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DEVENDRA & ORS.

v.

STATE OF U.P. & ANR.

Criminal Appeal No. 940 of 2009

MAY 6, 2009

B

**[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]**

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*Penal Code, 1860 – ss. 420, 467, 468 and 469 – Civil litigation between co-sharers regarding extent of their shares – One of the parties selling a portion of the suit property to third party – Other litigating party filing complaint alleging cheating and forgery – FIR lodged – Petition for quashing FIR dismissed – After investigation cognizance of the offences taken by Magistrate – Petition for quashing the criminal proceedings dismissed – On appeal, held: Execution of sale deed of the property claiming title to which the vendor was not entitled, would not, on facts, amount to cheating or forgery – Proceedings were liable to be quashed – Code of Criminal Procedure, 1973 – s. 482.*

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*Res Judicata – Applicability of – Held: The principle of res judicata is not applicable in criminal proceedings – Code of Civil Procedure, 1908 – s.11*

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**During pendency of a litigation between the co-sharers, regarding extent of their respective shares, two of the co-sharers (Appellant Nos.1 & 2) sold a portion of the property to a third party. The other co-sharer (respondent No.2) filed a suit seeking cancellation of the sale deed, which is still pending.**

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**Thereafter respondent No. 2 filed a complaint as a result thereof FIR was lodged. Appellants' application for quashing the FIR was dismissed by High Court. After investigation, chargesheet was filed against them and CJM took cognizance of the offences u/ss. 420, 467, 468**

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and 469 IPC. Appellants' another application challenging the order of CJM was dismissed by High Court. Hence the present appeal.

Allowing the appeal, the Court

**HELD: 1.** A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out. [Para 29] [887-C-D]

**2.** In the instant case, it is not correct to say that by reason of execution of a deed of sale claiming title over the property to which the appellants were not entitled to, the complainant-respondent had been cheated. Appellants had not made any representation to the complainant. No contract and/ or transaction had been entered into by and between the complainant and the appellants. [Para 21] [881-D-E]

*V.Y. Jose v. State of Gujarat and Anr.* (2009) 3 SCC 78 – referred to.

**3.** A misrepresentation from the very beginning is a sine qua non for constitution of an offence of cheating, although in some cases, an intention to cheat may develop at a later stage of formation of the contract. [Para 22] [882-E]

*Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.* (2000) 4 SCC 168; *Indian Oil Corporation v. NEPC India Ltd. and Ors.* (2006) 6 SCC 736; *Veer Prakash Sharma v. Anil Kumar Agarwal and Anr.* 2007 (9) SCALE 502; *V.Y. Jose v. State of Gujarat and Anr.* (2009) 3 SCC 78; *Ravindra Kumar Madhanlal Goenka and Anr. v. M/s. Rugmini Ram Raghav Spinners and Anr.* 2009 (6) SCALE 162 – referred to.

**4.** Making of any false document, in view of the definition of 'forgery' is the sine qua non therefor. What

A would amount to making of a false document is specified  
in Section 464 IPC. What is, therefore, necessary is to  
execute a document with the intention of causing it to be  
believed that such document inter alia was made by the  
authority of a person by whom or by whose authority he  
B knows that it was not made. Appellants are the owners of  
the property. They have executed a sale deed. Execution  
of the deed of sale is not denied. If somebody is aggrieved  
by the false assertions made in the said sale deed, he  
would be the vendees and not the co-sharers. Appellants  
C have not been alleged to be guilty of creating any false  
document. [Paras 23 and 24] [883-G-H; 884-A-D]

5. The High Court ordinarily would exercise its  
jurisdiction u/s. 482 Cr.P.C., if the allegations made in the  
First Information Report, even if given face value and taken  
D to be correct in their entirety, do not make out any offence.  
When the allegations made in the First Information Report  
or the evidences collected during investigation do not  
satisfy the ingredients of an offence, the superior courts  
would not encourage harassment of a person in a criminal  
E court for nothing. [Para 26] [886-E-F]

6. The High Court has refused to quash a First  
Information Report as a different standard therefor was  
required to be applied. However, when materials are  
collected and a chargesheet is filed on the basis whereof  
F the Magistrate takes cognizance of the offence, the same  
would give rise to a new cause of action. An order taking  
cognizance of an offence on the basis of a chargesheet  
filed by the investigating officer and/ or directing issuance  
of summons on a complaint petition, indisputably, would  
G attract the provisions of Section 482 Cr.P.C. if a case  
has been made out for invocation thereof. [Para 28]  
[887-A-B]

7. It is not correct to contend that the earlier order of  
the High Court would operate as res judicata. The principle  
H of res judicata has no application in a criminal proceeding.

