



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 12<sup>th</sup> March, 2025*  
*Pronounced on: 27<sup>th</sup> June, 2025*

+ **CRL.A. 328/2021, CRL.M.A. 17707/2021 (stay)**

1. **M/S NULON INDIA LTD.**

A company incorporated  
 under the Companies Act, 1956  
 having its office at  
 Block No.4, Tribhuvan Complex,  
 Delhi-Mathura Road, New Delhi-110065  
 Through its authorised representative  
 Sh. G.P. Chobey  
 Email [ID-cpvig44@gmail.com](mailto:ID-cpvig44@gmail.com)  
 Mob. No.9818444953

....Appellant No.1

2. **SH. K.K. GOLYAN**

S/o Sh. M.P. Golyan  
 Director of M/s Nulon India Ltd.  
 having its office at  
 Block No.4, Tribhuvan Complex,  
 Delhi-Mathura Road, New Delhi-110065  
 Email [ID-cpvig44@gmail.com](mailto:ID-cpvig44@gmail.com)  
 Mob. No.9818444953

....Appellant No.2

3. **SMT. SMITI GOLYAN**

W/o Sh. K.K. Golyan  
 Director of M/s Nulon India Ltd.  
 having its office at  
 Block No.4, Tribhuvan Complex,  
 Delhi-Mathura Road, New Delhi-110065  
 Email [ID-cpvig44@gmail.com](mailto:ID-cpvig44@gmail.com)  
 Mob. No.9818444953

....Appellant No.3

4. **SH. G.P. CHOBEY**

S/o Late M.L. Chobey



AR of M/s Nulon India Ltd.  
 having its office at  
 Block No.4, Tribhuvan Complex,  
 Delhi-Mathura Road, New Delhi-110065  
 Email [ID-cpvig44@gmail.com](mailto:ID-cpvig44@gmail.com)  
 Mob. No.9818444953

....Appellant No.4

Through: Mr. C.P. Vig, Advocate.

versus

1. **STATE**

(Govt. of NCT of Delhi)

Email [ID-dhcprosecutiondelhipolice@gmail.com](mailto:ID-dhcprosecutiondelhipolice@gmail.com)

Mob. No.9891919168

.....Respondent No.1

2. **M/S ISHWAR INDUSTRIES LTD.**

A company incorporated under the  
 Companies Act, 1956 Having its  
 Regd. Office at Ishwar Nagar,  
 Tribhuvan Complex, Delhi-Mathura  
 Road, New Delhi-110065

Through its Director

Sh. Bharat Bhaskar

Email [ID-bharatbhaskar@yahoo.com](mailto:ID-bharatbhaskar@yahoo.com)

Mob. No. 8171601176

.....Respondent No.2

Through: Mr. Utkarsh, APP for the State.

Ms. Ekta Mehta, Mr. Antarik  
 Chakrabarti, Ms. Zainab Khan,  
 Advocates for R-2.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. Appeal under Section 341 of the Code of Criminal Procedure, 1973  
 (*hereinafter referred to as 'Cr.P.C'*) has been filed on behalf of the



Appellants against the impugned Order dated 16.01.2021 of learned ADJ- New Delhi, who had taken cognizance under Section 340 Cr.P.C. against the Objector Company/Appellant No. 1 (*M/s Nulon India Ltd.*), for the offence under Section 209 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) and has directed a Complaint to be filed before the learned CMM, New Delhi.

2. ***Briefly stated***, the Appellant No.1 *herein* i.e. **M/s Nulon India Ltd.**, had filed ***Suit No. 36/2003***, titled '*M/s Nulon India Ltd. vs. The Ishwar Industries Ltd.*' for Permanent Injunction against M/s Ishwar Industries , which was decreed *vide* Judgment dated 31.10.2005 whereby the Respondent No. 2 was restrained from demolishing the office portion of the Appellant No.1, without due process of law and also restrained from dispossessing the Appellant No.1 from the office portion of the property in Block No. 4, Tribhuvan Complex, Delhi Mathura Road.

