**SUPREME COURT OF INDIA**

Inder Mohan Goswami

Vs.

State of Uttaranchal

(CJI,R. V. Raveendran and Dalveer Bhandari JJ.)

09.10.2007

**JUDGMENT**

**DALVEER BHANDARI, J.**

Leave granted.

This appeal is directed against the judgment dated 16th July, 2004 passed in Criminal Miscellaneous Application No.248 of 2003 under section 482 of the Code of Criminal Procedure (for short Cr.P.C.) by the High Court of Uttaranchal at Nainital. The appellants had to file an application under Section 482 Cr.P.C. because the Special Judicial Magistrate, Rishikesh issued a non-bailable warrant against the appellants on the basis of First Information Report under Sections 420/467 IPC filed by the respondents.

Basic Facts

In 1923, Pt. Madan Mohan Malviya founded Sanatan Dharma Pratinidhi Sabha, Punjab (hereinafter referred as the Sabha). Some of the objects of the Sabha are to open and maintain temples, dharamshalas, ashrams and to manage schools and colleges for the overall development of children. Moreover, it seeks to open hospitals for the poor and to develop the physical and mental state of the youth etc. It is averred that the Sabha from its inception is engaged in the work of uplifting backward and downtrodden people and is a grass root organization in the field of social development. The Sabha was registered in the year 1949 under the Societies Registration Act.

In order to develop a Ghat on the bank of river Ganga near Sapatrishi Ashram in Hardwar, the Sabha issued an advertisement in the newspapers; it invited bids from the eligible civil contractors to construct the Ghat in consideration of 13.5 Bighas (approximately) of its land situated in old Khasra No.140 and new Khasra Nos.61, 62, 63, 64, 65, 66, 67, 68 and part of 89, 90 in village Haripur Kalan, Rishikesh, Dehradun out of the total land of 26 Bighas owned by the Sabha. The Ghat was so constructed by one Himmat Rai Ahuja, respondent no.3 herein, on behalf of M/s Ahuja Builders.

On completion of the construction of the Ghat, the Sabha through its President Pt. Mohan Lal Sharma executed a General Power of Attorney on 13.12.1996 in favour of respondent no.3 in regard to the abovementioned land measuring 13.5 Bighas (out of the total of 26 Bighas approximately). On the same date, a receipt of Rs.17,92,000/- lakhs (approximately) was issued by the Sabha to respondent no.3 as an adjustment towards the cost of construction of the Ghat for which the said

land of 13.5 Bighas was transferred by executing a General Power of Attorney dated 13.12.1996 in favour of respondent no. 3. On the same day the parties executed an agreement to sell the remaining land situated at Old Khasra No.140 and new Khasra No.89 in Village Haripur Kalan, Rishikesh at the rate of Rs.1,35,000/- per Bigha (which was approx. 11.19 Bighas). In pursuance to this, an earnest money of Rs.4,00,000/- was received by the Sabha from respondent no.3. As per the agreement, respondent no.3 had to pay another Rs.1,00,000/- to the Sabha by 31.1.1997. This amount was paid by respondent no.3 on 21.3.1997 and the balance amount of Rs.10,10,650/- had to be paid by 31.3.1997.

According to the appellants, time was the essence of the contract and respondent no.3 had failed to pay the balance amount by Rs.10,10,650/-. The Sabha had sent a legal notice dated 3.4.1999 (first legal notice) to respondent no.3 to fulfill his contractual obligations under the sale agreement and informing that if he failed to do so, the agreement to sell would stand cancelled and the amount paid as earnest money would be forfeited. In reply to the said notice, respondent no.3 vide his reply dated 5.5.1999 stated that he had not defaulted in payment of the remaining amount. He stated in the reply that as per the agreement the land had to be measured and that he was ready to pay the balance amount once that was done.