The principles of res judicata as adumbrated in Section 11 CPC or the general principles thereof will have no application in a case of this nature. [Para 27] [886-G-H]

8. In a given case a civil suit as also a criminal proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it in another proceeding. [Para 20] [880-H; 881-A]

*P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu* AIR 2008 SC 1884 : (2008) 5 SCC 765 – relied on.

*Seth Ramdayal Jat v. Laxmi Prasad* 2009 (5) SCALE 527 – referred to.

9. If the appellant Nos. 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share over the entire properties, the same would not be binding on the complainant-respondent. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third-party, recourse to legal action could always be taken. Even for that purpose, a proceeding u/ss. Sections 144 and 145 Cr.P.C. would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court. [Para 18] [880-C-E]

*Shanti Kumar Panda v. Shakuntala Devi* (2004) 1 SCC 438 – relied on.

*Trisuns Chemical Industry v. Rajesh Agarwal and Ors.* (1999) 8 SCC 686; *Kamaladevi Agarwal v. State of W.B. and Ors.* (2002) 1 SCC 555 – referred to.

10. In a case of this nature where no case has been made out for taking cognizance of an offence under Section 420 IPC, it was obligatory on the part of the Chief Judicial Magistrate to apply his mind to the contents of the chargesheet. Such application of mind on his part should have been reflected from the order. [Para 30] [887-E]

- A *State of Karnataka and Anr. v. Pastor P. Raju* (2006) 6 SCC 728; *Pawan Kumar Sharma v. State of Uttaranchal*, Criminal Appeal No. 1692 of 2007 – referred to.

**Case Law Reference**

- |   |                    |              |         |
|---|--------------------|--------------|---------|
| B | (2004) 1 SCC 438   | Relied on.   | Para 19 |
|   | AIR 2008 SC 1884   | Relied on.   | Para 20 |
|   | 2009 (5) SCALE 527 | Referred to. | Para 20 |
|   | (2009) 3 SCC 78    | Referred to. | Para 22 |
| C | (2000) 4 SCC 168   | Referred to. | Para 22 |
|   | (2006) 6 SCC 736   | Referred to. | Para 22 |
|   | 2007 (9) SCALE 50  | Referred to. | Para 22 |
| D | 2009 (6) SCALE 162 | Referred to. | Para 22 |
|   | (1999) 8 SCC 686   | Referred to. | Para 25 |
|   | (2002) 1 SCC 555   | Referred to. | Para 25 |
| E | (2006) 6 SCC 728   | Referred to. | Para 30 |
|   | 1692 of 2007       | Referred to. | Para 30 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 940 of 2009

- F From the Judgement and Order dated 21.01.2008 passed by the Hon'ble High Court of Judicature at Allahabad in Criminal Misc. Appeal No. 8339 of 2006.

S.R. Singh, Archana Singh, Abhish Kumar, for the Appellant.

- G Ratnakar Das, Savitri Pandey, Rajeev Kumar, Kamalendra Mishra, Mona Rajvanshi, Anurag Kashyap, Kamaldeep, for the Respondent.

- H The Judgement of the Court was delivered by

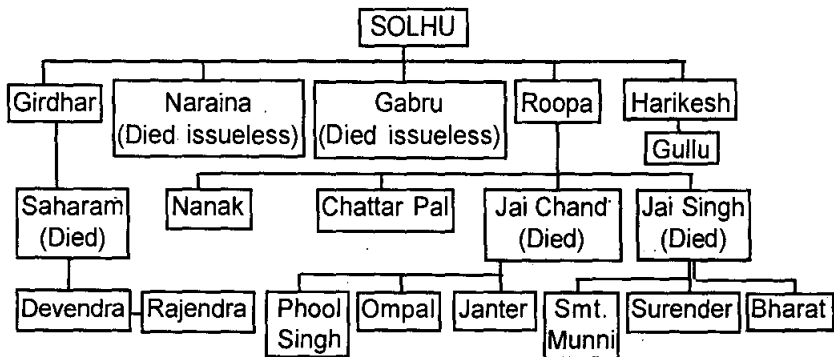
**S.B. SINHA, J :**

1. Leave granted.

2. Whether a pure civil dispute can be a subject matter of a criminal proceeding under Sections 420, 467, 468 and 469 of the Indian Penal Code is the question involved herein.