3. Thereafter, *M/s Ishwar Industries Ltd.* filed ***Suit No. 9831/2016 (Old No. 1317/2005)***/Respondent No.2 against M/s Gallus Chattles Pvt. Ltd., M/s Colorado Chattles Pvt. Ltd., M/s Crocus Chattles Pvt. Ltd. and ***M/s Nulon Global Ltd. for Recovery of Possession and Mesne Profits.*** The Suit ***was decreed vide Judgment dated 19.02.2020 by the learned ADJ*** whereby the defendants i.e. the four Companies, were directed to hand over the physical vacant possession of the Suit Property at Tribhuvan Complex, Main Mathura Road, within 30 days to the Plaintiff/Respondent No. 2 and were also restrained from creating third party rights in the property or to carry out further additions and alternations. In addition, decree of damages/mesne profits, was passed in favour of the Respondent No. 2 @Rs.75 per square



feet w.e.f. 23.11.1996, till the date of delivery of possession. Interest @ 12% p.a. was also awarded. The cost of Rs.3,00,000/- were imposed out of which, Rs.2,00,000/- were directed to be paid to the Respondent No. 2/Plaintiff and Rs.1,00,000/- to be deposited in the Prime Minister's National Relief Fund or Chief Minister's Relief Fund, Government of NCT of Delhi, within 30 days.

4. Before any Execution Petition could be filed by Respondent No. 2/Decree Holder, Appellant No.1 preferred Objections under *Order 21 Rule 97-101* read with Section 151 Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), on 22.07.2020.

5. A ***preliminary Objection*** was taken by Respondent No.2 in regard to the maintainability of the Objections in the absence of any Execution Petition being filed by the Respondent No. 2. However, in the light of observations made in the case of *Sameer Singh vs. Abdul Rab*, Civil Appeal No. 9699/2014 dated 14.10.2014, it was held that the Objections under Order 21 Rule 97-101 CPC were maintainable even though there was no Execution Petition filed.

6. The ***Objector/Appellant No.1*** took various Objections that he was not bound by the Judgment dated 19.02.2020, and to hand over the possession, by claiming an independent right in the Suit Property.

7. A ***Reply was filed by the Respondent No. 2, refuting all the Claims of the Petitioner.***

8. After considering the rival contentions of the parties, the ***learned ADJ vide Order dated 17.12.2020 noted that there was no merit in the Objections of Appellant No.1, which were dismissed*** with costs of



Rs.2,00,000/-, out of which Rs.1,00,000/- was to be paid to the Respondent No. 2 while Rs.50,000/- each were directed to be paid in Prime Minister's National Relief Fund and Chief Minister's Relief Fund, Delhi. At the same time, it was observed that the Objector/Appellant No.1 had filed a false claim in the Objections *and the Directors of the Appellant No.1 Company and Mr. G. P. Chobey, AR/Officer of the Objector Company*, who were directed to *Show Cause in writing as to why action under Section 340 Cr.P.C. for committing an offence under Section 209 IPC, be not initiated against them.*

9. The **Reply** was duly filed on behalf of the Appellant No.1 and by Mr. G.P. Chobey, A.R of Appellant No. 1 Company, asserting that they have not committed any offence under Section 209 IPC.

10. **Learned ADJ vide Order dated 16.01.2021** held the Directors and Mr. G.P. Chobey/AR of the Appellant Company to be "*in the habit of filing false applications, suits and objection without having any genuine claim over the Suit Property.*" **It was concluded that it was a fit case to file a Complaint under Section 340 Cr.P.C.** against the Objector Company, its Directors, namely, Mr. M.P. Golyan, Mr. K.K. Golyan, Ms. Smiti Golyan, Mr. G.P. Chobey, AR, for the offence under Section 209/34 IPC and a separate Complaint was directed to be filed before the learned CMM, South East.

