



2026:CHC-AS:962

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**CRR 2895 of 2025
With
IA No. CRAN 2 of 2025
CRAN 4 of 2026
Eraaya Lifespaces Limited & Ors.
Vs.
The State of West Bengal & Anr.**

For the petitioners	:	Mr. Sandipan Ganguly, Sr. Adv., Mr. Ayan Bhattacharjee, Sr. Adv., Ms. Manaswita Mukherjee Mr. Pankaj Agarwal Ms. Chmapa Pal
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For the opposite party No.2	:	Mr. Aman Lekhi Mr. Anuj Singh Mr. Soumya Nag Mr. Aman Agarwal Mr. Aditya Tiwari Ms. Rupali Singh
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For the State		Mr. Suman De, Mr. Kunal Ganguly
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Heard on	:	21.04.2026
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Judgment on	:	01.07.2026
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Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners in this application have prayed for quashing of the investigational proceeding being GR Case No. 3134 of 2025 under section 3(5)/336 (3)/338/340(2)/49/61(2) of the Bharatiya Nyaya Sanhita, 2023 (in short BNS) presently pending before the Court of learned Chief Judicial Magistrate, Murshidabad.

2. Petitioner no.1 is a public limited company and petitioner no. 2 to 4 and 7 to 8 are directors of the petitioner no.1, whereas the petitioner no.5 is the Company Secretary and petitioner no.6 is the Chief Financial Officer (in short CFO) of the petitioner no.1/company.

3. Berhampore Police Station Case no. 1057 of 2025 dated 17.05.2025 corresponding to aforesaid GR case no. 3134 of 2025, was registered on the basis of a letter of complaint dated 28.02.2025, lodged by opposite party (in short OP) No.2 herein against the present petitioners and two other accused persons. The allegation levelled in the said letter of complaint *interalia* is as follows:-

The OP no.2 herein is a shareholder in the petitioner no.1/company namely Eraaya Lifespaces Ltd. (In short Eraaya) and the accused no.1 (who is not the petitioner herein) is also a shareholder who filed a company petition before the learned National Company Law Tribunal (in short NCLT), New Delhi against the petitioner no.1/company and others on the basis of forged documents prepared in conspiracy with the respondents/petitioners. Accused no.1 filed company petition before the NCLT bearing company case no. 11 of 2025 and secured a status quo order on 13.02.2025 by dint of the



forged special power of Attorney (in short SPA). OP No.2 afterwards came to know on scrutiny of the company petition that the accused no.1 has filed said false petition on the basis of forged signatures/documents. It is alleged in the letter of complaint that the notary stamp, signatures and attestation in the SPA as attached to the petition filed by the accused no.1 are forged and the signatures of the shareholders have been forged in the SPA in order to bring the application filed by the accused no.1 within the ambit of section 244(1) of the Companies Act. Further allegation is about collusion between one of the shareholder namely Sharad Bagga and the petitioner no.2 with regard to breaches of the SEBI Act and regulations. It is also alleged that petitioner no.5 had provided confidential company emails to the accused no.1 thereby the directors of petitioner no.1 company acted hand in glove with the accused no.1. The aforesaid false, forged and fabricated documents have been utilized by the accused no.1 to deceive the shareholders of the petitioner no.1/company. It is further alleged that as a result of this dishonest mis representation, wrongful loss was caused to the shareholders and thereby the petitioners and the other accused persons have committed the offence of cheating by dishonestly inducing delivery of property. It is further stated that the accused no.1 in collusion with the other accused person including present petitioners have prepared aforesaid false documents which attracts offence of forgery and also filed the same before the learned NCLT, along with their company petition thereby they have also committed the offence of forgery for the purpose of cheating in collusion with each other. It is also alleged that the above mentioned forged document i.e. the special power of attorney have been created by the accused whereby



valuable rights are intended to be created in favour of accused no.1/company, which attract the definition of valuable security as defined in section 2 (31) of BNS and therefore the accused persons have committed offence of forgery of valuable security. Not only that the forged documents have been used as genuine documents by the accused no.1 therefore, the accused is also liable to be punished for committing offence of using as genuine a forged document. It has been specifically alleged in the written complaint that the accused persons including petitioners herein have conspired to commit the said offences and thereby they are liable to be punished under section 61 (2) of the BNS 2023. They are also hand in glove with each other and are well aware of the fact that their acts are wrongful acts/offences and their common intention has been clearly manifested, which attracts section 3(5) of the BNS. It is also alleged that fraudulent activities have been identified at Kolkata and has been duly substantiated at the address of the shareholders. However, OP no.2 is the resident of Murshidabad, Baharampore and since the issue here pertains to multi-Jurisdictional, therefore, Baharampore Police Station has got the jurisdiction under section 198(d) of the BNSS-2023 where the complaint has been lodged

4. Being aggrieved by and dissatisfied with the aforesaid impugned investigational proceeding, Mr. Ganguly learned counsel for the petitioners *interalia* made three-fold arguments before this Court.