Pt. Mohan Lal Sharma, the President of the Sabha, expired on 30.8.1999. On 5.1.2000, both the parties i.e. the representative of the Sabha and the representatives of M/s Ahuja Builders met at the site of the disputed land in the presence of Patwari (Revenue Official). The land of old Khasra No.140 and new Khasra Nos.61, 62, 63, 64, 65, 66, 67, 68 and part of 89, 90 was measured by the Patwari. The balance land, after adjusting the land given in lieu of construction of the Ghat, came out to be 11.19 Bighas. The total sale consideration for this land worked out to be Rs.15,10,650/-. Respondent no.3 had already paid Rs.4,00,000/- as earnest money out of this amount. He had paid a further sum of Rs.1,00,000/- on 21.3.1997. On the request of respondent no.3, the Sabha reduced the amount owed of Rs.1,50,000/- to him in view of the existence of a passage on the said land. Out of the balance of Rs.8,60,650/-, a further concession of Rs.60,650/- was given to Respondent no.3. He thus had to pay the balance amount of Rs.8,00,000/-. The said measurement sheet was endorsed by respondent nos.3 and 4 and the representatives of the Sabha on 19.3.2000.

The General Power of Attorney executed by Late Mohan Lal Sharma, President of the Sabha, had ceased to be in effect after his death. Therefore, the need of a fresh power of attorney was felt and respondent no.3 desired that the fresh Power of Attorney be executed in the name of his son, Suresh Ahuja (respondent no.4 herein) for the very same 13.5 Bighas of land in regard to which earlier Power of Attorney dated 13.12.1996 had been given. Accordingly, General Secretary of the Sabha, appellant no.1 herein, executed a fresh General Power of Attorney on 15.1.2000 in respect of 13.5 Bighas of land situated in part of Old Khasra No.140 (new Khasra Nos. 61, 62, 63, 64, 65, 66, 67, 68 and part of 89, 90) in Village Haripur Kalan, Rishikesh, Dehradun, in favour of Suresh Ahuja (respondent no.4) as per the request of respondent no.3. According to the appellants, the Sabha made several requests to respondent nos.3 and 4 asking them to pay the balance amount of Rs.8,00,000/-. However, despite repeated requests, the respondents failed to do so.

The appellants submitted that the Sabha had learnt from reliable sources and from the office of the Registrar of Properties that respondent no.3, by misrepresentation and by misusing his General Power of Attorney for the 13.5 Bighas of land, was attempting to sell the entire 26 Bighas of the Sabhas land to other parties and was executing sale deeds without any right whatsoever in respect of the remaining 11.19 Bighas. The appellants learnt that respondent no.4 had executed at least 29

registered sale deeds consisting of 13.5 Bighas of land in favour of various parties. The Sabha also discovered that 11.19 Bighas of land, for which there was only an agreement to sell between respondent no.3 and the Sabha, was also sold by respondent no.4 to his father (respondent no.3 herein) by executing three registered sale deeds. Such sales could not give any title to respondent no.3. On 30.4.2001, appellant no.1 sent a legal notice (second notice) to respondent nos.3 and 4 informing them that if the balance amount of Rs.8,00,000/- was not paid, he would have to cancel the General Power of Attorney. No reply to the said notice was received from the respondents nor was Rs.8,00,000/- paid. In these circumstances, appellant no. 1 (I. M. Goswami) cancelled the power of attorney issued in favour of respondent no.4 and informed respondent no. 4 accordingly. A public notice of the same was also published by the Sabha in a local newspaper Amar Ujala, a Hindi daily on 25.10.2002. The notice informed the general public about the cancellation of the General Power of Attorney given to respondent no.4. According to the appellants, in order to protect the interest of the Sabha, the remaining land of 11.19 Bighas of Khasra No.140 was sold to one Sunil Kumar on as is where is basis on 18.12.2002.

Having committed breach of his contractual obligations, respondent no.3 filed a criminal complaint to the SHO of Raiwala, Rishikesh police station on 23.4.2003 against the appellants and three other persons alleging that he had been cheated by the appellants in connivance with other persons by selling a portion of his land to a third party and by cancelling the General Power of Attorney. After examining the matter, the SHO arrived at the conclusion that no cognizable offence had been committed and the dispute in question was of civil nature for which the civil remedy is available in law.