11. Aggrieved by the said Order dated **16.01.2021**, present Appeal under Section 341 Cr.P.C., has been filed by the Appellants.

12. The **main ground taken to challenge the impugned the Order** is that it is against the facts of the case and provisions of law in so much as no



offence under Section 209 IPC made out and there are no cogent grounds for initiating the proceedings under Section 340 Cr.P.C.

13. It is submitted that *M/s Nulon India Ltd.*, through its Authorised Representative (AR) and Directors, filed *bonafide* Objections under Order 21 Rule 97-101 read with Section 151 CPC, on well-founded grounds and on legal advice. It has not been appreciated by the learned ADJ that no act of Appellants ever amounted to not preserving the sanctity of the Courts or to interference in the administration of justice. Merely because the defence taken by the Appellant No.1 was found not sustainable, it cannot be said that they had committed the offence under Section 209 IPC.

14. The Appellants never indulged in filing a false Claim nor can it be claimed that it was intended to pollute the stream of justice leading the Court to pass a wrong Judgment or that any act of the Appellant, was unjustified interference in the administration of justice. The Appellants believed to be justified by law in filing the Objections; there was no criminal intention and they did everything in a lawful manner by lawful means, in good faith and with proper care and caution.

15. It has not been considered that *vide* Judgment dated 31.10.2005, the learned ADJ had observed that *M/s Nulon India Ltd.* was in possession of property in question since 17.03.1994, the observations which attained finality as the challenge to the same remained unsuccessful till this Court. Therefore, the Appellants were justified in claiming protection of their possession and the circumstances do not invite any Show Cause Notice for initiation of proceedings under Section 340 Cr.P.C.



16. It is further contended that the Show Cause Notice in question was given in the Judgment dated 19.02.2020 and no separate Show Cause Notice was issued to the Appellants. Furthermore, it was not specified as to which claim of Appellant, was false since the Appellants had claimed to be in a settled possession of part of the property. The claims of the Appellant such as claim of purchase of two Units of Suit Property, non-filing of any Suit by the Respondent No. 2/M/s Ishwar Industries Ltd. against the Appellant No.1; fact of Collaboration Agreement dated 04.02.1986 and the rights and liabilities under that Agreement; admission of Respondent No. 2 in the Suit regarding the possession of the Appellant No.1 and no eviction Order having been made against M/s Nulon India Ltd., were based on record. *The Show Cause Notice in question was lacking in material particulars and was not tenable on various grounds.*

17. Furthermore, Section 24-26, 43, 52, 78-81 and 97 IPC, have not been considered, which gave a legal protection to the Appellants and none of the acts of the Appellants tantamount to an offence. Furthermore, it has not been appreciated that the Objections of the Appellant No.1, have not been tried on merit and there are no findings to conclude the claims of the Appellant No.1, to be false. The ingredients of the offence under Section 209 IPC, have not been made out.

18. It is, therefore, asserted that the impugned Order dated 16.01.2021, initiating proceedings under Section 340 Cr.P.C., is bad in law and is liable to be set-aside.

19. ***Learned counsel on behalf of the Respondent***, has argued that the learned ADJ has rightly observed in the impugned Order that intentionally



false statements were made purely to delay the handing over of the possession, to the Respondent No. 2 and all the ingredients of Section 209 IPC, were clearly made out. It is not a case where the defence as was being set-up by the Appellant No.1, was genuine but as has been noted, was not only blatantly falsehood but also an intent to defeat the *bonafide* claims of the Respondent No. 2, to get back the possession.

20. It is also asserted that by delaying handing over of the possession, immense losses by way of rent and has been caused aside from being deprived to use their own property.

21. It is, therefore, submitted that the Complaint under Section 340 Cr.P.C. has rightly been directed for registration of the case under Section 209 IPC. There is no infirmity in the Impugned Order and the Petition is liable to be dismissed.