It arises in the following factual matrix:

3. The parties are co-sharers. The genealogical tree of the family is as under:



4. Solhu had five sons, viz., Girdhar, Naraina, Gabru, Roopa and Harikesh. Appellant Nos. 1 and 2 are grand sons of Girdhar. Indisputably, Gabru died issueless. According to the appellants, the share of Naraina in the joint family, who died issueless, devolved upon among the three surviving brothers, viz., Girdhar, Roopa and Harikesh. However, according to the respondent No. 2, the share of Naraina devolved upon Rupa and Harikesh.

5. On or about 17.03.1982, Gullu, son of Harikesh filed a suit for partition of his  $\frac{1}{3}^{\text{rd}}$  share before the Additional Sub Divisional Officer, Pargana being Suit No. 135 of 1982. By an order dated 24.11.1983, the said suit was decreed, stating:

- “1. Plaintiff Gullu has  $\frac{1}{4}$  share in disputed land.
2. Share of defendant Devendra and Rajendra is  $\frac{1}{4}^{\text{th}}$  in disputed land.
3. Share of defendants Jai Singh, ChatarPal, Nanakchand and Jaichand is  $\frac{1}{2}$  in disputed land.”

A 6. Gullu filed an appeal thereagainst before the  
Commissioner, Meerut Division. By an order dated 19.03.1984,  
the said decree was modified opining that  $3/8^{\text{th}}$  share in the  
joint family belonged to sons of Roopa, viz., Jai Singh, Chatar  
Pal, Nanakchand and Jaichand. Aggrieved by the said order,  
B Jai Singh, son of Roopa, filed an appeal before the Board of  
Revenue, which by an order dated 21.10.1985 set aside the  
order dated 19.03.1984 passed by the Additional  
Commissioner and affirmed the order of the Additional Sub-  
Divisional Officer dated 24.11.1983.

C 7. Aggrieved thereby, Gullu filed a Civil Misc. Writ Petition  
bearing No. 17667 of 1985 before the High Court wherein the  
appellant Nos. 1 and 2 were not impleaded. The High Court by  
its order dated 7.11.1985, while issuing notice, stayed the  
operation of the order dated 21.10.1985 passed by the Board  
D of Revenue.

8. On or about 22.08.1997, a sale deed was executed by  
the appellant Nos. 1 and 2 in favour of the appellant Nos. 3 and 4.

E 9. On 24.08.2005, a suit was filed by the respondent No. 2  
and others for cancelling the aforesaid deed of sale dated  
22.08.1997, which was registered as Civil Suit No. 382 of 2005.  
The said suit is still pending in the Court of Learned Civil Judge  
(Junior Div.) Ghaziabad. In the said suit, however, it was averred  
that Solhu had four sons whereas in the suit No. 135 of 1982, it  
F was stated that Solhu had five sons.

10. Appellants filed an application under Order 9 Rule 13  
read with Section 151 of the Code of Civil Procedure before  
the Court of Deputy District Magistrate (First Class) Ghaziabad  
praying for dismissal of the suit No. 135 of 1982. An application  
G for impleadment was also filed by the appellants in Civil Misc.  
Writ Petition No. 17669 of 1985.

H 11. On or about 21.09.2005, the respondent No. 2 filed an  
application in the Police Station, Kavinagar, Ghaziabad wherein  
the City Magistrate by an order dated 17.09.2005 passed an

order to hear the complainant and register a First Information Report. Thereafter, the respondent No. 2 filed a First Information Report in the Police Station, Sahni Gate on 21.09.2005. A

12. Appellants filed an application for quashing the said First Information Report before the High Court. It was marked as Criminal Misc. Writ Petition No. 10568 of 2005. By an order dated 17.10.2005, the High Court, while dismissing the said application, directed: B

“5. The investigating officer will make all possible efforts to conclude the investigation within three months of the date on which a certified order of this order is served upon him.” C

The investigation was thereafter taken up. A chargesheet was submitted before the learned Chief Judicial Magistrate. D

13. The learned Chief Judicial Magistrate by an order dated 20.02.2006 took cognizance of the offence. No reason was assigned in support thereof. E

14. Questioning the legality of the said order, the appellants filed another application under Section 482 of the Code of Criminal Procedure, which by reason of the impugned judgment, has been dismissed. E