Respondent no.3 filed another complaint on the same day, i.e. 23.4.2003, to the Senior Superintendent of Police, Dehradun and got the FIR registered against the appellant and three other persons. The allegation of respondent no.3 was that the appellants in connivance with other persons had sold the part of land situated in Old Khasra No.140 and new Khasra No.89 which had been transferred to them by way of General Power of Attorney. The FIR was registered on 23.4.2003 as Case No.26 of 2003 under sections 420, 467 and 120-B IPC.

It may be pertinent to mention that on 27.5.2003, respondent no.3 filed a civil suit in the court of Civil Judge (Senior Division) against the Sabha bearing Original Suit No.302 of 2003 titled Himmat Rai Ahuja v. Sanatan Dharam Pratinidhi Sabha. In this suit, respondent no.3 prayed for cancellation of sale deed executed by the Sabha in favour of Sunil Kumar and for permanent injunction against the appellants herein restraining them from interfering in his alleged property. Thus, the issues relating to ascertaining the right, title of the land in dispute and also the issue of correct demarcation of land in Khasra No.140 are pending adjudication in a competent civil court. On the basis of the FIR registered, the case was investigated by the Sub-Inspector, Raiwala Police Station. Later on the investigation was transferred to Rishikesh Police Station. Thereafter, the investigation was again transferred to Raiwala Police Station and a charge-sheet was filed in the Court of the Special Judicial Magistrate, Rishikesh. Aggrieved by the filing of the false and incorrect charge- sheet in the court of Special Judicial Magistrate, Rishikesh in Criminal Case No.1728 of 2003 titled State v. Inder Mohan Goswami & Others, the appellants filed a Criminal Miscellaneous Application No.248 of 2003 in the High Court of Uttaranchal at Nainital under section 482 Cr.P.C. for quashing the proceedings against them. The High Court was pleased to pass the interim order on 22.10.2003 staying further proceedings. A reply was filed on behalf of the State by Shri Dinesh Kumar Sharma, SHO, Raiwala Police Station, in which two points were raised:

1. That, appellant no.1 has wrongly cancelled the General Power of Attorney given to respondent no.4; and

2. That, appellant no.1 has wrongly and illegally executed the sale deed of land comprising in Khasra No.140 (new Khasra Nos.61 to 68, 89 and 90) without returning the earnest money of respondent nos.3 and 4.

The High Court by order dated 16.7.2004 dismissed the petition under Section 482 Cr.P.C. filed by the appellants on the ground that the records show that the allegations in the FIR constitute an offence as alleged by the complainant. The said order is challenged in this appeal by special leave. The appellants submitted that first appellant cancelled the power of attorney by a registered cancellation deed after informing respondent no.4. The cancellation was necessary to protect its interests because respondent no.4 was selling the Sabhas land by misusing the power of attorney. The Sabha sold the land to Sunil Kumar only after respondent nos.3 and 4 failed to fulfill their obligations under the contract and had mala fide intention to grab the land without paying the balance amount. Accordingly, the sale deeds executed by respondent no.4 in favour of respondent no.3 were illegal. The appellants cancelling the power of attorney and selling a part of the land to Sunil Kumar to protect the interests of the Sabha by no stretch of the imagination attracts ingredients of the offences of sections 467, 420 and 120B IPC. According to the appellants, the entire issue relates to ascertaining the right, title of the land in dispute and also the issue of correct demarcation of the land Khasra No.140, all of which are pending adjudication before a competent civil court. The appellants contended that they filed a criminal miscellaneous application under section 482 Cr.P.C. for quashing the FIR because no offence under sections 467, 420 and 120B of the I.P.C. could be made out. The controversy between the parties is purely of a civil nature. A civil suit has already been filed and is pending adjudication. The appellants submitted that the High Court gravely erred in dismissing the application under section 482 Cr.P.C; whereas, according to the respondents, the High Court was justified in declining to quash the FIR because of the conduct of the appellants. In the counter-affidavit, it was also alleged that the loss had not been suffered by the appellants but in fact it had been suffered by the respondents.