22. **Submissions heard and the record perused.**

23. The **backdrop** in which the present proceedings have emerged is that in the year 2005, *Suit No 1317/2005 (Suit No.9831/2016)* was filed by M/s Ishwar Industries Ltd. Respondent No. 2, to seek possession of the Suit Property, which was at a prime location on main Mathura Road. The Suit was contested by the Defendant No. 4, *M/s Nulon Global Ltd.* (not *M/s Nulon India Ltd, the Petitioner*) and three other Appellants/Defendants, which got decreed by the learned ADJ on 19.02.2020, whereby the Defendants had been directed to hand over the possession of the Suit Property.

24. Faced with the imminent threat to vacate the premises, the Appellant No.1 *M/s Nulon India Ltd, (who was not a Party to the Suit)* who was



*admittedly in possession since 1994*, filed Objections under Order 21 Rule 97-101 read with Section 151 CPC, immediately even before the Execution Petition was filed.

25. It was asserted in the Objections that Growth Techno Projects Ltd. (*for short 'GTPL'*) had sold Unit No. 164 and 165 to the Appellant No. 1 against the consideration, as per the Letter dated 12.12.1991 and 16.12.1991, which were agreed to be treated as Agreement to Sell. When the construction to be raised got delayed, possession of Block No. 4 was given to the Appellant No. 1 and other Sister Concerns of the Appellant No. 1 on 17.03.1994 by GTPL, who was shown as a vendor to the knowledge of the Respondent No.2 and the Respondent was the confirming party. In this manner, the rights created in favour of the Appellant No. 1 by GTPL, which were confirmed by the Respondent No. 2, it had no right to disturb peaceful possession of Appellant on any ground whatsoever and to dispossess the Appellant from the property in question.

26. It claimed that it was in peaceful and settled possession of Unit No. 164 and 165 of the property in question as per Allotment Letters dated 12.12.1991 and 16.12.1991 having been inducted by *M/s Growth Techno Projects Ltd.*, who always treated the Appellant No.1 as owner in possession of the property in question and never filed any Suit against the Appellant No.1, to claim Possession or the Mesne Profits. So much so that, no Suit was ever filed by the Respondent No. 2 against the Appellant No.1 which right, if any of the Respondent has lapsed by efflux of time *qua* the Objector. The Appellant thus, claimed its independent right on the basis of Allotment



Letters dated 12.12.1991 and 16.12.1991, even before an Execution Petition could be filed.

27. Further, the Appellant No.1 claimed that being a Private Limited Company, it was a different legal entity from other sister concerns, who were different Private Limited Companies with different Directors. The Judgment and the Decree against the Defendants, was not binding on the Objector since the party impleaded was *M/s Nulon Global Ltd., which is independent from the Objector, M/s Nulon India Ltd., which was never a party in the Suit and has independent rights.*

28. The learned ASJ took cognizance of the objections filed on 22.07.2020 by the Objector Company and held the objections to be maintainable, even prior to filing of Execution Application by the Decree Holder. Learned ADJ by the Order dated 17.12.2020 ***while dismissing the Objections filed by the Appellant No. 1***, observed as under:-

*“that the Appellant No. 1 had filed various applications, one after another to delay the suit to illegally retain the possession for a long period. **The present objection is also in that direction only even after passing of Judgment against the defendants with clearly indicates that they want to delay the execution of the Judgment/decree and delivery of possession of the suit property to the plaintiff.** The Directors of the objector company are also the Directors of defendant companies (along with other Directors) and as such, they were well aware of each and every stage of the previous proceedings and despite that, they have filed the present frivolous objection/claim. Accordingly, this court deems it fit to take criminal action against them and to impose exemplary cost.*

..... ..