15. Mr. S.R. Singh, learned senior counsel appearing on behalf of the appellants would submit: F

- (i) The learned Chief Judicial Magistrate having not assigned any reason while taking cognizance of the offence, the High Court should have held that the same suffered from total non-application of mind. F
- (ii) Having regard to the question as to whether the appellants have one-third or one-fourth share and a civil suit being pending, the order dated 17.10.2005 could not be sustained. G

16. Mr. Ratnakar Das, learned senior counsel appearing H



A on behalf of the respondent – State, on the other hand, would submit that having regard to the provisions contained in Section 463 of the Indian Penal Code, an offence for commission of forgery must be held to have been made out.

B The learned counsel appearing on behalf of the complainant also supported the impugned order.

17. The fact that the appellants are co-sharers is not in dispute. The dispute between them is confined to the extent of their respective shares. It must be determined only in a civil suit.

C 18. If the appellant Nos. 1 and 2 had executed a deed of sale in favour of a third party stating that they have one-third share over the entire properties, the same would not be binding on the complainant – respondent. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharer or at the hands of the third-party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceeding under Sections 144 and 145 of the Code of Criminal Procedure would be maintainable. The decision of a criminal court in a case of this nature would not be binding on the civil court.

E 19. In *Shanti Kumar Panda v. Shakuntala Devi* [(2004) 1 SCC 438], this Court held:

F “(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence.”

G 20. There cannot, however, be any doubt or dispute H whatsoever that in a given case a civil suit as also a criminal

proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it in another proceeding. A

In *P. Swaroopa Rani v. M. Hari Narayana @ Hari Babu*, [AIR 2008 SC 1884 (2008) 5 SCC 765], the law was stated, thus: B

“13. It is, however, well-settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.” C

[See also *Seth Ramdayal Jat v. Laxmi Prasad*, 2009 (5) SCALE 527]

21. It was, however, submitted that by reason of execution of a deed of sale claiming title over the property to which the appellants were not entitled to, the complainant – respondent had been cheated. It is difficult to accept the said contention. Appellants had not made any representation to the respondent No. 2. No contract and/ or transaction had been entered into by and between the complainant and the appellants. D E

22. ‘Cheating’ has been defined in Section 415 of the Indian Penal Code to mean:

“**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’.” F G

In *V.Y. Jose v. State of Gujarat and Anr.* [(2009) 3 SCC 78], this Court opined: H

A "An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

i) deception of a person either by making a false or misleading representation or by other action or omission;

B (ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

C 12. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where  
D allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."

E It is, therefore, evident that a misrepresentation from the very beginning is a sine qua non for constitution of an offence of cheating, although in some cases, an intention to cheat may develop at a later stage of formation of the contract.

F In *Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.* [(2000) 4 SCC 168], this Court held:

G "14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section 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  
H the inducing must be fraudulent or dishonest. In the second

class of acts, the inducing must be intentional but not fraudulent or dishonest. A

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. 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 fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed." B  
C  
D

[See also *Indian Oil Corporation v. NEPC India Ltd. and Ors.* (2006) 6 SCC 736, *Veer Prakash Sharma v. Anil Kumar Agarwal and Anr.* 2007 (9) SCALE 502, *V.Y. Jose* (supra) and *Ravindra Kumar Madhanlal Goenka & Anr. v. M/s. Rugmini Ram Raghav Spinners & Anr.* 2009 (6) SCALE 162] E

23. Section 463 of the Indian Penal Code reads as under:

"Forgery

Whoever makes any false documents or false electronic record or part of a document or electronic record with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery." F  
G

According to Mr. Das, making of a false document so as to support any claim over title would constitute forgery within the meaning of the said provision and as a document was created for the purpose of showing one-third share in the joint property H

A by the appellants although they were not entitled to therefor, they must be held to have committed an offence.

Making of any false document, in view of the definition of 'forgery' is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof.

B What is, therefore, necessary is to execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.

C 24. Appellants are the owners of the property. They have executed a sale deed. Execution of the deed of sale is not denied. If somebody is aggrieved by the false assertions made in the said sale deed, he would be the vendees and not the co-sharers.

Appellants have not been alleged to be guilty of creating any false document.

D 25. Reliance has been placed by Mr. Das on *Trisuns Chemical Industry v. Rajesh Agarwal and Others* [(1999) 8 SCC 686] wherein this Court held that quashing of a complaint should be limited to very extreme situations. There is no dispute with regard to the legal position.