- (i) No prima facie case is made out against the present petitioners
- (ii) Baharampore police station has got no jurisdiction to continue with the investigation



(iii) *Malafide* nature of complaint has been made by the opposite party no.2 against the petitioners herein with a view to harass the petitioners.

5. In support of his contention that ‘the allegations made in the letter of complaint even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the present petitioners’, Mr. Ganguly argued that as per allegation, petitioner No.2 Bikash Garg and Sarad Bagga (one of the shareholders) are prior associates and have been co-noticees in a SEBI Proceeding. Therefore, it is alleged that there is collusion between accused no.1 and the present petitioners. It is astonishing how a prior association between Bikash Garg (petitioner no.2) and Sarad Kumar Bagga can lead to an inference that there existed conspiracy between the accused no.1 and the petitioners or pursuant to any such conspiracy the company petition was filed before the NCLT New Delhi. Therefore, the allegation of conspiracy as levelled in the present complaint is factually incorrect and legally untenable. Moreover said Sarad Kumar Bagga is not the person who had filed the petition before the NCLT. Said petition was filed by accused no.1, Sunil Agarwal, who is not the petitioner herein. Therefore, the reasoning that as there was prior relationship between Mr. Bagga and the petitioner no.2, so there is conspiracy between the petitioners and the accused no.1, is inherently flawed and cannot be accepted by any person of a reasonable and prudent nature.

6. He further argued that the averments made in the letter of complaint itself dispel the possibility of there being any conspiracy between the



accused no.1 and the petitioners. In the first part of the letter of the complaint it has been stated that Sarad Kumar Bagga's signature has been forged in the SPA. But in the second part of the complaint, OP no. 2 alleged that Mr. Bagga is in collusion with the petitioner no.2 and therefore, the other petitioners are also in collusion with the accused no.1.is fallacious and devoid of any logic. If Mr. Bagga is in collusion with the petitioner no. 2 then it is unclear as to why the signature of Sarad Kumar Bagga have been forged in the SPA. Infact if Mr. Bagga is indeed an associate of the petitioner no.2 and the accused no.1 has acted pursuant to a criminal conspiracy with the present petitioners then the accused no.1 would not have had to forge the signature of Mr. Bagga at all because in that case Mr. Bagga would have willingly and voluntarily signed the SPA.

7. Mr. Ganguly further argued that the opposite party no.2 herein has alleged in the letter of complaint to substantiate the case of conspiracy that the accused no.1 had obtained print outs of his own email correspondences with the management of the petitioner no.1/company from the email address of the petitioner no.5. Such an act can hardly be construed to be an act of abetment or conspiracy as the documents in question are the email correspondences of the accused no.1 himself. Those documents are not secret or confidential documents and are available with the accused no.1. The mere act of a shareholder i.e. accused no.1 having his own e-mails, printed out from the petitioner no.5's email address cannot be an act of abetment or conspiracy.

8. Mr. Gangully strenuously argued that the criminal liability of committing forgery as defined in section 336 (1) of BNS can be foisted only



upon a person who has made the said false document in question with an intention to cause damage or injury to the public or to any person. A bare perusal of the contents of the letter of complaint reveals that the allegations of forgery have been levelled exclusively against the accused no.1. Said accused no.1, who is not the petitioner herein, is the person who filed the company petition before the NCLT., wherein the OP no.2 has noted the aforesaid irregularities. The petitioners herein are the Respondents in the said company petition and they have not filed the company petition or the documents therewith and as such no allegation of criminal misconduct can be sustained as against the present petitioners.