*Accordingly, objection of the objector is dismissed with a cost of Rs.2,00,000/- out of which Rs.1,00,000/- shall be payable to the plaintiff/respondent within 30 days and Rs.50,000/- to the Prime Minister's Relief Fund and Rs.50,000/- to the Chief Minister's Relief Fund (Delhi) within 30 days.*

*Keeping in mind the conduct of the objector and filing of false claim in the present objection, the Directors of Objector Company and Mr. G.P. Chobey, AR/Officer of the Objector Company are directed to show cause in writing as to why action should not be initiated against them for filing a complaint under Section 340 CrPC, for continuing the offence under Section 209 IPC, on the next date of hearing with advance copy to the opposite counsel of her WhatsApp/email.”*

29. The *Appeal against the Decree dated 19.02.2020*, to this Court and to the Hon'ble Supreme Court of India, by the Appellants/Defendants, did not meet any success.

30. After having given Show Cause Notice in the Order dated 17.12.2020, while dismissing the Objections *vide* impugned Order dated 16.01.2021, learned ADJ directed a Complaint to be filed under Section 340 Cr.P.C. for the offence under Section 209 IPC. This Order has been assailed in the present Petition.

31. To appreciate the contentions raised in the present Petition, it is pertinent to observe that Order of learned ADJ dated 17.12.2020 dismissing the Objections of the Appellant No.1, was assailed *vide* EX. F.A. 5/2021 (Execution First Appeal) which was dismissed *vide* Order dated 30.11.2021 by the Co-ordinate Bench of this Court. In the said Order, the aspect of taking a false stand in the Suit and the conduct of the



Contemnors - Mr. K.K. Golyan, Director and Mr. G.P. Chobey and the dilatory tactics resorted to by the Appellant/Objector Company, in order to delay the Suit to retain the possession of the Suit Property and the execution thereof, was considered.

32. The observations by the Co-ordinate bench of this Court in the Order dated 30.11.2021 are produced herein below for reference:-

*“ 26. Each of the above statements is prima facie, false to the knowledge of the deponent, who in this appeal is Mr. G.P. Chobey. He is the authorised representative of the Objector Company and also the authorised representative of the Defendants of the group companies/sister concerns. He is obviously authorised by the main Director Mr. K.K. Golyan who has also made incorrect statements in his cross examination. He has concealed the fact that the allotment letters were cancelled and that a suit had been filed challenging the said cancellations. Even today, the submission made on merits by the Appellant/Objector is that there are allotment letters in its favour. Clearly the intention is to misrepresent and mislead this Court.*

*27. Issue notice to show cause as to why proceedings for contempt/perjury should not be initiated against Mr. K.K. Golyan, Director of the Defendant Companies, and Mr. G.P. Chobey, the Authorised Representative of the Objector, for having concealed the relevant facts before this Court, as also having made false statements before the Executing Court only to retain the possession of the suit property. Let reply to the show cause notice be filed within two weeks.”*

33. Consequently, *Show Cause Notice* was given under *Contempt of Courts Act as to why proceedings for Contempt/perjury be not initiated against the Contemnors for making false pleas and false Statements,*



against Mr. K.K. Golyan, the Director of the Defendant Companies (Appellant No. 2 herein) and Mr. G.P. Chobey, AR of the Appellant (Appellant No. 4 herein), for having concealed the relevant facts before this Court and also having made false Statements before the Executing Court only to retain the possession of the Suit Property and that such action was justified, in the given circumstances.

34. Thereafter, this Court in the Order dated 21.07.2022, considered the ***response of the Appellants to the Show Cause Notice*** under ***Contempt of Courts Act*** and concluded that the Suit Property had to be vacated but because of delay caused by the Objector, the Respondent No. 2 could not enjoy the suit Property. There were various incorrect and false pleas taken before this Court and clever suppressions were resorted to. The attempt clearly was to continue to occupy the premises by resorting to *mala fide* methods and falsities.