The appellants in the rejoinder submitted that the trial court was not justified in taking cognizance of the matter when no prima facie case was made out against the appellants. The trial court gravely erred in not appreciating the complete facts of the case in the proper perspective. The trial court has not properly comprehended the complete investigation reports, which were conducted by two different investigating officers. It was pointed out that it was the respondents who had committed criminal breach by purporting to sell that part of the land for which an agreement to sell was procured, by misusing the Power of Attorney given to them for some other part of the land. Respondent no.4 was clearly guilty of offences under sections 420 and 467 IPC and the appellants had also filed a criminal complaint against respondent nos.3 and 4 before the Special Judicial Magistrate, Rishikesh under sections 120B/467/468/471 IPC. The criminal case was registered as Case No.1306 of 2003 titled as I.M. Goswami v. Suresh Ahuja. The Special Judicial Magistrate vide order dated 12th May, 2005 had issued summons to respondent nos.3 and 4.

The appellants submitted that in the impugned judgment, the High Court had also disregarded the settled legal position crystallized by various judgments of this court and declined to quash the criminal proceedings against the appellants.

We have heard the learned counsel for the parties at length. The appellants who are office-bearers of

a charitable organization, namely, Sanatan Dharma Pratinidhi Sabha, in order to protect the interests of the Sabha cancelled the Power of Attorney by executing a registered Cancellation Deed after giving notice to the Power of Attorney holders. The appellants sold only that part of the land to Sunil Kumar on behalf of the Sabha for which an agreement to sell with the complainants (respondents) had already been terminated. The respondents earnest money had been forfeited. All of this was only done after appellants had given respondents due notice.

The veracity of the facts alleged by the appellants and the respondents can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction. The dispute in question is purely of civil nature and respondent no.3 has already instituted a civil suit in the court of Civil Judge. In the facts and circumstances of this case, initiating criminal proceedings by the respondents against the appellants is clearly an abuse of the process of the court. Scope and ambit of courts powers under section 482 Cr.P.C.

This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised: (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. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

Discussion of decided cases Reference to the following cases would reveal that the courts have consistently taken the view that they must use this extraordinary power to prevent injustice and secure the ends of justice. The English courts have also used inherent power to achieve the same objective. It is generally agreed that the Crown Court has inherent power to protect its process from abuse. In Connelly v. DPP [1964] AC 1254, Lord Devlin stated that where particular criminal proceedings constitute an abuse of process, the court is empowered to refuse to allow the indictment to proceed to trial. Lord Salmon in DPP v. Humphrys [1977] AC 1 stressed the importance of the inherent power when he observed that it is only if the prosecution amounts to an abuse of the process of the court and is oppressive and vexatious that the judge has the power to intervene. He further mentioned that the courts power to prevent such abuse is of great constitutional importance and should be jealously preserved.

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 of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their 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.

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. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the 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 such magnitude that they 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 proceedings at any stage.

This court in State of Karnataka v. L. Muniswamy & Others (1977) 2 SCC 699 observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when 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 High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. The court observed in this case that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. This case has been followed in a large number of subsequent cases of this court and other courts. In Chandrapal Singh & Others v. Maharaj Singh & Another (1982) 1 SCC 466, in a landlord and tenant matter where criminal proceedings had been initiated, this Court observed in para 1 at page 467 as under:- A frustrated landlord after having met his waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.

The court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The court also observed that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

This court in Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre & Others (1988) 1 SCC 692 observed in para 7 as under:

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

In State of Haryana & Others v. Bhajan Lal & Others 1992 Supp. (1) SCC 335, this court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under

section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that 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 to 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 FIR 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 FIR 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.

This court in Janata Dal v. H. S. Chowdhary & Others (1992) 4 SCC 305 observed thus:

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

In G. Sagar Suri & Another v. State of UP & Others (2000) 2 SCC 636, this court observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process particularly when matters are essentially of civil nature.

This court in Roy V.D. v. State of Kerala (2000) 8 SCC 590 observed thus:-

18. It is well settled that the power under section 482 Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice.

This court in Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque & Another (2005) 1 SCC 122 observed thus:-

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.