9. Furthermore the condition precedent for an offence under section 338 and section 340 (2) of the BNS is forgery. Since the filing of the alleged forged document have been undertaken by the accused no.1, the criminal liability of committing forgery can therefore be foisted only upon a person who has made the said false document in question with an intention to cause damage or injury to the public or to any person. Therefore the offences under section 338 and 340(2) of the BNS do not apply to the petitioners. In the complaint, the OP no.2 has miserably failed to show any collusion between the accused no. 1 and the petitioners herein nor he has made any specific allegations or averments against the present petitioners and as such no prima facie case has been made out against the petitioners under any of the penal sections. He further argued that unless there are specific instances of a close cohesion and collusion between all the accused persons which formed the subject matter of the conspiracy, the OP No.2



cannot be permitted to set into motion the course of law with a malafide intent to harass the petitioners.

10. In support of his argument that Baharampore police station has got no jurisdiction to proceed with the investigation, Mr. Ganguly submits that from the letter of complaint it transpires that the accused persons are all residents of Delhi, the offence of forgery and criminal conspiracy if any, have been committed in Delhi. The shareholder who came together and signed the SPA in favour of the accused no.1 come from Delhi, Haryana Kolkata and Gujarat. The OP No.2 is not sure of his own place of residence as at the beginning of the FIR, he claims himself to be a resident of Berhampore but thereafter he has claimed himself to be a resident of Kolkata. Therefore, he submits that except the said purported residence of the OP No.2, at Berhampore, present police station does not have the requisite jurisdiction to investigate the offence alleged in the complaint. Therefore, after the registration of FIR, the Officer-In-Charge Berhampore PS ought to have forwarded the present FIR to the police station having jurisdiction. He further alleged that the registration of the present FIR and continuance of investigation thereon is not sustainable in law.

11. In support of his argument that the proceeding is *malafide* in nature he submits that the OP no. 2 has made unholy nexus with the investigating agency and started the criminal proceeding at Berhampore Police Station which is a remote location and is situated at a considerable distance from the nearest airport in Kolkata. Therefore, travelling to Berhampore for the purpose of cooperating with the investigating agency would be extremely difficult for the petitioners, who are all resident of Delhi. The choice of Police



station of OP No.2 therefore, clearly demonstrate that the instant case has been lodged with a *malafide* motive to wreak vengeance and cause harassment upon the petitioners. The instant letter of complaint is manifested with contradictions. The *malafide* motive of the opposite party no.2 also manifested from the fact that if Sarad Kumar Bagga is a conspirator in the instant case with the petitioner no.2, then there was no requirement of forging a conspirator's signature and this contradictory statements raise grave suspicion about the genuineness of the allegation.

12. The *malafide* nature of allegation against the petitioners also manifested from the fact that the matter is still pending before the NCLT, New Delhi but till date the OP no. 2 has not filed any application before the NCLT alleging therein that a collusive petition has been filed before it or that forgery has been committed to file the SPA. There is no judicial finding by the Forum that a collusive application has been filed by the parties. In the absence of any judicial finding regarding the existence of a collusive proceeding, the FIR is premature and the opposite parties attempt of Forum hunting in respect of a cause of action which had allegedly arisen in New Delhi also shows his malafidness. Though the OP no.2 in his written argument has stated that CFO of the company had provided crucial information to the accused no.1 and the same establishes the conspiracy between the accused no.1 and the present petitioners, but such argument is also not *bonafide* in view of the fact that such developments were made in the written argument pursuant to the completion of the argument by all the parties and furthermore such allegation did not even form part of the FIR. There is no material in the FIR to even remotely suggest that CFO of the



company had provided crucial information to the accused no.1 or provided details of shareholders. Considering all these the petitioners have prayed for quashing of the said proceeding.

13. Mr. Aman Lekhi learned counsel appearing on behalf of the opposite party no.2/complainant argued that the petitioners in the instant Application have not denied the offence of forgery or criminal conspiracy but they have only stated that have no role in committing the offence. He submits that the petitioner no. 5 herein supplied the information to accused no.1 for filling of petition before the NCLT Delhi. Said fact is apparent from the perusal of the company petition wherein print out taken from the outlook ID of the Company Secretary of the petitioner no. 1/company is mentioned. He further argued that the said Company Secretary/petitioner no.5 had not acted for her personal interest alone but was doing the bidding of the others in an illegal combination for an unlawful object. The petitioners who are the directors and CFO of petitioner no.1/company, have not disowned the company secretary but has not taken any action against her rather filed the instant quashing petition jointly with petitioner no.5.