35. Thus, as per ***Order dated 21.07.2022*** of the Co-ordinate Bench of this Court, the Appellant was sentenced under Contempt of Courts Act, as under:-

***“Considering the above settled legal position and that the Contemnors have repeatedly made false and incorrect statements to the Court and have also raised misleading pleas in their pleadings and submissions only to remain in possession of the suit property for more than 15 years after the suit was filed, the contemnors are held guilty of contempt of this Court. The apologies tendered are accepted by the Court subject to the condition that the Contemnors - Mr. K.K. Golyan, Director and Mr. G.P. Chobey, the Authorized Representative of the Appellant/Objector Company shall pay Rs.50,00,000/- and Rs.20,00,000/- respectively, to the Respondent, within three***



*months. If the said payments are not made, the Contemnors would be liable to be sentenced to imprisonment for 15 days each.*

*If the amounts as directed are paid, the show cause notice for contempt shall stand discharged and adjustment of 50% of the said amount shall be given by the Executing Court as part of the amount payable under the decree.”*

36. This Order dated 21.07.2022 was clarified *vide* Order dated 23.05.2023 wherein it was stated that the amount of Rs.70,00,000/-, which was directed to be paid to the Respondent No. 2, be treated as cost to be paid to the Respondent as the total cost incurred by the Respondents, was more than the said amount. It was further clarified that the cost of Rs.70,00,000/- be paid within a period of two months failing which they would be guilty of the Contempt and shall undergo imprisonment for 15 days.

37. *Appeal No. CONT.APP.(C) 36/2023 and CONT.APP.(C) 37/2023* was filed by **Mr. K.K. Golyan, Director** and **Mr. G.P. Chobey, the two Directors of the Appellant** against the Order of the learned Single Judge penalising them under Contempt of Courts Act, before the Division Bench wherein the Impugned Order was stayed *subject to deposit of the cost of Rs.70,00,000/-*. **The said matter is still pending before the Division Bench.**

38. It is, therefore, evident from the Order of the learned Single Judge dated 30.11.2021 that the aspect of giving false evidence and obstructing and delaying the trial, and Order dated 17.12.2020 issuing Show Cause Notice under Section 340 Cr.P.C. has been duly considered in the Appeal



against the Order Dated 17.12.2020 dismissing the Objections, and after detailing the false Statements, the **Show Cause Notice under the Contempt of Courts Act**, was issued and the Appellants/Directors who were held guilty and their unconditional apology was accepted, *vide* Order dated 21.07.2022 of the learned Single Judge. In addition, to compensate the Decree Holder for the delay, Appellant No.2 *K.K. Golyan* and Appellant No.4 *G.P. Chobey*, as representatives of Appellant No.1 were directed to pay ***Rs.50,00,000/- and Rs.20,00,000/- respectively, to the Respondent***, (*which was subsequently clarified to be by way of fine*) ***within three months. If the said payments are not made, the Contemnors would be liable to be sentenced to imprisonment for 15 days each.***

39. Thus, fundamentally, the aspect of giving false evidence for which Show Cause Notice under Section 340 Cr.P.C. was directed to be issued to the Appellants by the learned ADJ in the Order dated 17.12.2020 has already been considered in Appeal by Single Judge and appropriate action taken under Contempt of Courts Act for delay and obstruction and depriving the Respondent No. 2 of the possession and the use of the property by payment of Fine/Costs.

40. *Therefore, no further action under Section 340 Cr.P.C. is warranted, once the Contempt Proceedings got initiated on the same averments and the Appellants have been suitably put to terms.*

41. **Even otherwise, if it was to be considered on merits, *M/s Nulon Global Ltd.*** was a party to the original Suit and not the present Appellant i.e. *M/s Nulon India Ltd.* The Objections were filed by *M/s Nulon India Ltd.* who was not a party to the main Suit, raising certain averments.



Though it has been rightly contended that the Directors of the M/s Nulon *India* Ltd. were the same as M/s Nulon *Global* Ltd. and other sister Concerns but the Directors who were same in the Two Company, could have disclosed this fact during the Trial. However, it cannot be overlooked that they were separate entities.