E Reliance has also been placed on *Kamaladevi Agarwal v. State of W.B. and Others* [(2002) 1 SCC 555] wherein this Court held:

"9. Criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending...

F 15. We have already noticed that the nature and scope of civil and criminal proceedings and the standard of proof required in both matters is different and distinct. Whereas in civil proceedings the matter can be decided on the basis of probabilities, the criminal case has to be decided by adopting the standard of proof of "beyond reasonable doubt"...

G 17...We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as

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prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings. A

7. This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction." B C

We may, however, notice that the said decision has been considered recently by this Court in *Mahesh Choudhary v. State of Rajasthan & Anr.* [2009 (4) SCC 66] wherein it was noticed:

"Recently in *R. Kalyani v. Janak C. Mehta and Ors.* 2008 (14) SCALE 85, this Court laid down the law in the following terms: D

9. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. E

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence. F

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus. G

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. H

A 10. It is furthermore well known that no hard and fast rule  
can be laid down. Each case has to be considered on its  
own merits. The Court, while exercising its inherent  
jurisdiction, although would not interfere with a genuine  
complaint keeping in view the purport and object for which  
B the provisions of Sections 482 and 483 of the Code of  
Criminal Procedure had been introduced by the Parliament  
but would not hesitate to exercise its jurisdiction in  
appropriate cases. One of the paramount duties of the  
Superior Courts is to see that a person who is apparently  
innocent is not subjected to persecution and humiliation  
C on the basis of a false and wholly untenable complaint.

16. The charge-sheet, in our opinion, prima facie discloses  
commission of offences. A fair investigation was carried  
out by the Investigating Officer. The charge-sheet is a  
detailed one. If an order of cognizance has been passed  
D relying on or on the basis thereof by the learned Magistrate,  
in our opinion, no exception thereto can be taken. We, therefore,  
do not find any legal infirmity in the impugned orders.”

26. There is no dispute with regard to the aforementioned  
propositions of law. However, it is now well-settled that the  
E High Court ordinarily would exercise its jurisdiction under  
Section 482 of the Code of Criminal Procedure if the  
allegations made in the First Information Report, even if  
given face value and taken to be correct in their entirety,  
do not make out any offence. When the allegations made  
F in the First Information Report or the evidences collected  
during investigation do not satisfy the ingredients of an  
offence, the superior courts would not encourage  
harassment of a person in a criminal court for nothing.

27. Mr. Das, furthermore, would contend that the order of  
G the High Court dated 17.10.2005 would operate as res judicata.  
With respect, we cannot subscribe to the said view. The principle  
of res judicata has no application in a criminal proceeding. The  
principles of res judicata as adumbrated in Section 11 of the  
Code of Civil Procedure or the general principles thereof will  
H have no application in a case of this nature.

28. The High Court has refused to quash a First Information Report as a different standard therefor was required to be applied. However, when materials are collected and a chargesheet is filed on the basis whereof the Magistrate takes cognizance of the offence, the same would give rise to a new cause of action. An order taking cognizance of an offence on the basis of a chargesheet filed by the investigating officer and/ or directing issuance of summons on a complaint petition, indisputably, would attract the provisions of Section 482 of the Code of Criminal Procedure if a case has been made out for invocation thereof. A B

29. Mr. Das submits that a wrong committed on the part of a person may be a civil wrong or a criminal wrong although an act of omission or commission on the part of a person may give rise to both civil action and criminal action. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out. C D

30. Furthermore, in a case of this nature where even, according to Mr. Das, no case has been made out for taking cognizance of an offence under Section 420 of the Indian Penal Code, it was obligatory on the part of the learned Chief Judicial Magistrate to apply his mind to the contents of the chargesheet. Such application of mind on his part should have been reflected from the order. [See *State of Karnataka and Anr. v. Pastor P. Raju* (2006) 6 SCC 728 and *Pawan Kumar Sharma v. State of Uttaranchal*, Criminal Appeal No. 1692 of 2007 decided on 10<sup>th</sup> December, 2007] E F

31. We, however, must place on record that we have not entered into the merit of the dispute as the civil suit is pending. The same has to be determined in accordance with law. We would request the court concerned to consider the desirability of the disposing of civil suit as expeditiously as possible.

32. The appeal is allowed with the aforementioned directions.