14. Mr. Lekhi, further argued that the details of the shareholder of the company is not publicly available information and usually the disclosure of the same is made only on 31st March of each year in annual returns of the company. It is further argued that the impleadment application filed by accused no.1 was part of a conspiracy between him and the petitioners, which was based upon forged and fabricated documents. In the impleadment application, the shareholders have mentioned that they got the knowledge of company petition when the said documents were served upon



them. The shareholders have not disclosed how they were served the copy of the company petition filed before the NCLT and it is also not mentioned what triggered the shareholders to be impleaded as a party to the aforesaid petition.

15. Mr. Lekhi, further argued that the conspiracy between the petitioners and Mr. Agarwal is also apparent from the fact that the shareholders who signed the SPA lacked prior combination between him and the shareholders. There was no immediate trigger to file the said petition and there was no means to obtain information about each other's existence. Furthermore the copy of email providing by the CFO of the company to Accused no. 1 providing crucial information to him as well as providing details of the shareholders which otherwise are confidential documents, manifest that the said petition was filed under a criminal conspiracy which needs proper investigation.

16. He further argued, that the order dated 13.02.2025 passed by the Hon'ble NCLT in the company petition filed by the accused no.1 is a collusive order which has been obtained under a conspiracy hatched between accused no.1 and the petitioners. Therefore, the offences mentioned in the FIR requires proper investigation. Therefore, Mr. Lekhi prays for dismissal of the instant Application.

Decision

17. It is not in dispute that accused no. 1 Sunil Agarwal (who is not the petitioner herein) filed a company petition before Hon'ble NCLT under section 241(1) and 244(1) of The Companies Act, seeking interalia for a



declaration that the Offering Circular dated 23.08.2024 is null and void. He also filed another company application bearing no. 28 of 2025 under section 11 of the Companies Act stating that he has been authorised by 103 shareholders under a SPA to represent them. During investigation it reveals from statement recorded under section 180 of BNSS that the SPA filed in support of company petition and the company application though has been stated to be notarized by notary advocate Mr. Rakesh Kumar Jain but during investigation Mr. Jain denied the execution of the said document in question. One Mr. Sarad Bagga stated to have signed the Application at two places in SPA, first in his individual capacity and second as Karta of Sarad Bagga HUF. In the FIR it has been specially alleged that upon review of the signature in SPA against both the names, there is apparently difference in both the signatures which shows that forged signatures have been made to justify the requirement under section 241 of the Companies Act. The shareholders as part of the Memo of Parties are from different corners of India and there is no document as to how and when there shareholders came together and signed the SPA in support of accused no.1.

18. Now the allegations against the present petitioners in the FIR is that one of the shareholder Mr. Bagga who has allegedly given SPA for filing of the company petition is acting as puppet of petitioner no.2, one of the directors of the company and key promoter of Eraaya. There are allegations of share price manipulation on Mr. Bagga and the petitioner no.2 herein as alleged vide show cause notice issued by SEBI on 13.02.2025. The said show cause notice issued to petitioner no.2 and entities of the other associated company and individuals raises allegations for orchestrating a



manipulative scheme that induced unsuspecting investors to acquire securities. The show cause notice alleges significant breaches of the SEBI Act & allied Rules. It was alleged that the petitioner no.2 and Sarad Bagga were engaged in manipulation of share trading, creation of misleading appearances of trading etc. It is specifically alleged in the written complaint that the accused persons, including the petitioners engaged in a concerted conspiracy with a shared intent to undermine the rights of the investors. This collective conspiracy led to the obtaining of a status quo order on February 13, 2025 from the NCLT, New Delhi. It is further alleged that despite numerous glaring faults in the company petition and related applications, the accused company being respondent, consented to the petition and the preliminary relief was obtained by the accused persons which according to the complainant, clearly speaks that the accused company and its directors were operating with dual motives engaging in actions aimed at deceiving both the investors and the shareholders.

19. Further allegations against petitioner no.5 herein namely Basudha Agarwal, company secretary, is about email correspondences between accused no.1 and Managing Director/Company Secretary/Board of Directors of Eraaya about certain questions regarding the impugned Offering Circular dated 23.08.2024, the email address of the said company secretary appears on the top of the page and the said email has been printed through the email ID of said company secretary of Eraaya, who infact is an employee of the company. It is alleged that disclosing of confidential information clearly envisages that the petitioners in collusion with each other have prepared and filed the forged petition. It is specifically alleged in the



complaint that accused no.1 wrote an email dated 27.12.2024 putting up certain queries in regard to the office circular dated 23.08.2024. However, petitioner Basudha Agarwal fraudulently disclosed confidential information to the sender of the email without confirming identity in collusion with the other petitioners.