42. Furthermore, a reference be made to Section 340(1) Cr.P..C. which reads as under:-

**340. Procedure in cases mentioned in Section 195.—**

(1) When, upon an application made to it in this behalf or otherwise, ***any court is of opinion that it is expedient in the interests of justice*** that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary—

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the First Class having jurisdiction;
- (d) ....”

....

43. It is mandated in this Section itself that the proceedings may be initiated only ***if the court is of opinion that it is expedient in the interests of justice, to initiate the proceedings.***

44. This aspect was emphasized by the Apex Court in the case of *Chajoo Ram vs. Radhey Shyam*, (1971) 1 SCC 774, wherein it was held as under:-



*“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of and material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”*

45. The Apex Court in *Prithish vs. State of Maharashtra & Ors.*, (2002) 1 SCC 253 has held that the procedure of *preliminary inquiry* envisaged under Section 340 CrPC, is not meant to decide the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. The scope of such proceeding is confined to see whether based on the material available, *it is expedient in the interest of justice that an inquiry be made.*

46. The Apex Court in the case of *Iqbal Singh Marwah vs. Meenakshi Marwah*, (2005) 4 SCC 370, held that the Court is not bound to make a complaint in every case *unless the same is expedient in the interest of justice.* It was also noted in the said case that the question as to whether it is expedient in the interest of justice to make a complaint is to be *tested by the concerned Court by not only weighing the magnitude of impact of*



*injury suffered by the person who would have been made to suffer by such a document, but also by seeing the impact the same had on the administration of justice.*

47. In the case of Amarsang Nathaji vs. Hardik Harshadbhai Patel, (2017) 1 SCC 113, the Apex Court observed that that there are two preconditions for initiating proceedings under Section 340 CrPC:

*(i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 CrPC, and*

*(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.*

48. Furthermore, in Yashovardhan Birla vs. Kamdhenu Enterprises Ltd., 2023 SCC OnLine Del 7311 it was observed that for initiating proceedings under Section 340 Cr.P.C., ***the statements should have been made deliberately and consciously.***

49. Therefore, the ingredients for initiation of proceedings under Section 340 Cr.P.C., be stated as under:-

*(i) that the statements should have been made deliberately and consciously;*

*(ii) that the materials produced before the court must make out a prima facie case for a Complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 CrPC;*



- (iii) *the magnitude of impact of injury suffered by the person who would have been made to suffer by such a conduct;*
- (iv) *the impact the same had on the administration of justice;*
- and*
- (v) *whether it is expedient in the interests of justice to direct initiation of such an inquiry.*

50. *In the present case, whatever defences/Statements were made by the Appellant was essentially to defend his possession, which he believed to be in the nature of ownership on account of the two Allotment Letters, though they may have been subsequently cancelled. Furthermore, M/s Nulon India Ltd., the Appellant No. 1 was in possession since 17.03.1994 and instead of impleading it as a Party, its Sister concern M/s Nulon Global Ltd. was made a Party to the Suit. The defence taken by the Appellants were taken purely to defend their long possession.*

51. The discretionary power under Section 340 Cr.P.C. should not be exercised mechanically, but must be tempered by considerations of fairness. In the present case, since the Appellant has already been penalised under Contempt of Courts Act and the unconditional apology of the Directors has already been accepted. Further, the Respondents have been duly compensated for the long litigation and denial of possession, by imposition of Costs. To penalize the Appellants again for the same offences by initiating the proceedings under Section 340 Cr.P.C. for the offence under Section 209 IPC, *is neither in the interest of justice nor it further the administration of justice.*



***Conclusion:***

52. In the light of the aforesaid observations, the Impugned Order dated 16.01.2021 and the proceedings under Section 340 Cr.P.C., are hereby set-aside.

53. The Appeal along with Pending Application(s) is disposed of accordingly.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**JUNE 27, 2025/RS**