In Indian Oil Corporation v. NEPC India Ltd. & Others (2006) 6 SCC 736, this court again cautioned about a growing tendency in business circles to convert purely civil disputes into criminal cases. The court noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The court further observed that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

The question before us is - whether the case of the appellants comes under any of the categories enumerated in Bhajan Lal (supra)? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120B IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/complaint.

In the instant case, the first information report has been registered under sections 420/467/120B IPC. The allegations leveled in the first information report are of (1) cheating and (2) forgery.

Analysis of relevant provisions of law Firstly, we shall deal with the section 420 IPC. Cheating is defined in section 415 IPC and is punishable under section 420 IPC. Section 415 is set out below:

415. Cheating.Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat. Explanation.A dishonest concealment of facts is a deception within the meaning of this section.

Section 415 IPC thus requires

1. deception of any person.

2. (a) fraudulently or dishonestly inducing that person- (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.

On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning. We shall now deal with the ingredients of section 467 IPC. Section 467 IPC reads as under:

467. Forgery of valuable security, will etc. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The following ingredients are essential for commission of the offence under section 467 IPC:

1. the document in question so forged;

2. the accused who forged it.

3. the document is one of the kinds enumerated in the aforementioned section.

The basic ingredients of offence under Section 467 are altogether missing even in the allegations of the FIR against the appellants. Therefore, by no stretch of the imagination, the appellants can be legally prosecuted for an offence under Section 467 IPC.

Even if all the averments made in the FIR are taken to be correct, the case for prosecution under sections 420 and 467 IPC is not made out against the appellants. To prevent abuse of the process and to secure the ends of justice, it becomes imperative to quash the FIR and any further proceedings emanating therefrom.

The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.

Before parting with this appeal, we would like to discuss an issue which is of great public importance, i.e., how and when warrants should be issued by the Court? It has come to our notice that in many cases that bailable and non-bailable warrants are issued casually and mechanically. In the instant case, the court without properly comprehending the nature of controversy involved and without exhausting the available remedies issued non-bailable warrants. The trial court disregarded the settled legal position clearly enumerated in the following two cases.

In Omwati v.State of UP & Another (2004) 4 SCC 425, this court dealt with a rather unusual matter wherein the High Court firstly issued bailable warrants against the appellant and thereafter by issuing non-bailable warrants put the complainant of the case behind bars without going through the facts of the case. This Court observed that the unfortunate sequel of such unmindful orders has been that the appellant was taken into custody and had to remain in jail for a few days, but without any justification whatsoever. She suffered because facts of the case were not considered in proper perspective before passing the orders. The court also observed that some degree of care is supposed to be taken before issuing warrants.

In State of U.P. v. Poosu & Another (1976) 3 SCC 1 at para 13 page 5, the Court observed:

Whether in the circumstances of the case, the attendance of the accused respondent can be best secured by issuing a bailable warrant or non- bailable warrant, is a matter which rests entirely in the discretion of the court. Although, the discretion is exercised judiciously, it is not possible to computerize and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the court would take into account the various factors such as the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and the State.

Personal liberty and the interest of the State Civilized countries have recognized that liberty is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law.

The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when: * it is reasonable to believe that the person will not voluntarily appear in court; or * the police authorities are unable to find the person to serve him with a summon;

Or

* it is considered that the person could harm someone if not placed into custody immediately.

As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.

On consideration of the totality of facts and circumstances of this case, the impugned judgment and order of the High Court cannot be sustained.

Needless to mention that the concerned civil court (where the suit is pending) shall decide the suit without being influenced by any observation made by us in this judgment regarding the merits of the civil suit.

Reverting to the facts of this case, we are of the considered view that the impugned judgment of the High Court in declining to exercise its inherent power has led to grave miscarriage of justice. Consequently, we set aside the impugned judgment and in order to prevent abuse of the process of the court and to otherwise secure the ends of the justice we direct that all the proceedings emanating from the FIR shall stand quashed. The appeal is disposed of accordingly. In the facts and circumstances of this case, we direct the parties to bear their own costs.