20. It is further alleged that said forged document has been created by the accused persons in collusion with each others and have were used by them to make unlawful gain and to make wrongful loss to the share holders, thereby they have committed offence under section 318(4)/336(3) of the BNS. It is further allged that the document is covered under the definition of 'valuable security' as defined in section 2(31) of BNS and hence it attract the offence punishable under section 338 of the BNS. Since there was a conspiracy, the other petitioners have committed offence under section 61(2) of BNS for each and every omission and commission of the act complained of, which was committed allegedly with the connivance of the petitioners and other accused persons. Such offence could not have committed without their knowledge and consent and they had been allegedly hand in glove with each other. The petitioners allegedly have wilfully and intentionally aided each other in their acts with respect to the offences and thereby they have abated the offence complained of under section 45 and 49 of the BNS, 2023.

21. In the above backdrop the petitioners have not denied the offence of forgery or criminal conspiracy but they have only stated that they have no role in the commission of the offences.

22. Mr. Lekhi, learned Counsel for the opposite party no.2 specifically argued that petitioner no.2 supplied information to the accused no.1 for



filing up petition before the NCLT, Delhi. The details of the share-holders of the company is not publicly available information. He also argued that the conspiracy between the petitioners and accused no.1 is apparent from the fact that the share-holders who signed the SPA locked prior combination between him and the share-holders. Furthermore, the copy of the email provided by the CFO of the Company to accused no.1 providing crucial information to him as well as providing the details of the share-holders, which otherwise are confidential documents, manifest that the said petition was filed under a criminal conspiracy.

23. Mr. Lekhi's further argument is that the conspiracy is also apparent from the fact that the ultimate beneficiary of status quo order obtained in the said petition is the petitioner no.1/company as the implication of the status quo order is that the petitioner no.1 company neither has to pay interest on the 120 million dollars, which it has raised by issuing FCCB nor it has to convert those bonds. Further it is also not required to pledge the shares. In fact he argued that there is no personal benefit of accused no. no.1 or other share-holders who are party to the aforesaid petition but ultimate beneficiary of order dated 13.02.2025 is the petitioner no. 1/company, who has got the company petitions filed under a criminal conspiracy.

24. Therefore, from the conspectus of the aforesaid lengthy FIR, it cannot be said that FIR does not disclose a prima facie commission of various cognizable offences alleged by the complainant against the petitioner/alleged conspirators. At this stage when investigation has only started and there are only allegation and counter allegation, it is not possible for the court to



anticipate the result of the investigation. It is settled law that while considering such petition under section 528 BNSS, High Court is not supposed to act as an investigating agency or to start adjudicating whether allegation made in the complaint are false or truthful.

25. One must admit at this early stage of investigation that neither the allegations levelled in the letter of complaint against the petitioners as stated above are entirely absurd or improbable, nor it is a case where no prima facie offence at all or no cognizable offence is made out. Mr. Ganguly strenuously argued that if Sarad Kumar Bagga is indeed an associate of petitioner no.2 and the accused no.1 has acted pursuant to a criminal conspiracy with the present petitioners, then the accused no.1 would not have had to forge the signature of Mr. Bagga at all and in that event Mr. Bagga would have willingly and voluntarily signed the SPA and therefore it is baseless to allege that the accused no.1 is in conspiracy with the petitioners specially when the allegation is that the accused no.1 has forged the signature of Mr. Bagga in order to file the petitions.

26. The Hon'ble Apex Court in ***M/S Neeharika infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors.*** reported in **(2021) SCC Online SC 315** held that while exercising the power under section 482 Cr.P.C., the High Court only has to consider whether the allegations in the FIR disclose the commission of a cognizable offence and does not require to consider it on merits whether the allegations make out cognizable offence. Merely because FIR maker has taken a plea that Mr. Bagga was in collusion with petitioner no.2 and therefore it is improbable that petitioners No.2 along with other petitioners in collusion with accused no. 1, have forged signature



of Bagga, this court on the basis of such reasoning cannot give a finding at this stage that the allegations against the petitioners in the present FIR are completely absurd or improbable or that the FIR has been instituted against petitioners with ulterior motives. The veracity and genuineness of the allegations will have to be tested at the appropriate stages during the course of trial and it would be improper to do the same at this stage as decided by the Apex Court.

