence under Section 109 of the IPC. Therefore, none of the grounds urged by the learned counsel for the petitioner would merit any acceptance and non-acceptance of grounds would lead to dismissal of the petition.

12. For the aforesaid reasons, the following:

ORDER

- (i) The petition lacking in merit stands dismissed.
- (ii) However, it is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of the petitioner under Section 482 of Cr.P.C. and the same shall not

bind or influence the proceedings pending before the concerned Court.

**Sd/-
JUDGE**

nvj
CT:SS