27. Mr. Gangully's other limb of argument is that letter of complaint miserably failed to establish criminal conspiracy between the accused no.1 and the petitioners herein and therefore the offence of forgery has not been made out against the petitioners as the fact remains that the petition has been filed by accused no.1 by utilising purported forged SPA. His further contention is that in case of forgery the primary liability lies with the person who has committed the forgery or utilized the document or the signatures but in this case the petitioners were the respondents in the said NCLT proceeding and therefore it is absurd proposition that the purported forged document was prepared or filed in collusion with the present petitioners without their being any cogent evidence of the same or in the absence of any judicial finding of collusion between the petitioner and the respondents by the learned Tribunal.

28. It is settled law that at the stage when the High Court considers a petition for quashing of criminal proceeding under section 482 of Cr.P.C., the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged has been made out against the accused persons, that the court may be justified in exercising its



jurisdiction to quash. The allegation of conspiracy made by the petitioners in committing forgery with accused no.1 has been clearly described in the FIR. It is equally settled law that FIR is not supposed to be an encyclopaedia. Since investigation just started, the State should be given its due chance to investigate and to collect evidence. If the petitioners story as stated in this application is correct, then the police will conclude the investigation by a closure report, otherwise a charge sheet would be filed and in that case, it will be within the jurisdiction of the trial Court to adjudicate upon the truth of the contents of the complaint.

29. Considering the allegations levelled in the FIR against the petitioners, I am unable to say that the present case is covered under the guidelines laid down by the Apex Court for quashing of FIRs in ***Bhajanlal's Case***, reported in **1992 supp(1) SCC 335** and ***Neeharika Infrastructure Pvt. Ltd.***(supra) as the allegations levelled in the FIR cannot be termed as absurd or improbable.

30. Mr. Ganguly, has taken an alternative plea in his written notes of argument that if materials suggest culpability of the petitioners no.5 herein, this High Court may dismiss her prayer but such consequence, in the absence of cogent material, cannot be visited on other petitioners. I do not find much force in such argument to come to a conclusion that other petitioners cannot have any role in the alleged conspiracy at this stage, because that is the task entrusted upon investigating agency and High Court is not supposed to usurp the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other's sphere. The investigating agency deserves



a command to conclude the investigation and bring it to a logical conclusion at an early date, keeping in view the totality of the circumstances of the case and specially the fact that the investigation is already underway. Infact considering the relevant principles governing quashment of FIR as laid down by the Apex Court in **Neeharika infrastructure case** (supra) specially the guidelines as stated in para 57 (iv),(v),(vi),(vii) of the said decision, I am of the view that it would be premature to quash the FIR at this stage. This is also not the case where I have been persuaded to reach a conclusion that the allegations are highly improbable or that such incident would not have happened so as to direct quashing of the FIR.

31. Therefore, at the cost of repetition it can be said that when a prosecution is asked to be quashed at the initial stage, the test to be applied by the court is as to whether the uncontroverted allegations as made has prima facie established the offence. In **Vinod Raghubanshi Vs. Ajay Arora and Ors.** reported in **(2013) 10 SCC 581** Supreme Court reminded the settled legal proposition in para 30 which may be profitably referred in this context

30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage.



32. I have no hesitation to say that the entire facts at this stage are incomplete and hazy as material particulars concerning evidence has not yet been collected and produced before the Court and the issue involves as to the fact and as to question of attracting essential ingredients of the offence against the petitioners cannot be seen at this stage in its true perspective without sufficient materials to be collected during investigation relating to alleged conspiracy by the petitioners. Undoubtedly, High Court is not expected to enquire into the merits of the allegation relating to conspiracy. It is settled law that at this stage High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of criminal trial after evidence is adduced. A detailed enquiry into the merits of the allegations is not warranted at this stage and FIR is also not expected to be an encyclopaedia, particularly in the matter of allegation involving forgery in the course of judicial proceeding. It would be improper for the High Court at this stage to analyse the case of complaint in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise arrive at a conclusion that the proceeding is to be quashed.

33. The allegation that forgery has been committed has not been denied. The only contention is that some of the petitioners have no involvement in it. However, there are specific allegations in the FIR alleging reasonable nexus of committing forgery by accused no.1 with that of role played by petitioners to make illegal gain by petitioner company.

34. Though Mr. Ganguly has cited some instances to substantiate his claim that the proceeding is *malafide* one as stated above, but it is now well settled in view of **Lakhwant Singh Vs. Jasbir Singh and Ors.** reported in



(2008)14 SCC 661 that when an information is lodged at the police station and an offence is registered, the *malafide* of the informant would be of secondary importance. It is the material collected during the investigation and evidence laid in Court which decides the fate of the accused person. The allegations of *malafide* against the informant are of no consequence and cannot by themselves be the basis of quashing the proceeding.

35. Mr. Ganguly has also attacked the impugned proceeding, stating that the investigating officer designated by the officer in charge of Baharampore police station does not have the territorial jurisdiction to enquire into the offences alleged in the letter of complaint as no part of the offence has been committed within the territorial jurisdiction of Baharampore police station and that all the accused persons are residents of Delhi.

36. It is worthwhile to mention in this context that in the instant Application, the petitioners have described complainant's address at Baharampore. However, it is no more *res-integra* that FIR cannot be quashed merely because the place where offence committed is not within the territorial jurisdiction of the concerned police officer to investigate the offence. The words '*irrespective of area where the offence is committed*' in section 173 (1) of BNSS removes the bar to register offence even if offence is committed outside its territorial jurisdiction.

37. In the case ***of Satvinder Kaur Vs. State (GNCT of Delhi)*** reported in **AIR 1999 SC 3596** the Apex Court held that the FIR cannot be quashed on the ground that police station did not have territorial jurisdiction to investigate the offence. Para 15 may be reproduced below:-



15. Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.

38. The Hon'ble Supreme Court in ***Rasiklal Dalpatram Thakkar Vs. State of Gujarat and Ors.*** reported in **(2010) 1 SCC 1** reiterating the principle laid down in ***Satvinder Kaur Case*** (supra) had held that under section 156 (2) of Cr.P.C. there is no bar on investigating agency continuing with investigation for offence committed outside jurisdiction. Relevant paragraphs of the judgment states as follows:-

24. From the aforesaid provisions it is quite clear that a police officer in charge of a police station can, without the order of a Magistrate, investigate any cognizable offence which a court having jurisdiction over such police station can inquire into or try under Chapter III of the Code. Sub-section (2) of Section 156 ensures that once an investigation is commenced under sub-section (1), the same is not interrupted on the ground that the police officer was not empowered under the section to investigate. It is in the nature of a "savings clause" in respect of investigations undertaken in respect of cognizable offences. In addition to the powers vested in a Magistrate empowered under Section 190 CrPC to order an investigation under sub-section (1) of Section 202 CrPC, sub-section (3) of Section 156 also empowers such Magistrate to order an investigation on a complaint filed before him.

27. In our view, both the trial court as well as the Bombay High Court had correctly interpreted the provisions of Section 156 CrPC to hold that it was not within the jurisdiction of the investigating agency to refrain itself from holding a proper and complete investigation merely upon arriving at a conclusion that the offences had been committed beyond its territorial jurisdiction.

28. A glance at the material before the Magistrate would indicate that the major part of the loan transaction had, in fact, taken place in the State of Gujarat and that having regard to the provisions of sub-section (2) of Section 156 CrPC, the proceedings of the investigation could not be questioned on the ground of jurisdiction of the officer to conduct such investigation. It was open to the learned Magistrate to direct an investigation under Section 156(3) CrPC



without taking cognizance on the complaint and where an investigation is undertaken at the instance of the Magistrate, a police officer empowered under sub-section (1) of Section 156 is bound, except in specific and specially exceptional cases, to conduct such an investigation even if he was of the view that he did not have jurisdiction to investigate the matter.

29. *Having regard to the law in existence today, we are unable to accept Mr Syed's submissions that the High Court had erred in upholding the order of the learned trial Judge when the entire cause of action in respect of the offence had allegedly arisen outside the State of Gujarat. We are also unable to accept the submission that it was for the investigating officer in the course of investigation to decide whether a particular court had jurisdiction to entertain a complaint or not.*

30. *It is the settled law that the complaint made in a criminal case follows the place where the cause arises, but the distinguishing feature in the instant case is that the stage of taking cognizance was yet to arrive. The investigating agency was required to place the facts elicited during the investigation before the court in order to enable the court to come to a conclusion as to whether it had jurisdiction to entertain the complaint or not. Without conducting such an investigation, it was improper on the part of the investigating agency to forward its report with the observation that since the entire cause of action for the alleged offence had purportedly arisen in the city of Mumbai within the State of Maharashtra, the investigation should be transferred to the police station concerned in Mumbai.*

39. Even in the matter of State of **AP Vs. Punati Ramulu and Ors.**

reported in **1994 supp (1) SCC 590** Supreme Court had held that non registration of complaint of cognizable offence due to lack of territorial jurisdiction by the police, amounts to dereliction in duty. The relevant para no. 4 is quoted below:-

4. *The case as put forward by the prosecution was that PW 1 went to Narasaraopet from the scene of the occurrence. He contacted PW 13 to draft the report addressed to the Circle Inspector of Police. PW 1 was projected by the prosecution as an eyewitness who is the nephew of the deceased and had accompanied the deceased when the latter went to realise debts from the villagers. On reaching the police station at Narasaraopet he was informed by the constable on duty that the Circle Inspector, PW 22, had already received information about the occurrence and had left for the village. The police constable at the police station refused to record the complaint presented by PW 1 on the ground that the said police station had no territorial jurisdiction over the place of crime. It was certainly a dereliction of duty on the part of the constable because any lack of territorial jurisdiction, could not have prevented the constable from recording information about the cognizable offence and forwarding the same to the police station having jurisdiction over the area in which the crime was said to have been committed.*

40. Moreover placing reliance upon the judgment of **Satvinder Kaur**

(supra) the ministry of Home Affairs vide its notification no. 15011 (35)/2013/-SC /ST-W dated 10.05.2013 has directed that the police officers



need to dispel with the fear that cases arising out of jurisdiction cannot be investigated. Said notification is titled as '*registration of FIR irrespective of territorial jurisdiction and zero FIR*'. In the notification it has also been made clear that section 156(2) of the Cr.P.C. contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate the case.

41. In ***Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors.*** reported in **(1999) 8 SCC 686** it was held that the quashing of complaint on the ground that the Magistrate has no territorial jurisdiction to take cognizance of offence is erroneous and premature. The relevant paragraphs may be quoted below:-

11. *It is an erroneous view that the Magistrate taking cognizance of an offence must necessarily have territorial jurisdiction to try the case as well. Chapter XIII of the Code relates to jurisdiction of the criminal courts "in enquiries and trials". That chapter contains provisions regarding the place where the enquiry and trial are to take place. Section 177 says that:*

"177. Every offence shall ordinarily be enquired into and tried by a court within whose local jurisdiction it was committed."

But Section 179 says that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the place of enquiry and trial can as well be in a court "within whose local jurisdiction such thing has been done or such consequence has ensued". It cannot be overlooked that the said provisions do not trammel the powers of any court to take cognizance of the offence. The power of the court to take cognizance of the offence is laid in Section 190 of the Code. Sub-sections (1) and (2) read thus:

"190. (1) Subject to the provisions of this chapter, any Magistrate of the First Class, and any Magistrate of the Second Class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-section (1) of such offences as are within his competence to enquire into or try."

13. *The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this chapter". There are 9 sections in Chapter XIV most of which contain one or other restriction imposed on the power of a First Class Magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial*



barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these: "Except as hereinafter provided...." Those words are now replaced by "Subject to the provisions of this chapter...." Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the First Class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a Magistrate of the power to take cognizance of an offence — of course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Anyway that is a different matter.

15. Unfortunately, the High Court, without considering any of the aforesaid legal aspects rushed to the erroneous conclusion that the "Judicial Magistrate of the First Class, Gandhidham has no power to take cognizance of the offences alleged" merely because such offences could have been committed outside the territorial limits of the State of Gujarat. Even otherwise, without being apprised of the fuller conspectus a decision on the question of jurisdiction should not have been taken by the High Court at a grossly premature stage as this.

42. In view of aforesaid discussion I have no other alternative but to conclude that the allegations of committing offences mentioned in the FIR, against the petitioners need to be properly investigated to unerth the truth. Therefore, the present application seeking quashsment of proceeding is devoid of merit and therefore it is liable to be dismissed.

43. Therefore, **CRR 2895 of 2025** is dismissed.

44. Investigating agency will make every endeavour to conclude the investigation at the earliest. Connected applications thus stands disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)